Enduring Unfreedom: Law and the State in Trinidadian Sugar Production

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Abstract

In the context of sugar production in Trinidad, the dissertation examines the role of law and the state in the incorporation of unfree labour during the colonial and early post-colonial period. In orienting the analytical focus to account for the human agency and resistance of sugar workers, the dissertation finds that law and the state channel worker opposition into processes or pathways of exit. These exit processes mediate the shifts within, and transitions between, unfree labour regimes. Three key observations emerge from the historical analysis. First, the "mobilize to immobilize" dynamic, which describes how legal regimes tightly structured the movement and relocation of unfree sugar workers, represents a broad and generalizable phenomenon. Second, the "pathways to exit" illustrate the ways that law channels opposition and shapes expectations. Third, the recurring demands of "recruitment" and "retention" made by owners, demonstrates how aggregated capital's need for labour power extraction is internalized within and facilitated by the state. In constituting the conditions and relations of unfree labour, law and the state render unfree labour an enduring (if strategic) feature of capitalism.

Résumé

Le mémoire examine le rôle du droit et de l'État dans l'incorporation de la main-d'œuvre non libre pendant la période coloniale et au début de l'ère postcoloniale dans le contexte de la production de sucre sur l'île Trinité. En orientant l'approche analytique pour expliquer la capacité ou non d'agir des individus et la résistance des travailleurs du sucre, le mémoire constate que le droit et l'État canalisent l'opposition des travailleurs vers des processus ou des sentiers de sortie. Ces processus de sortie servent d'intermédiaires aux changements internes et aux transitions des régimes de main-d'œuvre non libre. Trois observations clés découlent de cette analyse historique. En premier lieu, la dynamique « mobiliser pour immobiliser », qui décrit comment les régimes juridiques ont structuré étroitement le mouvement et le déplacement des travailleurs du sucre non libres, représente un phénomène vaste et généralisable. Deuxièmement, les « sentiers de sortie » illustrent les méthodes utilisées par le droit pour canaliser l'opposition et façonner les attentes. Troisièmement, les demandes répétées de « recrutement » et de « rétention » des propriétaires démontrent comment l'État intériorise et facilite le besoin d'extraction de la force de travail du capital agrégé. En établissant les conditions et les relations de la main-d'œuvre non libre, le droit et l'État font de la main-d'œuvre non libre un élément persistant (bien que stratégique) du capitalisme.

Acknowledgements

This dissertation is as much an investigation of privilege as it is an exercise in it. Even in the face of the academy's "deeply exclusionary impulses" -- which, dare I say, I feel I know all too well -- I cannot help but acknowledge the resounding privilege which has allowed me to devote sustained attention to the issues discussed within. A stark reminder of this came the night when Jarvis St. Remy was gunned down, within "earshot" as I sat at my computer putting the finishing touches on one of the final chapters. If that were not enough, the subsequent shooting deaths of two others, also young black men, at points along my regular running route, served to "bring home" this point of privilege. At the same time that I mourn the loss of these (and countless other) young people, I express my gratitude to all those who have supported me in achieving this great privilege.

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For Dayna -- *right back at you!*

Introduction

The post-contact history of the Commonwealth Caribbean is a history of state-managed migration of "foreign" labour. The Caribbean has been both a site of incorporation of foreign labour as well as a prominent source of it. In the face of mounting global interest in managed migration, there is a need to appreciate the role assumed by national states and by law in schemes of foreign or migrant labour incorporation.[1] A classic example of this occurred within the historical development of sugarcane production in the Caribbean. The decline of sugar workers in much of the contemporary Anglo-Caribbean poses penetrating questions about the current conjuncture, including with respect to the impact of the so-called 'new economy' on 'old economy' workers, and about the legacy of historical forms of labour control.

In the context of the role of law and the state in capitalist relations of production, and specifically in the development of colonial capitalism in the Commonwealth Caribbean, this dissertation examines the legal regulation of labour relations in Trinidad's sugar industry between the late eighteenth and mid to late twentieth centuries.[2] Through the deployment of a Marxist analytical framework, the

[1] This dissertation grew out of questions which have emerged from Canada's use of Caribbean workers in the Seasonal Agricultural Worker Program and to a lesser extent its Live-In Caregiver Program (and predecessors). The issue of "free" and "unfree" labour and its relationship to foreign labour incorporation remain important for understanding historical and ongoing processes of international labour migration in the Americas. Indirectly, the hope is that an analysis of this nature will assist our understanding in ways that facilitate worker organizing and action.

[2] Even though Trinidad and Tobago were joined together as a colony in 1889, the dissertation deals exclusively with sugar production in Trinidad and therefore for ease of reference throughout I refer simply to Trinidad.

dissertation constructs an understanding of how the Trinidadian state utilized law to constitute conditions and relations of unfreedom: for the exaction of labour power to generate profit and, simultaneously, for the suppression of oppositional forms of collective worker resistance.[3]

Unfree labour includes workers who produce under the coercion of physical force and bondage including through chains and shackles -- but it is not limited to this. As the lyrics of legendary reggae singer Bob Marley in Concrete Jungle hint toward, workers characterized as "unfree" also include those who have no chains around their feet, but are not free. Unfreedom applies to workers who are captive and bound not (merely) by the "dull compulsion of economic relations" -- to employ Marx's apt, if well-worn, phrase -- but by extra-economic forces. It is the legal dimension of these forces with which this dissertation is concerned.

The concept of unfree labour is useful because it encapsulates the elements of the critique of contemporary economic globalization and poses a critical challenge to the agenda of transnational labour law. In a question: If the state's role in constituting the conditions of unfreedom has been (and remains) central, then can we assume the decline or disempowerment of the nation-state? Rejecting explicitly the premise of state decline or disempowerment, the dissertation

[3] Prabhu P. Mohapatra, "Assam and the West Indies, 1860-1920: Immobilizing Plantation Labour" in Douglas Hay & Paul Craven eds., Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955 (Chapel Hill: University of North Carolina Press, 2004) 455. My take differs from Mohapatra's in two fundamental respects. First, it broadens the analysis beyond indentureship. Second, it takes militant collectivity as the source of opposition as opposed to mere mutuality or collective action.

engages with historical developments in Caribbean sugar production and state-based legal regulation of sugar workers to transcend well-accepted but under-theorized assumptions about the role of law and the state.

Sugar As Meta-Narrative

The sugar industry in the Caribbean has soured in the face of the liberalization of trade and accompanying transformations in global political economy in the current epoch.[4] In one sense this is far from surprising. The "fortunes of the Caribbean have [virtually] always been determined by the bittersweet consequences of shifts in international sugar policies" and international political economy.[5] Since well before the mid-twentieth century, Caribbean historiography has captured the lengthy and drawn out demise of local sugar production. In his brilliant study of the struggle for independence in Saint Dominque (now Haiti), C.L.R. James asserts that: "For over two hundred years the sugar industry has tottered on the brink of disaster, remaining alive by an unending succession of last-minute rescues by gifts, concessions, quotas from the metropolitan power or powers".[6]

The sugar industry in the Caribbean was consolidated within the framework of mercantilist trade policies starting with successive Navigation Acts passed by

[4] Oxfam International, "The Great EU Sugar Scam: How Europe's Sugar Regime Is Devastating Livelihoods in the Developing World" (Oxfam Briefing Paper 27, 2002).
[5] Clive Thomas, "The Inversion of Meaning: Trade Policy and the Caribbean Sugar Industry" in Dennis Pantin ed., The Caribbean Economy: A Reader (Kingston, Miami: Ian Randle, 2005) 165.
[6] C.L.R. James, The Black Jacobins: Toussaint L'Ouverture and the San Domingo Revolution (2nd ed. revised.) (New York: Vintage Books, 1989) at 405.

Britain in 1650 and later and which lasted until the mid 1800s.[7] These Acts afforded preferential access for colonial sugar into Britain with the imposition of prohibitive duties on sugar originating from all other locales.[8]

Having overcome a period of free trade in the mid to late nineteenth century, sugar workers are now faced with the prospects of this latest round of trade liberalization. But while the Caribbean sugar industry was shielded more or less by British protectionist policies in that earlier round, this time it must confront several new features of global political economy. The European Union now produces more sugar than it needs.[9] The most developed western capitalist states all heavily subsidize local farming production. Trade liberalization has worked to obliterate the Caribbean's preferential trade arrangements with the United Kingdom and the United States.

In another sense, however, to see the recent souring of Caribbean sugar as the product of "outside" or "external" forces detached from peoples of the region is seemingly to re-inscribe the top-down trajectory of British colonialist and imperialist rule. It is to characterize Caribbean workers as, to borrow a phrase, "faceless automatons energized only by British metropolitan stimuli".[10] As dire

[7] Eric Williams, Capitalism & Slavery (Chapel Hill: University of North Carolina, 1994) at 56-57["Capitalism"].

[8] *Ibid*; Thomas, *supra* note 5. Importantly, the English Tariff Act of 1670 placed such prohibitively high import duties on high-grade sugar that it served to discourage sugar refining in the colonies. As a result, Britain preserved its central position in sugar refining while relegating the Caribbean region primarily to raw sugar production.

[9] Oxfam, *supra* note 4.

[10] Bonham C. Richardson, "The Caribbean in the Wider World, 1492-1992: A Regional Geography" (Cambridge: Cambridge University Press, 1992) at 12 cited in Nigel O Bolland, The Politics of Labour in the British Caribbean: The Social Origins of Authoritarianism and Democracy in the Labour Movement (Kingston, Jamaica: Ian Randle, 2001)["Politics of Labour"].

as the current epoch might appear, workers must be perceived as subjects, not objects, of global capitalist economic change. If sugar is, as once suggested, a meta-narrative through which to understand colonial capitalism,[11] it is a product of the egregious plight of labourers.[12] Its importance rests on the notorious regimes of labour control and, no less important, on the legendary struggles of workers engaged in its production. From the 17th to the 19th century as slave labour – these, of course, were "the workers who generated the wealth that put the 'great' in Great Britain"[13] – and for an important period from the mid-nineteenth century as indentured workers from India, until their eventual rise and apparent fall as 'free' waged labour in the twentieth century, sugar workers present us with the opportunity to trace transitions and developments within and between legal structures of unfree labour.

Free and Unfree Labour

Of pressing concern is the persistence and impact of unfree labour in Trinidad (and the wider Anglo-Caribbean) in the period under study. What constitutes "free labour"? Marx employs the concept of free labour to refer to wage labour,

[11] D.P.S. Ahluwalia, Bill Ashcroft & Roger Knight eds., White and Deadly: Sugar and Colonialism (Commack, N.Y.: Nova Science Publishers, 1999) at 13.

[12] The following is meant to capture the forms of unfree labour regulation employed specifically in the production of sugar in Trinidad; and not to undermine the existence of indentured labour prior to the introduction of slave labour in the Caribbean region. For a discussion of white European indentured servitude see Eric Williams, From Columbus to Castro: The History of the Caribbean 1492-1969 (New York: Vintage Books, 1984) at 96-99 ["Columbus to Castro"]. The first round of indentureship in the Caribbean, which overlapped with the use of slave labour, and the second round, which occurred following the end of slave labour, illustrates the complexities (and non-linearity) of the development of legal regimes of labour regulation. See Douglas Hay & Paul Craven eds., Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955 (Chapel Hill: University of North Carolina Press, 2004) at 28-29.

[13] Franklin Knight, "Forward" in Nigel O Bolland, The Politics of Labour in the British Caribbean: The Social Origins of Authoritarianism and Democracy in the Labour Movement (Kingston, Jamaica: Ian Randle, 2001) at xi.

which, subject to economic compulsion, allows workers to secure wages in exchange for labour power to obtain the means of subsistence. This includes the capacity to circulate within a labour market.[14] Free wage labour does not constitute freedom from all forms of constraint, only from explicitly extra-economic forms. Central features of Marx's understanding of capitalism include the "labour power for wages" exchange and the existence of a labour market in which that exchange occurs.

As Miles succinctly summarizes: "Marx portrays slave and wage labour as antithetical because in the case of the former, the human being becomes the private property of another while in the case of the latter, it is labour power which is the private property of its 'owner' and which is exchanged".[15] Marx therefore forges a sharp distinction between labour in its bodily form and labour power as an individual's productive capacities. Individuals may be, indeed are, compelled to commodify those productive capacities for subsistence. Whereas labour in its bodily form is perceived to form an aspect of the exchange under a pre-capitalist or slave mode of production, labour power forms an aspect of the exchange under a capitalist mode of production. In equating freedom with the opportunity to commodify one's own labour power, "free labour" constitutes an impoverished notion under capitalism.

[14] Robert Miles, Capitalism and Unfree Labour: Anomaly or Necessity? (London & New York: Tavistock, 1987) at 31["Capitalism"].
[15] *Ibid*. at 31 (Miles adds: "Thus in the case of the former there is an obvious external constraint on the autonomy of the individual who is enslaved, while in the case of the latter, the individual becomes an autonomous subject in so far as he/she is freed from direct physical and politico-legal compulsion").

Although he did not employ the concept of unfree labour in any of his writings, Marx's analytical framework tends toward the view of unfree labour as the existence of extra-economic coercive forces which, in prohibiting or severely restricting the exchange of one's labour power for wages, force an individual into trading on ownership in themselves. What then constitutes extra-economic forces? The most widely accepted definition, articulated by Robert Miles, refers to relations "where direct physical and/or politico-legal compulsion are used to acquire and exploit [and *retain*] labour power".[16] Physical compulsion clearly is present in instances of enslavement. Politico-legal coercion occurs in the form of denials or limitations on labour market circulation. Therefore, the features of capitalism identified by Marx -- the capacity to exchange labour for wages freely within a labour market -- either are not in existence, or are suppressed, where unfree labour is found.[17]

'Freedom of Movement' & The Free-Unfree Labour Debate

> Of all the specific liberties which may come into our minds when we hear the word 'freedom', freedom of movement is historically the oldest and also the most elementary. Being able to depart for where we will is the prototypical gesture of being free, as limitation of freedom of movement has from time immemorial been the precondition for enslavement. Freedom of movement is also the indispensable precondition for action, and it is in action that men [sic] primarily experience freedom in the world.[18]

[16] *Ibid*. at 31, 171.
[17] Miles identifies six forms of unfree labour: slave labour, convict labour, labour tenancy, contractual servitude, indentured labour; contract labour (*Ibid*. at 171-176).
[18] Hannah Arendt, "On Humanity in Dark Times: Thoughts about Lessing" in Arendt ed., Men In Dark Times (New York: Harcourt, Brace,1959/1968) at 9.

The relationship between labour migration and the concepts of free and unfree labour requires deeper exploration. Hannah Arendt's emphasis on "freedom of movement" as a key indicator of liberty reflects well-established sentiments which found political expression in the Anglo-Caribbean (and elsewhere) during the march toward Independence. In Arendt's view, freedom of movement is a defining theme or element of human existence. Although employed in varying ways, it typically refers to the uninhibited or unfettered movement of people across the territorial boundaries of national states. In many instances, movement occurs to secure a livelihood. In the early twenty-first century, freedom of movement remains arguably "the prototypical gesture" of living free. That said, the extent to which unfettered movement actually occurs is far less definitive. Unmitigated freedom of movement remains, at best, an object of desire for the majority of the world's inhabitants. In light of the analytical persistence of freedom of movement, there is a need to explain why an emphasis on such a theme fails to assist rigorous analysis in relation to labour migration.

In contemporary terms, the concept of freedom of movement simultaneously accepts human mobility as a human right, and the presence of territorial border controls.[19] In the middle to late twentieth century, state-level agreements promoting trade liberalization and regional cooperation incorporated the idea of free movement. The Caribbean context proved no different as freedom of movement represented a recurring theme within formal cooperation and

[19] Mehmet Ugur, "The Ethics, Economics and Governance of Free Movement", in A. Pécoud & P. de Guchteneire eds., Migration Without Borders: Essays on the Free Movement of People (Paris: UNESCO Publishing, 2007) 65.

integration initiatives. In the Grand Anse Declaration of 1989, the defining document in the latest attempts at regional integration, Caribbean countries accepted the free movement of people as a defining feature.[20] In its earliest days, CARICOM's political elites agreed to explore the feasibility of freer movement for people between member countries which ultimately led to the current state of affairs set out in the Grand Anse Declaration. Although developed with promises of widespread application, to date CARICOM's commitment to freedom of movement has not been widely realized. At best, it facilitates cross-border mobility for a narrow and specific segment of the skilled workforce in the region. In particular, cricketers, track and field athletes, and their respective entourages (coaches, trainers, managers and the like), as well as university graduates, enjoy mobility between member states with minimal constraints. In this sense, free movement represents an unfinished if not largely hollow promise within the political discourse surrounding regional integration.[21] The deep interest in

[20] In article 45 of the Treaty of Chaguaramas (revised) "Member States commit themselves to the goal of the free movement of their nationals within" CARICOM. The free movement of skilled persons eliminates the need for work permits, instead permitting them to seek employment in any member state. See also the Caribbean Community (Free Movement of Skilled Persons) Act (1997).

[21] Predating CARICOM, free movement featured within formal regional integration initiatives during the Independence period. Two prominent initiatives emerged in the late 1960s, the Caribbean Free Trade Association (CARIFTA) on a relatively grand scale and the Eastern Caribbean Common Market on a smaller one, both of which demonstrated commitments to free movement, although to differing degrees. A decade earlier, the theme of freedom of movement figured prominently within the early development of the West Indies Federation, in this period as a source of dissension between participating island nations. The introduction of the Federation in 1957, a federal governance regime of the soon-to-be independent Caribbean nations, failed to reduce constraints on labour mobility in a meaningful way. The refusal of the Eric Williams-led government of Trinidad & Tobago to embrace unqualified freedom of movement, said to be out of fears of a massive influx of low-skilled labourers to that country, represented an impediment to integration efforts in fact playing a significant role in the Federation's premature demise less than half a decade later. Federation member states included: Jamaica, Trinidad and Tobago, Barbados, Grenada, St. Kitts-Nevis-Anguilla, Antigua and Barbuda, St. Lucia, St. Vincent and the Grenadines, Dominica, and Montserrat. Daniel C. Turack, "Freedom of Movement in the Caribbean Community" (1981) 11 Denv. J. Int'l L. & Pol'y 37.

addressing human mobility expressed by Caribbean political elites in the lead up to Independence was not unexpected. Freedom of movement represented an important aspiration, perhaps not always explicit, within the outlook of prominent anti-colonialist thinkers as diverse as C.L.R. James and Marcus Garvey.[22]

How then does labour migration and freedom of movement impact interpretation of the concepts of free and unfree labour? The perspective articulated by Arendt, which seemingly continues to hold sway, implies a certain relationship between migration and free and unfree labour. If we conceptualize migration in terms of freedom of movement, free labour would be inclusive of freedom of movement and conversely unfree labour would be the imposition of (unspecified) constraints on geographic mobility. Applied in the context of labour migration, therefore, the free-unfree labour distinction takes on an additional dimension, not fully contemplated by Marx, to account for human or spatial mobility. That said, the view that migration is reducible to the mobility of people within and across space rests on a "largely geographical" assumption rejected by the likes of Miles.[23] As Miles astutely asserts, a vision of migration solely grounded in movement through geographic space "abstracts people from their material context because the significance of migration does not lie in spatial mobility per se, but in the position in the relations of production occupied before and after such movement".[24]

[22] That said, critics assert that the centrality of freedom of movement in anti-colonialist thought developed within the gendered frame of masculinity. See Michelle Ann Stephens, Black Empire: The Masculine Global Imaginary of Caribbean Intellectuals in the United States, 1914-1962 (Durham: Duke University Press, 2005).
[23] Miles, Capitalism, *supra* note 14 at 6.
[24] *Ibid*.

Migration is a process that "relocates people in the relations of production".[25] Thus, from this perspective, labour migration constitutes not just a process of spatial mobility but more profoundly a process of labour relocation in which workers move "to different sites of class relations".[26] The dissertation takes this as a point of departure.

Although I dismiss the binary free-unfree distinction, I do not reject the analytical utility of unfree labour.[27] In fact, in taking it as fitting on a continuum, I strive to maintain and extend the explanatory value of the concept. In this respect, freedom of movement constitutes an *ideal* which, although pivotal to peoples' aspirations of liberation, falls short as a tool capable of sorting through the historical intricacies of labour control. Such a perspective amounts to a rejection of those analytical approaches which, in taking free labour and by extension free movement as a static idea around which capitalist labour markets and in turn "action" or resistance are organized, overstates the explanatory utility of the concept. Free labour, built on an assumption of free movement, is not only a shifting target but also a relative one.[28] In my view, a failure to appreciate this impedes our understanding of the role of law and the state in the creation (and maintenance) of labour unfreedom.

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[25] *Ibid.*
[26] *Ibid.*
[27] That said, one must concede that the idea of unfreedom, if not itself subjected to deeper reflection, holds the potential to occlude the diversity of working realities and contexts.
[28] Insofar as "free labour" implies freedom from coercion, whether economic or extra-economic, it presents an inaccurate account of capitalist labour formations. Under capitalism, free labour does not exist in fact. That said, certain workers may benefit from specialized knowledge or expertise for which they are compensated, on a financial and non-financial basis, at rates which erode or overcome the material consequences of capitalist exploitation. These exceptional circumstances aside, free labour refers not to freedom from economic coercion, but rather politico-legal coercion.

In acknowledging the ongoing existence of unfree labour within capitalism, a more deeply contextualized approach is needed to reflect historical contingency, that is the messy and shifting structural realities of productive relations. The critical task as I perceive it is to shift emphasis away from the idea that free labour derives from freedom of movement and to, instead, locate the analysis within more nuanced understanding reflected by the dialectical dynamics of managed migration, a move that I capture in this dissertation with the phrase "mobilize to immobilize".[29] After mobilizing workers over lengthy distances to cross national territorial borders to secure paid work, workers are immobilized within the labour market and geographically, and in terms of their capacity to assert themselves collectively in forceful ways. The critical issue turns on how law and the state interact to mobilize and immobilize, a point to which the dissertation is devoted and I return to below.

Even with the displacement of freedom of movement by mobilize to immobilize as an organizing idea, additional questions remain. Are the relations of

[29] I do not claim to have invented the "mobilize to immobilize" conceptualization. Most recently, Mohapatra employed it in an important analysis on indentureship -- which this dissertation explicitly engages with and is heavily indebted to. Its origins (although not the exact phraseology) appear to extend back to earlier works on indentured servitude in Trinidad (including Kusha Haraksingh and Dennison Moore both referenced in later chapters of the dissertation). Mohapatra, *supra* note 3. At issue here is not an outright denial of mobility, but rather an intricate mixture of permissions and denials for the purposes of relocating labour in relations of production. I contend that freedom of movement falls short as the best concept to understand intricate mechanisms of labour control through which these permissions and denials are granted or taken away, as the case may be. The mobilize to immobilize dynamic speaks to labour movement in a fundamentally different way than envisaged in a classical sense as articulated by Arendt. We cannot capture the dynamic of labour migration by relying on this understanding. Rather, in the context of capitalist state management of migration, the "mobilize to immobilize" dynamic captures a generalizable phenomenon that exposes the intricate role of law in the mixing of forms of labour coercion within capitalist relations.

production in which workers are relocated capitalist? Which workers are relocated?

Unfree Labour and Capitalism

The historical co-existence of capitalism and unfree labour regimes has proven a source of intense intellectual debate. In the context of landless agricultural workers in India and Latin America, Brass identifies four competing approaches to situating and characterizing unfree labour.[30] In the first approach, unfree labour represents a non-capitalist relation of production. Proponents of this approach marshal evidence to demonstrate agriculture's semi-feudal or feudal nature. Where unfree labour exists, as Brass summarizes, "capitalist development must by definition be absent".[31] Second, unfree labour constitutes "a specifically colonial experience of capitalist expansion".[32] The third approach, similar to the second, accepts the compatibility of unfree labour and capitalism, but within both colonial and the metropolitan settings, and yet maintains the claim of unfreedom as a pre-capitalist socio-economic form.[33] On this account, unfree labour, although "central to the reproduction" of the capitalist mode of production, ultimately occurs outside of it.[34] Miles' analysis, which marks the first systematic Marxist

[30] Tom Brass, Towards A Comparative Political Economy of Unfree Labour: Case Studies and Debates (London: Frank Cass, 1999) at 152. Although developed in the specific context of debt bondage, these approaches are applicable to the more generalized concept of unfree labour.
[31] *Ibid*.
[32] *Ibid*.
[33] *Ibid*. at 152-153.
[34] *Ibid*. at 153.

exploration of the free-unfree labour distinction, and which centers around processes of racialization and racism, fits in here.[35]

The fourth approach characterizes unfree labour "as a crucial aspect of class conflict in particular agrarian situations" which "may be introduced or reintroduced by employers at any historical conjuncture".[36] The re/introduction of unfree labour serves "to impose capitalist authority over the work place (where a proletariat already exists), or else to preempt the emergence and political consequences of proletarianization".[37] As such, unfree relations represent a strategic intervention of capital in class struggle. Brass' analysis, dubbed the deproletarianization thesis, conforms to this fourth approach. It is distinguished by a reliance on a non-sequential understanding of capitalist economic development. In the words of Brass: "Unlike the [competing] approaches, which locate [unfree] labour within a unilinear process of economic development, the deproletarianization thesis accepts that legal [E]mancipation does not necessarily signal an automatic and irreversible relational transformation".[38] Thus, as he concludes, "in the course of class struggle involving workforce de-/recomposition ... labour can experience a two-way transition, both from freedom to unfreedom and vice versa".[39]

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[35] Miles, Capitalism, *supra* note 14 at 221 ("The capitalist mode of production is a particularly dynamic and self-expanding system, but there are limits and obstacles to that development". The existence of unfree labour "reveal[s] circumstances where either capitalist relations of production cannot develop or where their development is obstructed").
[36] Brass, *supra* note 30 at 153.
[37] *Ibid*. at 153.
[38] *Ibid*. at 295.
[39] *Ibid* ([U]nfree labour is an integral aspect of both the initial and continuing accumulation process").

The first approach, following Brass' critique, aligns with neoclassical economic historiography which regards unfree labour as a non-market or pre-capitalist relationship. On this account, unfree labour and capitalism are not compatible as a labour market cannot form in the absence of commodified labour power.[40] This runs head-on into a myriad of historical evidence demonstrating otherwise. [41]

Indeed, unfree labour is consistent with capitalism. Save for this first approach, the latter three approaches acknowledge the compatibility of unfree labour and capitalism. That said, the second approach's reliance on a division between free labour in the metropolitan countries and unfree labour in the colonies again invokes a clash with overwhelming historical evidence. Coercion and unfreedom are not absent from "core" countries in the international capitalist order; they are features of productive relations within core and peripheral countries.[42]

This leaves the third and fourth approaches represented by the analytical frameworks of Miles and Brass respectively. In a question: Is labour unfreedom

[40] *Ibid*. at 163.
[41] Philip Corrigan, "Feudal Relics or Capitalist Monuments? Notes on the Sociology of Unfree Labour" (1977) 11 Sociology 435; Miles, Capitalism, *supra* note 14; Brass, *supra* note 30. See also the debates in Brass & Marcel van der Linden eds.. Free and Unfree Labour: The Debate Continues (Bern, Switzerland; New York: Peter Lang, 1997).
[42] The view that unfree labour is reserved for peripheral countries is advanced by Immanuel Wallerstein in world systems theory. It implies the existence of certain rigid or binary distinctions which, in historical context, cannot be upheld: capitalist versus non-capitalist; free-unfree; First World-Third World. On the stubborn persistence of coercion in capitalist relations of production see Hay & Craven, *supra* note 3; Craven & Hay, "The Criminalization of 'Free' Labour: Master and Servant in Comparative Perspective" in Paul Lovejoy & Nicholas Rogers eds., Unfree Labour in the Development of the Atlantic World (Frank Cass, 1994) 71; Robin Cohen, The New Helots: Migrants in the International Division of Labour (Aldershot; Brookfield: Gower, 1987).

an "anomalous necessity"[43] or deliberate strategy within capitalism? A satisfactory response requires engagement with the issue of which workers encounter relocation through the dynamics. Here, processes of signification and categorization especially racialization and racism, provide invaluable support for a more systematic explanation. Racialization refers to an ongoing process by which social significance is assigned to perceived physical or observable attributes of an individual.[44] This process of assignment occurs to facilitate the allocation of finite resources and opportunities by relegating certain individuals to subordinate positions in production relations. Racism, then, refers to the relegation process, including the naturalization or legitimation of it, constituting a particularly acute form of racialization. The core analysis of the dissertation rests on the view that the processes of racialization and racism constitute defining features of the forms of labour unfreedom experienced by sugar workers in Trinidad. The politico-legal mechanisms of unfree labour mediated the incorporation of working people racialized as "foreign" or "other" into Trinidadian sugar production.[45]

While embracing features of Miles' analysis, especially his careful attention to racialization, this dissertation falls squarely within the fourth approach. In questioning the idea of the anomalous incidence of unfreedom, I accept the

[43] Miles *supra* note 14 at 221, 222.
[44] *Ibid*. at 7 (In Miles' words, "the appropriation of labour power is accompanied by a process of racialization").
[45] Although racialization impacts individuals designated as falling within dominant and non-dominant groups, the focus of the dissertation is almost exclusively on the categorization of workers as non-dominant or "foreign" which served as a basis for relegation and exclusion. To capture this, I employ ethnicity along with racialization with both concepts meant to connote a specific form of categorization based on a combination of perceived physical (phenotype) and cultural (e.g. religion and place of origin) markers.

concept of unfree labour as not only consistent with but as strategically necessary to capitalism under recurring conditions. Contrary to the third approach's tendency toward an explanation of capitalist development as stages, a perspective proven problematic because of its commitment to linear history and the inevitability of positive change,[46] the fourth approach accepts the ongoing existence of unfreedom notwithstanding uneven development between national state contexts. However, unfree labour is not elevated to the level of trans-historic phenomenon as the conditions under which it develops and the manner upon which it functions shifts. The dissertation explores these shifts and transitions in more detail. In incorporating foreign labour through the dialectical processes of mobilization and immobilization, law and the state interact to mediate these transitions.

More specifically, the state deploys law to organize worker opposition to labour controls into more manageable channels or processes of exit. These various processes constitute accommodations made to unfree labourers in an attempt to further exploit and coerce them; and to divert if not undermine the most militant forms of collective opposition from them and their allies. In this way, law establishes parameters of legitimate behaviours and expectations which have real implications for collective worker organizing as well as resistance. Those

[46] These views bring it disturbingly close to modernization theory. That theory, which is linked with sociologist Émile Durkheim among countless others, has faced intense criticism from critical sources within development studies including world-systems and dependency theorists such as Wallerstein. For a Marxist critique pertinent to Trinidad & Tobago see Ray Kiely, The Politics of Labour and Development in Trinidad (Kingston, Jamaica: UWI Press, 1996)["Politics of Labour"].

parameters are thoroughly grounded on the logic of private property which underwrites capitalist rule.

Collective worker resistance becomes more not less important on this account. The degree of labour unfreedom, and the processes of exit which corresponded to a given regime of unfreedom, is contingent upon the impact of opposition of the exploited and their allies. The quality of opposition, the capacity of working people to organize and sustain opposition, is a crucial component which, the dissertation demonstrates, impacts the scope of unfree labour controls.

Chapter Outline

Through an exploration of the role of law and the state in constituting unfreedom, the dissertation traces the ongoing persistence of labour unfreedom in the specific historical context of nineteenth and twentieth century Trinidad. The analysis unfolds in six chapters. The first chapter reviews the labour law and economic globalization literature to examine, in the context of the recent "transnational turn" in that literature, the prevailing methodologies as they relate to the impact of contemporary globalization on the nation-state. Despite its contemporary focus, the underlying claim of the chapter is that we learn a great deal about historical assumptions from examining current debates. The findings generated from this first chapter are used to re-orient the analytical focus of the debate. Notwithstanding transnationalism's emergent popularity, the claim here is to the

development of a far less insular epistemology; but not, as the second chapter makes clear, to an end to the mischaracterization of the role of the state.

The second chapter constructs a political economy of law framework in the context of wider questioning about the capacity of nation-states to regulate labour relations. Drawing on anti-colonial theories -- especially the insights of C.L.R. James, Eric Williams and Frantz Fanon -- the chapter calls for and develops a constitutive analytical approach to the interaction between 'the national' and 'the global' spheres. It locates nationally-rooted social forces at the centre of scholarly attention and inquiry and contests the articulation of productive relations in the periphery as external to the contemporary processes of economic globalization. Of fundamental importance is the "social constitution of globalization" within and between nation-states. The chapter operationalizes the constitutive approach. In the eighteenth and nineteenth centuries the working reality which gripped most of the planet's inhabitants was one not of freedom but more profoundly of unfreedom. This remained true for Trinidadian sugar workers well into the twentieth century. Chapters three and four aim to contextualize sugar production in Trinidad with a view to the structure of relations governing sugar workers.

The legal history chapters situate the resistance of workers and their allies within the broader understanding of the pathways to challenging and exiting unfree labour regimes. The critical task here is to reveal ways that the activities and relations of real people reflect and create legal developments. Legal

developments come about to counter opposition mounted by the oppressed and their allies. Put differently, social conflict or antagonism, and more specifically the need to confront and ultimately curtail resistance, drives legal developments. The emergence of concerted resistance is dealt with by the state through law/legal developments. Those developments in turn alter the activities and relations of real people. How? Law shapes actions, behaviour and expectations of people in two senses: in the creation of the labour market and productive relations; and in supervising the relations within that market.

I argue that the processes of exit, which emerged to address opposition within slave labour relations, and which contained law's reproduction function, are processes of transition from one form of unfree labour to another. Exit processes drive or guide the re-configuration of worker subordination, of labour unfreedom. Ultimately, the processes of exit are about linking the destruction of the old regime of unfreedom with the creation of new regimes of labour control and efforts to have those regimes remain infused with elements of unfreedom.

Three central observations emerge from the historical analysis with respect to how law and the state constitute labour unfreedoms. The first observation is that the state employed law to both mobilize and immobilize workers. Not only indentured, but also enslaved sugar workers, to varying degrees, were mobilized great distances in order to be spatially and physically restricted in their movements and within the labour market. The second observation is that law

structured the processes or "pathways of exit" that marked the transitions between unfree labour regimes. Law established the parameters of legitimate behaviours and expectations which served to manage resistance in these times of class conflict and collective action. The third observation is that the interlocking demands of recruitment and retention that are made by aggregated capital, through the state, are structured and manifest in labour law.

The final chapter draws on the key findings of the historical chapters to articulate a theoretical understanding of the role of law and the state in constituting and sustaining labour unfreedom. It takes the discussion as the beginning of a necessary but broader conversation on strategies for mounting resistance to unfree labour regimes.

A Note on Methodology

This dissertation strives to provide a theoretically engaged and rigorously interdisciplinary account explicitly dependent on historical analysis and interpretation. In pursuit of this aim, two shortcomings became evident. First, due to the broad and general scale of historical account which I attempt to construct, primary sources could not always be used; rather, I attempted to creatively synthesize and rework the findings of the vast and well developed existing historical accounts.[47] The dissertation is written to facilitate the interrogation of transnational realities in which migrant workers -- such as

[47] For the two most prominent examples see Bolland, *supra* note 13; B.W. Higman ed., Methodology and Historiography of the Caribbean. Vol. VI of the General History of the Caribbean (London/Oxford: UNESCO/Macmillan).

Caribbean seasonal agricultural workers in Canada -- find themselves at the present but through a lens which takes seriously the ongoing role of law and the state. Second, although focused around the central theme of labour unfreedom, the analysis presents Trinidadian labour history in largely chronological terms. The hope is that the inherent limitations of chronology and a generalist historical survey are offset by the ability to construct a wide account and framework.

CHAPTER 1

Labour Law and Globalization

Introduction

Labour law scholars are, at present, enamoured by the potential of transnational labour regulation. Transnational regulatory regimes are thought to offer new opportunities to attend to the impact of global restructuring or economic globalization on the functioning of the nation-state. Although tending to focus narrowly on developed countries, this body of scholarship, in its thrust, presents universal claims in respect of the impact of contemporary globalization. To a large extent, interest in transnational regulation emerges out of concerns for the diminution of states' regulatory capacities and national labour law regimes more generally. These concerns can be collapsed into a basic theoretical question: Does the "globalization of the state" mean that individual state power is undermined in terms of domestic regulation of labour – and, as such, what is the impact on workers?

This chapter reviews and characterizes the emergent trends in the literature on labour law and economic globalization. It interrogates the "transnational turn" in the literature to illustrate the methodologies embedded within prevailing interpretations of the impact of globalization on the nation-state. It reviews the substantive arguments insofar as they speak to the methodological commitments of these scholars. The first section reviews the dominant trends in labour law and

globalization studies.[48] As evident in this section, the dissertation adopts a uniquely interdisciplinary framework, drawing on insights from the fields of labour law and labour history, critical legal theory, political economy, post-colonial theory, and development studies. Such a framework is necessary to capture the multiplicity and complexity of the forces of contemporary economic globalization. This discussion sets up the critique of the emerging trends or tendencies in the field of study, which forms the focus of the second section. The section emphasizes issues of methodology. The third and final section sketches an alternative methodological approach, based on political economy of law, to organize the dissertation. The section makes way for the development of the political economy of law approach in the second chapter.

Underlying the review of the literature is an attempt to show how reliance on top-down perspectives of the globalization of the state lends credence to the privileging of epistemologies on and about the developed world. Yet in eschewing the 'top-down' institutionalist perspective widely employed in the field of study, the chapter sets about to formulate a more nuanced if not "bottom-up" political economy of law that does not totally discard conventional ways of knowing. "New beginnings do not start with blank pages", as Caribbeanist Kari Levitt astutely asserts, "[t]hey build on existing intellectual traditions, their

[48] I employ the phrase "labour law and globalization" to characterize the area of study in question. However, it should be noted that the scholars I identify as writing in this field have not to date employed the same or similar terminology.

insights, and their inadequacies".[49] Thus, the chapter engages labour law and globalization literature with the ultimate aim of constructing a methodological approach which – to borrow and rephrase the words of one scholar of political economy – takes workers and the state seriously and economic globalization no less seriously.

The position taken in this chapter is that despite the prevalence of divergent theories and methodologies, and the tendency to make universal claims, labour law and globalization scholarship privileges epistemologies generated at and about the developed world. The privileging occurs to the exclusion of epistemologies designed to confront particular issues and circumstances in the developing world. This is evidenced in the overarching theories of the globalization of the state reviewed here.

The Employment Consequences of Corporate Restructuring

Neo-liberal institutions and policies have restructured states in the Americas,[50] removed barriers to intra-regional as well as hemispheric trade,[51] and accelerated

[49] Levitt, "Preface" in Levitt & M. Witter eds., The Critical Tradition of Caribbean Political Economy: The Legacy of George Beckford (Kingston: Ian Randle, 1996) xi at xii.

[50] See United Nations Economic Commission for Latin America and the Caribbean, Globalization and Development, (2002), online: < http://www.eclac.cl/> (See especially chapter 4 entitled "An Agenda For the Global Era").

[51] Between the late-1980s and mid-1990s, Caribbean countries adopted several formal measures to strengthen their intra-regional economic connections through the Caribbean Community (CARICOM). They have also entered into extra-regional trade agreements with the U.S. (for example, the Caribbean Basin Initiative (1983)), Canada (CARIBCAN (1986), the Canadian Government's programme that provides duty-free access to the Canadian market for most Commonwealth Caribbean exports) – these two nations absorb over forty percent of Caribbean exports; and the European Union (the long-standing Lome Convention (1975) was replaced in 2000 with the Cotonou Agreement, and regional economic partnership agreements are expected to enter into force by 2008).

the transition towards a deeply unified hemispheric economy. In the face of intensified state restructuring and economic globalization – often dubbed the "new economy" or the "new global economy" – labourers throughout the Americas are concerned about safeguarding their workplace interests and rights.[52] Concern arises with respect to all types of work organization but it is particularly acute in transnational corporations ("TNCs").[53] TNCs are definitive private actors in the new global economy, particularly from the perspective of labour regulation.

TNCs are economic entities that own and control operations or income-generating assets in multiple countries.[54] On this account, TNCs engage in foreign direct investment through the management and control of production or service affiliates in host countries – as opposed to portfolio investment through the acquisition and

[52] See e.g. Linden Lewis and Lawrence Nurse, "Caribbean Trade Unionism and Global Restructuring" in Hilbourne Watson ed., The Caribbean in the Global Political Economy (Boulder Colorado: Lynne Rienner, 1994) 191; Lawrence Nurse, Trade Unionism and Industrial Relations in the Commonwealth Caribbean: History, Contemporary Practice, and Prospect (Westport, Conn: Greenwood Press, 1992)["Trade Unionism"]; Cecilia Green, "Historical and Contemporary Restructuring and Women in Production in the Caribbean" in Watson ed., ., The Caribbean in the Global Political Economy (Boulder Colorado: Lynne Rienner, 1994) 149. From the standpoint of Caribbean workers, concerns about globalization are not new. After all, workers in the Caribbean, "which historically is perhaps the most globalized of world regions", have resisted globalizing trends in the form of colonialist and imperialist policies and sentiments since the sixteenth century. Thomas Klak, Globalization and Neoliberalism: The Caribbean Context (Lanham: Rowman & Littlefield, 1998) at 6.

[53] Competing terms and definitions are employed to characterize the phenomenon of large-scale international business associations and activity, namely multinational enterprise ("MNE") and multinational corporation ("MNC"). Peter Muchlinski notes that "a certain degree of arbitrariness is involved" in the terminological debates. (Muchlinski, Multinational Enterprises and the Law (Cambridge, Mass: Blackwell, 1996).at 14; and the general discussion at 12-15). The term TNC was initially employed during United Nations Economic and Social Council ("ECOSOC") discussions in 1974 invented the term "transnational corporation" in the 1970s. Emphasis here rests with the distinction between uninational corporations who may or may not operate across territorial borders (e.g. firms involved in the exporting of goods and services) and international business associations that not only operate across borders on a permanent basis but hold ownership and a controlling interest in assets abroad. It is there "ability to affect the international allocation of productive resources" that, in creating distinct problems for nation-state regulatory regimes designed to respect territorial sovereignty, renders TNCs unique.

[54] *Ibid*. at 12; Geoffrey Jones, Multinationals and Global Capitalism: From the Nineteenth to the Twenty-First Century (Oxford, New York: Oxford University, 2005) at 5.

ownership of foreign securities. TNCs differ from domestic or uni-national firms "in their capacity to locate productive facilities across national borders, to exploit local factor inputs thereby, to trade across frontiers in factor inputs (not simply finished products) between affiliates, to exploit their know-how in foreign markets without losing control over it, and to organize their managerial structure globally according to the most suitable mix of divisional lines of authority".[55] As leading organizers of productive activity,[56] TNCs transform the structure of employment relations[57] and are an important, perhaps the leading, driver of the integration of the global economy in the late twentieth and early twenty-first centuries. They have had a significant quantitative and qualitative impact on labour markets in the countries in which they operate.

In the Commonwealth Caribbean, TNCs have assumed a prominent role in the shaping of labour markets and productive relations. The giant sugar estates, the focus of this dissertation, were prevalent within the colonies of Trinidad and Guyana in the middle to late nineteenth century. These estates, which ranked

[55] *Ibid*. at 15.

[56] United Nations Conference on Trade and Development. World Investment Report. Transnational Corporations, Employment and the Workplace (1994) online: < http://www.unctad.org>, at 163 ["WIR 1994"]. Oft-cited statistics in 1994 were that TNCs directly employed an estimated 73 million workers worldwide (sixty percent in parent companies based in the developed countries) or three percent of the world's labour force or ten percent of non-agricultural paid employment or twenty percent of paid employment in the developed countries (*Ibid*. at 163; xxiii). About 12 million workers are employed in foreign affiliates in developing countries (*Ibid*. at 163). An estimated one to two jobs are indirectly created in developing countries by TNCs (*Ibid*. at 164). A conservative estimate of direct and indirect jobs associated with TNCs is 150 million (*Ibid*. at 164).

[57] *Ibid*. at 163.

among the first modern TNCs,[58] developed in conjunction with indentured servitude, a defining and coercive feature of post-Emancipation colonial industrial practices.[59] At the turn of the twentieth century, TNCs dealing in mineral resource extraction for export arose. Transnational firms in the petroleum industry emerged in Trinidad and Tobago and in the century's final quarter would become a dominant private economic force in the country.[60] By the 1960s and 1970s, as the colonies achieved formal independence, Caribbean governments promoted "industrialization by invitation", import substitution development strategies (authored by Saint Lucian economist Arthur Lewis) which openly encouraged foreign direct investment from TNCs in manufacturing.[61] Caribbean countries secured TNC investment through the provision of corporate tax incentives and through relaxed labour standards.[62]

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[58] Indentured servitude is discussed later in the dissertation. Prior to the emergence of TNCs in the Caribbean, slave era economic organization contained identifiable elements of transnational corporate activity in the form of foreign, absentee ownership.

[59] As discussed later, the intensification of the plantation economy occurred through the consolidation of sugar estates. The concentration of capital and the shift of ownership and control towards metropolitan companies created giant sugar estates. See *ibid*. at 111; Bridget Brereton, A History of Modern Trinidad 1783-1962 (Oxford: Heinemann, 1989) at 85 ["History"].

[60] Bauxite mining developed in Guyana, Jamaica and elsewhere in the region.

[61] Developmental strategies provoked criticisms about corporate imperialism and the dominance of TNCs. By the 1960s, TNCs operating in the Caribbean region had garnered significant critical attention from scholars and activist movements. See Tom Barry, Beth Wood & Deb Preusch, The Other Side of Paradise: Foreign Control in the Caribbean (New York: Grove Press, 1984); Norman Girvan, Corporate Imperialism: Conflict and Expropriation (New York: M.E. Sharpe, 1976); David Kowalewski, Transnational Corporations and Caribbean Inequalities (New York: Praeger, 1982); Harry G. Matthews, Multinational Corporations and Black Power (Cambridge: Schenkman, 1976); Chaitram Singh, Multinationals, The State, and the Management of Economic Nationalism: The Case of Trinidad (New York: Praeger, 1989). See also Jorge Niosi, Canadian Multinationals (Toronto: Between The Lines, 1985).

[62] In 1977, for example, TNCs employed forty-four percent of Trinidad and Tobago's labour force primarily in the petroleum and manufacturing sectors. This equated to a nearly ten percent share of employment for the economy as a whole. Joint ventures between TNCs and government or locally owned firms were particularly popular in Trinidad & Tobago. Terisa Turner, Multinational Enterprises and Employment in the Caribbean with special reference to Trinidad and Tobago, ILO Working Paper No 20 (Geneva: International Labour Office, 1982) at 3-4.

While resource extraction TNCs continue to operate in the Caribbean, there has been a marked rise in TNC manufacturing activity. TNC supply chains now operate in Export Processing Zones ("EPZs") throughout the Caribbean region, including in Trinidad & Tobago.[63] Further, TNC activity directly associated with the new global economy, such as semi-conductor manufacturing and data entry centres, and financial services, have been outsourced to the region.

Transnational Labour Regulation

In recent years, scholars increasingly have reflected on and questioned the capacity of labour law and regulation to keep pace with the new legal, economic, political and social developments in work organization.[64] Efforts have been made

[63] As of 2003, Trinidad & Tobago has seventeen designated EPZs (or "free zone" areas) with manufacturing, data processing, and trade sectors exporting the equivalent of $US54 million. Between four Caribbean countries (Antigua & Barbuda, Trinidad & Tobago, St Kitts & Nevis and St Lucia) fifteen thousand workers were employed in EPZs. See Jean-Pierre Singa Boyenge, ILO Database On Export Processing Zones (International Labour Organization, 2003), online: < http://www.ilo.org/public/english/dialogue/sector/>. For a critique of EPZs see S. McKay, "Zones of Regulation: Restructuring Labor Control in Privatized Export Zones" (2004) 32:2 Politics and Society 171.

[64] A prominent contributor to, if not the initiator of, the 'new' labour law studies is the International Network on Transformative Employment and Labour Law (INTELL). A network of more than seventy labour law academics from various parts of the world initiated in 1994, (See "Introduction" in Joanne Conaghan, Richard Michael Fischl & Karl Klare eds., Labour Law in an Era of Globalization: Transformative Practices and Possibilities (New York: Oxford, 2002) at xxiii) INTELL claims a "non-sectarian and inclusive" mandate with "no dominant ideological viewpoint" (*Ibid*. at xxiv). INTELL scholars claim an affiliation with the egalitarian sentiments of the US variant of critical legal studies. In a bold statement the network asserts that "we recognize that law and legal discourse have an inescapably political dimension and seek openly to engage with that dimension" (*ibid*. at xxiv); as such INTELL "bears some of the hallmarks of the US critical legal studies movement" and INTELL is "to some extent" an intellectual offspring of critical legal studies. In effect, they have formalized what had been formulating within mostly Western legal academic circles, the development of a "new" labour law and globalization field of study. The new field contests the overly technical and particular and "self-consciously" anti-theoretical nature of contemporary academic labour law (*Ibid*.). In "applying critical, interdisciplinary, and international perspectives to labour law", the work eschews traditional categorization (*Ibid*. at xxv). Much of the volume "seeks to highlight and destabilize the boundaries within which traditional labour law discourse is located" (*Ibid*. at xxiv). Because they "are informed by and participate in a common conversation" (*Ibid*. at xxv), all of the works in the volume are at least indirectly implicated in the critique developed herein. For an articulation of

to re-conceptualize labour law in light of the impact of economic globalization. Conventionally defined labour law constructs are said to inadequately govern lean and flexible production in the post-Fordist new global economy. Critics, for some time, have called attention to the failings of the collective bargaining regime – its preference for narrow, economistic bargaining issues; its limited reach; as well as its reliance on a full-time, standardized male manufacturing employment norm, among others – and the gaps and unevenness in the statutory floor of employment rights. And while many of these critics argued vehemently over the form and configuration corrective strategies should take, there was general agreement that domestic labour law, and more fundamentally the state, assumed a pivotal regulatory role. Commitment to state-based regulation is eroding rapidly. Several well-respected commentators have now gone as far as to predict, if not pronounce, the "death" of domestic labour law at the hands of the new global economy.[65] Other scholars have developed research agendas which, at least implicitly, operate on the assumption that state-based regulation is in decline. One might conclude that the state's capacity to form and regulate labour markets is, at the very least, in peril.[66]

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the sentiments of INTELL members see Karl Klare, "The Horizons of Transformative Labour and Employment Law" in Joanne Conaghan, Richard Michael Fischl & Karl Klare eds., Labour Law in an Era of Globalization: Transformative Practices and Possibilities (New York: Oxford, 2002) 3.

[65] See Harry Arthurs' quotation to this effect from an unpublished paper cited in Dennis M. Davis, "Death of a Labour Lawyer?" in Joanne Conaghan, Richard Michael Fischl & Karl Klare eds., Labour Law in an Era of Globalization: Transformative Practices and Possibilities (New York: Oxford, 2002) 159. See also Massimo D'Antona's brief discussion of "the identity crisis of labour law" in Britain and France, "Labour Law at the Century's End: An Identity Crisis? In Conaghan, Fischl & Klare, *ibid*. at 32.

[66] Klare, *supra* note 64 at xxviii.

The apparently imperilled and destabilized nature of state-based labour regulation is said to offer the potential for innovative corporate practices, as well as new disciplinary and regulatory directions and interventions.[67] This marks an opportunity, according to certain labour law scholars, to revise the borders of the discipline in response to the distinct challenges of the new global economy.[68] Increasingly, scholars of labour law and globalization have proposed the formulation and reformulation of transnational regulatory regimes to dampen the harsh effects of globalizing capital on nation states and workers in the new economy.[69] Transnational labour regulation, according to Bob Hepple, is a concise term employed to capture a wide range of "both hard and soft rules and procedures which apply across national boundaries".[70] Whereas domestic labour laws apply within a territorial state and may or may not enjoy extra-territorial

[67] With respect to corporate strategies, this holds the opportunity to revolutionize productive relations by gearing employment toward the facilitation of labour-capital cooperation and the empowerment of workers. Paddy Ireland, "From Amelioration to Transformation: Capitalism, the Market, and Corporate Reform" in J. Conaghan, K. Klare & M. Fischl eds.. Labour Law in an Era of Globalization: Transformative Practices and Possibilities (Oxford: Oxford University Press, 2001) 197 at 198-199. On this account, cooperation and trust become requisite features of corporate strategies of efficiency and competitiveness. The technological imperatives of the new global economy, driven by consumer demand and constant innovation in technology, render businesses and other "stakeholders" such as employees vulnerable if they remain inflexible in their relations with other stakeholders such as consumers. Ireland argues that "the belief that flexibility might be a positive force [is] premised on a conception of the market as an opportunity rather than as an imperative. In other words, they focus on the opportunities which the market offers rather than the imperatives it imposes" (*Ibid*. at 210 [author's emphasis]).

[68] In Klare's words: "To be transformative, labour law must take a global perspective and be immersed in transnational dialogue; de-centre paid employment and switch focus to work and social contribution; escape the continuing grasp of the purported distinction between 'public' and 'private law'; reinterpret class in light of other social identities; conceive institutions and work relationships that combine flexibility with security; and assist in devising egalitarian development strategies. It should work to undo gender and racial domination" (Klare, *supra* note 64 at 29).

[69] Katherine Van Wezel Stone, "Labour and the Global Economy: Four Approaches to Transnational Labour Regulation" (1995) 16 Mich. J. Int'l L. 987; L. Compa & T. Hinchcliffe-Darricarrere, "Enforcing International Labour Rights through Corporate Codes of Conduct" (1995) 33:3 Col. J. Transnat'l L. 663; Bob Hepple, Labour Laws and Global Trade (Oxford, UK; Portland, Oregon: Hart, 2005).

[70] Hepple, *ibid*. at 4.

coverage, transnational labour law necessarily applies across territorial borders and in multiple jurisdictions.[71]

Much of the transnational regulatory emphasis has been placed on strengthening international labour standards, including human rights at work. Proposals have examined conventional avenues, such as the International Labour Organization;[72] supranational and international institutions like the World Trade Organization[73]; and treaties, namely the North American Free Trade Agreement and the once anticipated Free Trade Area of the Americas.[74] A considerable number of proposals also examine regimes based on private mechanisms in the form of corporate codes of conduct.[75] The degree of commitment to hard and soft

[71] *Ibid*. at 4.

[72] See e.g. Brian Langille, "The ILO and the New Economy: Recent Developments" (1999) 15:3 Int'l J. of Comparative Labour Law and Industrial Relations 229. On the impact of the ILO's 1998 Declaration on Fundamental Principles and Rights at Work on the international labour rights regime see Philip Alston & James Heenan, 'Shrinking the International Labor Code: An Unintended Consequence of the 1998 ILO Declaration on Fundamental Principles and Rights at Work" (2004) 36 New York University Journal of International Law and Politics 221; Alston, "'Core Labour Standards' and the Transformation of the International Labour Rights Regime" (2004) 15 European Journal of International Law 457; Brian Langille, "Core Labour Rights – The True Story (Reply to Alston)" (2005) 16:3 European Journal of International Law 409 ["Core Labour Rights"].

[73] See e.g. Robert Howse, "The WTO and the Protection of Worker's Rights" (1999) 3 Journal of Small and Emerging Business Law 131 (distinguishing trade measures based on labour rights from conventional protectionist measures, and arguing the formal commitment of (most) WTO members to fundamental international labour rights is a basis for the WTO to permit the use of trade sanctions against violators of those rights). Trebilcock, & Howse, "Trade Policy & Labour Standards" (2005) 14 Minnesota Journal of Global Trade 261; Adelle Blackett, "Mapping the Equilibrium Line: Fundamental Principles and Rights at Work and the Interpretive Universe of the World Trade Organization" (2002) 65 Sask. L. Rev. 369 ["Mapping the Equilibrium Line"]. On the related topic of social clauses see Adelle Blackett, "Whither Social Clause? Human Rights, Trade Theory and Treaty Interpretation" (1999) 31:1 Columbia Human Rights. L. Rev. 1 ["Whither Social Clause"](examining recent arguments in support of the insertion of a social clause in the multilateral global trade regime).

[74] See e.g. Clyde Summers, "NAFTA's Labour Side Agreement and International Labour Standards" (1999) 3 J. Small & Emerging Bus. L. 173; Blackett, "Toward Social Regionalism in the Americas" (2002) 23:4 Comp. Labor L. & Pol'y J 901 ["Toward Social Regionalism"].

[75] The literature on corporate codes of conduct is quite voluminous. Corporate codes of conduct are, of course, not new. See Harry Arthurs, "Private Ordering and Workers' Rights in the Global

transnational labour regulation varies within the field of study. Corporate codes of conduct, perhaps the most prominent soft mechanism, garner significant attention as a form of transnational labour regulation. With interest having arisen out of the disaffection and alienation from the ILO system, corporate conduct codes are a form of self-regulation by private corporate actors.[76] In light of the assessments of codes' effectiveness and potential to serve established regulatory objectives,[77] there are conflicting viewpoints about the utility of codes and self-regulation generally.[78]

While some of the scholarship embraces either hard or soft transnational regulation as the sole solution to economic globalization, there is strong and growing interest in hybrid regulatory approaches achieved through the blending of

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Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation" in J. Conaghan, K. Klare, M. Fischl eds., Labour Law in an Era of Globalization: Transformative Practices and Possibilities (Oxford: Oxford University Press, 2001) (tracing the corporate use of codes back to the seventeenth century). See also Adelle Blackett, "Global Governance, Legal Pluralism and the Decentered State: A Labour Law Critique of Codes of Corporate Conduct" (2001) 8:2 Indiana Journal of Global Legal Studies 401 [A Labour Law Critique]. See also Anthony Payne, "Governance In the Context of Globalisation and Regionalisation" in Hall & Benn eds., Governance In the Age of Globalization: Caribbean Perspectives (Kingston: Ian Randle, 2003) 147 at 160 ["Governance"] (noting that "privatized governance is not actually new (it is rather that it has been ignored in the past)").

[76] There are reportedly 1000 codes of conduct in operation today. World Bank, "Company Codes of Conduct and International Standards: An Analytical Comparison" (October 2003) 2.

[77] There is a dearth of empirical evidence on comparative cross-country studies of transnational standard enforcement (Hepple, *supra* note 69 at 13). A recent case study on the impact of NAFTA trade liberalization on collective bargaining in Canada and the U.S. concludes that: "International or transnational legal regimes are ineffective in directly countering downward pressure on collective bargaining law in both Canada and the United States". Eric Tucker, "'Great Expectations' Defeated?: The Trajectory of Collective Bargaining Regimes in Canada and the United States Post-NAFTA" (2004) 26 Comp. Lab. L. & Pol'y J. 97 at 149 (The exclusion of Mexico leaves the study open to criticism).

[78] Codes of Conduct frequently apply in a general non-country specific way to workers throughout a TNC or commodity chain. Others note the potential for corporate codes to round up transnational solidarity of civil society, even though trade unionists and human rights activists tend to be excluded from formal mechanisms of engagement set out in corporate codes, particularly in developed countries. These codes tend to differ more with respect to their targeting of consumers in particular national markets than with their attention to their own workers in particular countries. Blackett, A Labour Law Critique, *supra* note 75 at 412.

hard and soft regulation.[79] Within the proposals for hybrid regulation there are diverging viewpoints about the role and necessity of the state as a regulatory actor. One such example envisages a role for transnational regulation as a supplement to national labour law systems.[80] A similar example conceives of a domestic regulatory regime based on the expansion of inter-related, international modes of capital governance.[81] To that end, international law enables domestic regulation aimed at promoting workplace justice.[82] Others while critical of certain soft and hard approaches still maintain that "[t]ransnational labour regulation does matter".[83] That is to say, as Hepple contends, transnational regulation might be reconfigured to harness global economic processes, and to tap the inherent

[79] Katherine Van Wezel Stone, "To the Yukon and Beyond: Local Laborers in a Global Labor Market" (1999) 3 J. Small & Emerging Bus. L. 93; Hepple, *supra* note 69["To the Yukon and Beyond"]; Harry Arthurs, "Reinventing Labour Law For The Global Economy" (2001) 22 Berkeley Journal of Employment and Labor L. 271 ["Reinventing Labour Law"]. For an "outsider" commentary on hard and soft law in the European Union see David M. Trubek & Louise G. Trubek, "Hard and Soft Law in the Construction of Social Europe: The Role of the Open Method of Co-ordination" (2005) 11:3 European Law Journal 343 (arguing for the articulation of a theory of hybridity, integrating hard law and soft law approaches to employment policy).

[80] David M. Trubek, Jim Mosher & Jeffrey S. Rothstein, "Transnationalism in the Regulation of Labor Relations: International Regimes and Transnational Advocacy Networks" (2000) 25 Law & Soc. Inquiry 1187.

[81] Patrick Macklem, "Labour Law Beyond Borders" (2002) 5 J. Int'l Econ. L. 605.at 608-609 (arguing that "recent international developments relating to labour standards and trade liberalization initiatives, together with more general principles of international human rights law, authorize a state to enact legislation requiring a corporation operating within its jurisdiction to conform to an enforceable code of conduct governing its employment relations at home and abroad [… and] that these developments authorize a state to require a corporation operating outside its jurisdiction but seeking domestic market access to respect international labour rights in its foreign operations").

[82] In a perhaps related way, there is recognition that, at least in certain nation states, international labour rights have been judicially interpreted to enlarge local collective bargaining regimes (See Tucker, *supra* note 77). Notwithstanding the Supreme Court of Canada's particularly prominent labour-friendly interpretation of freedom of association rights, this is seen to come with requisite warnings related to the judicial politics, and generally putting stock in the judiciary's capacity (and desire) to effect deep and systematic transformative change of domestic labour law.

[83] Hepple, *supra* note 69 at 24.

capacity of rising productivity to bolster foreign direct investment.[84] Thus, a blend of certain hard and soft mechanisms might be deployed to establish and protect labour standards.

In general terms, the transnational turn in labour law scholarship flows from two mounting concerns about the globalization of the state. Concern arose with respect to the impact of TNCs and related globalizing economic forces on, in one sense, state sovereignty and law-making powers, and, in another, national legal regulatory regimes.[85] On the law-making account, dissidents insist that the cross-border movement of capital and labour encouraged by the new economy imposes real constraints on national governments.[86] According to Katherine Stone, capital (and to some extent labour) mobility undermines the capacity of nation-states to regulate their own domestic labour markets and national economies.[87] Not all in the field accept what might be termed the "globalization without the state" thesis, and claims about nation states' capacities in respect of labour market regulation have since shifted away from overly simplistic assumptions about state disempowerment.

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[84] *Ibid*. at 24. To this end, transnational regulation must spur on economic performance by inverting the logic of the race to the bottom (discussed below) to achieve superior labour productivity from enhanced labour standards. (*ibid*. at 15-16). This calls for the development of "'a race to the top' by spreading the best practices of TNCs, and by promoting sustainable development through fundamental human rights at work" (*ibid*. at 24).

[85] Karl Klare, *supra* note 64 at 23; Kenneth O. Hall & Denis Benn, "Introduction" in Hall & Benn eds., Governance In the Age of Globalization: Caribbean Perspectives (Kingston: Ian Randle, 2003) x at xi (noting that globalization "has impinged on the exercise of national sovereignty and has further limited the capacity of the state"). This "transnational turn" was reflected in the year 2000 update of the Organization for Economic Co-operation and Development (OECD)'s Guidelines on Multinational Enterprises (1970).

[86] Stone, *supra* note 69.

[87] *Ibid*.

With respect to the impact on national legal regimes, critics such as Karl Klare maintain that domestic regimes, which were once "relatively unified, coherent, and nationally based", now increasingly contain "multiple, overlapping layers of sovereignty and norm-creation".[88] On the whole, labour law and globalization scholarship regards the nation-state as a "multivalent" as opposed to "unitary" legal order.[89] The multivalent state "results from the growing number, types, and importance of federal and quasi-federal systems and supranational institutions, the expanded reach of international law, and the proliferation of bilateral and multilateral treaty obligations and entitlements".[90] Implicated here is the relationship between national (and sub-national) labour law regimes and transnational labour regulation.

Taken together, these concerns evince the "hollowing out" of the nation-state in the contemporary era of globalization.[91] The degree to which states have been hollowed out, however, is the source of significant debate. The debate occurs within three overlapping approaches to the study of the impact of economic globalization on labour law. While alternative approaches exist, the three delineated here share an open commitment to transnational labour regulation.

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[88] Klare, *supra* note 64 at 27, 23.
[89] *Ibid*. at 27.
[90] *Ibid*.
[91] That is not to say all accept this view. For some, to varying degrees it is acknowledged that despite the apparent decline of the state the prevailing global legal order presents room for manoeuvring and opposition. That states have actively facilitated the declination, or at least done little to reject the appearance of frailty, provides ample evidence of states' latent capacities. Arthurs, Reinventing Labour Law, *supra* note 79; Hepple, *supra* note 69; Kevin Banks, "Globalization and Labour Standards – A Second Look at the Evidence" (2004) 29 Queen's L. Rev. 533; Tucker, *supra* note 77.

Global Governance of Labour

The first approach to labour law and globalization attends primarily (although not exclusively) to global governance of labour. There is general agreement on the emergence of the elements of a "new global labour law".[92] Global labour law still finds value in domestic sources of labour law -- albeit perhaps inevitably or by default. That is "a good part of global labour law is going to be created where domestic labour law is created today – in national legislatures, courts and tribunals".[93] However, the idea of global labour law also captures international treaties – most often in the form of trade liberalization frameworks; "best practices" gleaned from shop-floor customs, corporate philosophy and "accepted" elements of national laws; corporate codes of conduct; international worker and labour union cooperation in the form of alliances, committees, secretariats and the like; social movement initiatives such as industry monitoring, public shaming and dialoguing; and perhaps even intellectual property.[94]

Global labour law is reminiscent of, in the wider context of economic globalization and law, global legal pluralism.[95] In that wider context, as

[92] Hepple, *ibid*.; Arthurs, Reinventing Labour Law, *ibid*.; Stone, To the Yukon and Beyond, *supra* note 79.
[93] Arthurs, Reinventing Labour Law, *ibid*. at 293.
[94] *Ibid*. at 286-292; Stone, To the Yukon and Beyond, *supra* note 79 at 129-30.
[95] Competing conceptions of global legal governance include contract, marking the global web of contractual relations aligning various actors from firms to states and individuals; multi-level, hierarchical governance; networks; and lex mercatoria. Snyder, "Economic Globalization and the Law in the Twenty-first Century" in Austin Sarat ed., The Blackwell Companion to Law and Society (Malden, MA: Blackwell, 2004) 624 at 627-631 ["Economic Globalization and the Law"].

articulated by Francis Snyder,[96] the characterization of this new global order is more descriptive than explanatory. Global legal pluralism, in Snyder's terms, is "the totality of strategically determined, situationally specific, and often episodic conjunctions of a multiplicity of sites throughout the world".[97] Characterized by institutions, normative and processual features, global legal pluralism constitutes overlapping but independent sites set with their own histories, internal dynamics and distinctive features.[98]

Global labour law,[99] and global legal pluralism more broadly, can be characterized as an extension of the legal pluralist understanding of domestic employer regulation which, under the regime of industrial pluralism prevalent in post-World War II industrial relations in Canada, has been regarded as: "The 'web of rules' governing the complex and dynamic relationship we call employment [and] includes strands of state law, to be sure, but also explicit contracts and implicit understandings, custom and usage, patterned behaviour, cultural assumptions, power relations, and technological imperatives".[100]

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[96] Snyder, "Governing Economic Globalisation: Global Legal Pluralism and European Law" (1999) 5 European Law Journal 334 ["Governing Economic Globalisation"]; Snyder, "Economic Globalization and the Law", *ibid*.
[97] Snyder, Governing Economic Globalisation, *ibid*. at 334.
[98] *Ibid*. (citing the abstract).
[99] See Hepple, *supra* note 69.
[100] Arthurs, "Labour Law without the State" (1996) 46:1 University of Toronto L. J. 1 at 2 ["Labour Law without the State"]. See Blackett's argument to this effect in A Labour Law Critique, *supra* note 75 at 431-433. While Blackett does not employ the idea of global labour law, she does connect the emerging self-regulatory strands of corporate codes of conduct with a legal pluralist perspective on labour law.

Multivalent legal orders are a – if not the most – prevalent consequence of contemporary globalization.[101] The regulatory dilemmas arising from TNCs are central to this formulation. Global economic networks such as commodity chains present particularly challenging dilemmas for global legal governance. The associated legal arrangements of these networks are as elaborate as they are evasive, avoiding trouble-free nation state-based regulatory capture.

Two critical issues arise from the discussion of new global labour law as a global legal pluralist order. First, global labour law, like global legal pluralism, largely appears as a descriptive depiction of global legal governance of labour. A group of scholars acknowledge that the relationship between national labour law regimes and transnational labour regulation is continuously varying and permeable. On this account, in the global legal order the parameters between and around assorted sources of law are forever wavering.[102] Or as Klare asserts, the "order of hierarchy between layers is often indeterminate".[103] We are left with questions about how global labour law emerges in the first place, how the global legal order operates, and how it is governed – by which actors (e.g. states, TNCs, workers) and for whose benefit. There are additional uncertainties. What is the significance of the emergence of certain forms of transnational labour regulation over others? How, if at all, does the inadequacy of private normative orders (such as codes of conduct) as mechanisms to protect workers assist or detract from the regulatory efficacy of the wider global legal order?

[101] Hepple, *supra* note 69 at 275.
[102] Klare, *supra* note 64.
[103] *Ibid*.

For those who view global legal governance through the lens of global legal pluralism the task of mapping and contextualizing the interactions of legal normative orders or sites is not yet fulfilled.[104] Insofar as the vision of global labour law caters solely to description, the phenomenon operates at a particularly high level of generality which fails to explain the significance of political and economic factors between and within states. In particular, the concern is that global labour law (and analogous interpretations of global legal governance of labour) may neglect the implications of the disparate authority of states and non-state actors in the global political economy. As global labour law extends beyond description therefore, there are questions, all potentially debilitating, about the phenomenon's explanatory power or efficacy. Moreover, global labour law also may suffer from criticisms directed at legal pluralist conceptions of domestic legal normative orders.[105] In view of these questions and concerns, a few labour law scholars have articulated more nuanced analyses which attempt to surpass crude legal pluralist interpretations to capture, for example, the differentiated global

[104] Hepple refers to this as the "dialogue between the multivalent legal orders that shape power relations" (Hepple, *supra* note 69 at 190). There is a need, in Hepple's view, to synthesize "traditional theories" that have informed labour law (i.e. socialist, labourist and pluralist) "with the modern approach of rights-based regulation as well as human rights theory". The "synthesis" should be based on four pillars: the dialogue; new conceptions of law in the workplace that embrace both employed and self-employed labour; dissolving the public law-private law distinction; and developing "social rights" to dissolve the labour rights-human rights distinction. Hepple, "Four Approaches to the Modernisation of Individual Employment Rights" in Roger Blanpain & Manfred Weiss eds., Changing Industrial Relations and Modernisation of Labour Law (The Hague: Kluwer, 2003) 181 at 190 ["Four Approaches"].

[105] Unresolved issues relate to whether the multivalent state refers to a numerical plurality of normative orders within and without the state or to a political plurality or to the equivalence of those orders per se. Scholarly analyses focussed on the specific levels at which relations between these normative orders occurs have the potential to compliment accounts at more abstract levels of analysis.

terrain in terms of state power as well as the particular location and significance of states (or regions) as sites of production.[106]

Second and in a related way, the relationship between global labour law and global legal pluralism reveals an institutional-centred analytic approach which relies on formalistic interpretations of law. The prevalence of institutional interpretations of global legal pluralism in which one "seeks to reconstruct the system", while "useful in tracing the elaboration of legal doctrine", in Snyder's view "is not the most fruitful if our aim is to understand how legal institutions and other institutional, normative, and processual sites are created, develop, and operate in practice".[107] Similarly, global labour law embraces an institutional focus which clings to legal formalism.[108] The issue is that the emphasis on formal

[106] As Blackett asserts: "In an economic context in which new and old forms of production interact, complement, and challenge each other, it may be acceptable, even desirable, to adopt a layered vision of labo[u]r regulation that is responsive to differences across and within labo[u]r law systems and relations between States" (Blackett, A Labour Law Critique, *supra* note 75 at 422). Transnational labour regulation also must account for the predominance of work in the informal economy throughout the underdeveloped world. Here, employing Amartya Sen's idea of "equality of capabilities", Hepple envisions transnational regulation that facilitates a more robust understanding of equality, incorporating the attainment of what some have come to call social capital – education and training, human rights and democratic freedoms; while imbricating equality of income. (Hepple, *supra* note 69 at 18-19)

[107] Snyder, Governing Economic Globalisation, *supra* note 96 at 371. Snyder examines the international toy industry to show how the EU legal institutions fit within the broader context of global legal pluralism. Snyder's effort to de-stabilize the orthodoxy of EU institutional research which as a rule sees EU institutions "in their own terms" and not "in any wider context" starts with a sketch of the relationship between global legal pluralism and legal economic networks (*Ibid*.); and not the other way around. The point is not only the directional move his analysis makes but the attempt to cut across prevailing orthodoxy to open space for the pursuit of questions about legal institutional operation on the ground. A focus from the standpoint of economic actors in legal economic networks (*Ibid*. at 371-372). EU law is situated within the sets of relations that constitute the broader global legal playing field/arena (*Ibid*. at 372).

[108] According to one definition: "Formalism treats the law as an external, autonomous, self-sustaining, and independent order, neutralized of" political and extra-political conflict and contestation. This neglects "how law empowers actors as legal subjects or identifies legitimate sources and voices of the law or confers the authority and legitimacy to resolve disputes and determine outcomes or 'who gets what' […]". It also overlooks how "law disempowers, delegitimizes, and disenfranchises subjects and sources of law" and "tends toward a form of

law and legal institutions exacerbates the explanatory weaknesses of global labour law.

Labour Rights as Human Rights

A second approach to labour law and globalization, the fundamental human rights approach, asserts the entitlement of workers to certain international labour rights or standards.[109] Premised on the belief that a person does not enter the labour market as a commodity, core labour standards are regarded as universal human rights.[110] This view applies within the context of, and is seen by some to be constituent with, liberal international trade regulation.[111] In contrast to other approaches based on articulating a relationship between trade and labour, as discussed below, the human rights approach "focuses primarily on the welfare of citizens in exporting, not importing countries".[112]

A more general view of the approach posits that labour rights as constitutive of fundamental human rights may offer a means to counteract the negative impact of

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historicism that empties the law of a past and a future" Claire A. Cutler, Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy (Cambridge, UK: Cambridge, 2003) at 3.

[109] There are obvious connections between the practice of international trade and the human rights of individuals. In a fundamental respect, there is "social displacement associated with opening a society to increased competition". Robert Wai, "Countering, Branding, Dealing: Using Economic and Social Rights in and around the International Trade Regime" (2003) 14 European Journal of International Law 35 at 45; 41 (accordingly, a way to address social displacement is to utilize international human rights law. "[I]nternational human rights law may provide a basis to frame serious claims based on suppressed policy goals that disturb dominant policy discourses of international trade law").

[110] Trebilcock & Howse, *supra* note 73 at 272.

[111] "Core labo[u]r standards viewed as basic or universal human rights […] by promoting human freedom of choice, are entirely consistent with a liberal trading regime that seeks to ensure other human freedoms, in particular the right of individuals to engage in market transactions with other individuals without discrimination on the basis of country of location" (*ibid*. at 272).

[112] *Ibid*.

globalization on workers. To summarize this perspective, "labour rights warrant certain forms of protection within the framework of the emerging global economic system".[113] Accordingly, some scholars incorporate a human rights perspective within one of the alternative approaches to the study of labour law and globalization.[114]

The 1998 ILO Declaration on Fundamental Principles and Rights at Work[115] figures prominently in the human rights approach. The ILO Declaration delineates core labour rights or standards. While occupational safety and health protection is not included in the ILO Declaration, freedom of association, freedom from child labour and forced labour, and non-discrimination in employment are included.[116] Whereas scholars such as Macklem and Langille assume core labour rights hold great potential to mitigate the consequences of economic globalization,[117] others take a distrustful view of the potential protective covering offered by the ILO Declaration. The introduction of core labour standards, according to Alston, subverts the existing international labour rights regime.

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[113] This is Alston's summation of the arguments presented in his edited collection. Philip Alston, "Labour Rights as Human Rights: The Not So Happy State of the Art" in Alston ed., Labour Rights as Human Rights (New York: Oxford, 2005) 1 at 3.
[114] See e.g. Hepple, *supra* note 69.
[115] Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 86th Session, Geneva, June 1998 ["ILO Declaration"].
[116] The challenge for workers and their supporters then is to find ways to pressure the state to close the gap between international human rights and employer actions, to sign onto new international labour and human rights agreements, and to broaden the scope of existing agreements. And when the state neglects or refuses to act, the strategy is to turn to domestic and international courts, and to tribunals and dispute resolution bodies, to secure enforcement.
[117] Langille, Core Labour Rights, *supra* note 72; Macklem, "The Right to Bargain Collectively in International Law" in Alston ed., Labour Rights as Human Rights (New York: Oxford, 2005).

The fundamental human rights approach is subject to criticisms levelled at the practical and theoretical validity of universal human rights. An especially forceful critique calls attention to the relative and particular nature of human rights as set out in the Universal Declaration of Human Rights.[118] The critique applies to developed countries but has far greater resonance for workers in developing countries. If it is true that human rights are the guiding principles of a particular historical juncture of capitalist relations, and that we are in a new global economy marked by a distinctive phase of capitalism, can human rights become relevant to the "substantial part of humanity [that] has never possessed most of these rights"[119]?

International Trade & Labour

A third approach to labour law and globalization examines the relationship between trade and labour issues. The international trade regime – including bilateral, regional and multilateral trade and investment liberalization agreements – forms a core feature of the global legal order. Significant consideration is given to the relationship between trade policy and labour rights or standards. This has rendered the protection of labour standards through international trade a highly contentious issue.[120] Interest in the use of international labour standards to

[118] For instance, Gary Teeple argues that human rights are defined by, and particular to, the capitalist mode of production; more precisely, a stage of development in capitalism which could not universally honour the claims and entitlements of human rights. Teeple, The Riddle of Human Rights (Aurora, ON: Garamond, 2004).
[119] *Ibid*. at xi.
[120] Howse, *supra* note 73.

counteract economically exploitative labour relations commenced in the nineteenth century.[121]

While it could not be said that linking trade and labour in twentieth century trade agreements is commonplace, a number of contemporary bilateral, regional and multilateral trade agreements connect trade with foreign labour standards.[122] The contemporary case for the formal insertion of labour rights into trade and investment liberalization agreements is presented as a "win-win" situation for developed and developing countries alike.[123] Both direct and indirect challenges to formal trade-labour linkage have arisen. Developing countries directly and forcefully objected on the basis that linkage constituted a disguised form of protectionism.[124] A formal linkage, in this respect, would provide developed

[121] Trebilcock & Howse, *supra* note 73 at 261-266 (canvassing recent history).
[122] One such agreement, the Caribbean Basin Economic Recovery Act, 1983, applies to the U.S-Caribbean relations. Trebilcock & Howse, *supra* note 73.
[123] See e.g. Sandra Polaski, "Trade and Labor Standards: A Strategy For Developing Countries" (Carnegie Endowment for International Peace, 2003) at 5; and see generally. Polasky is a former U.S. Department of State trade representative on labour issues. Often, but not in the case of Polaski's work, the case for trade-labour linkage points to the (failed) International Trade Organization's Havana Charter, which clearly incorporated provisions for the protection of labour standards, as the precursor to the linkage argument (Howse, *supra* note 73).
[124] José Manuel Salazar-Xirinachs & Jorge Mario Martínez-Piva, "Trade, Labour Standards and Global Governance: A Perspective from the Americas" (2002) online: Foreign Trade Information System < http://www.sice.oas.org/> at 336-341. While most Latin American and Caribbean countries are open to global cooperation on labour issues through the ILO and in the hemisphere through the Labour Initiative in the Inter-American system, they are generally against trade-labour linkages in trade liberalization agreements (including at the WTO). They are particularly concerned with the use of trade sanctions or restrictions. These concerns can be grouped into six categories: (1) negotiating priorities – formal trade-labour linkages inhibit market access; (2) political economy perceptions – the protectionist intent and the selective interest in preventing labour issues; (3) stage of development issues – concern that developed countries are attempting to impose western developmental strategies on developing countries; (4) questions concerning the logic of trade negotiations – asymmetrical power relations between states, particularly in reference to relations between the U.S. and Latin American/Caribbean countries; (5) considerations of efficiency in achieving social objectives – the protection of labour issues should occur through cooperation not confrontation or negotiation; (6) arguments related to the architecture of the global trading system, including those with respect to the appropriate forms of governance of international trade and the appropriate structure for the system.

countries with a punitive instrument to enforce and maintain the underdevelopment of the Global South.

An indirect challenge has developed in the form of a revision to the case for formal linkage. Based on the "inherent linkage" between trade and labour,[125] the substantiating evidence for this challenge lies in the relatively recent institutional and structural adjustments to the ambit of international trade regulation. In particular, the outward expansion of the zone inhabited – or, perhaps more fittingly, colonized – by the global trading regulatory regime, including the broadening of the focus of the GATT-WTO to incorporate non-tariff barriers and the Dispute Settlement Body to domestic legal and regulatory policies and remedies,[126] unavoidably entails an encounter between trade and labour. How and in what context the encounter occurs is, to a limited extent, open to debate.[127]

In view of the neo-liberal enlargement of the zone of the global trading regime, Blackett contends that the WTO's dispute settlement machinery, notwithstanding questions about its legitimacy, offers an appropriate context for the encounter of and engagement with trade and labour.[128] Advocating juridical attentiveness to

[125] Blackett, Mapping the Equilibrium Line, *supra* note 73.
[126] *Ibid*. at 371.
[127] An analogous example of the expanding scope of trade law can be seen in proposals to utilize trade law regimes to adjudicate human rights law disputes. For a scathing critique of one such proposal see Philip Alston, Resisting the Merger and Acquisition of Human Rights by Trade Law: A Reply to Petersmann" (2002) 13:4 European Journal of International Law 815.
[128] Blackett, Whither Social Clause, *supra* note 73. Josephs takes the argument further, arguing the Dispute panel in its current structure offers an "optimal approach" that overcomes the incessant bickering over the wording of a given provision in trade negotiations, and that secures "obligations on a case-by-case or judicialized basis rather than on a codified or legislative basis" (Hilary K.

the general and hierarchical norms of international law, and in light of country-specific commitments to international labour standards and human rights, Blackett urges "principled" pursuit of the "equilibrium line" by the WTO Dispute Settlement Body.[129]

The most prominent vision of the trade-labour encounter – initially described as social dumping and later as race to the bottom – builds the case for formal linkage in terms of country competitiveness. International trade theory takes as a given that all countries in the global trade regime benefit from the opening of their markets. In exchange for this benefit, member countries must accept the guiding principle of comparative advantage. Ricardo's theory of comparative advantage, constitutive of the orthodoxy of contemporary global trade, posits that free trade permits a country to specialize in the production of goods it produces more efficiently than its trading partners.

Comparative advantage is contested on a number of grounds each of which represents distinct visions of the trade-labour encounter. Initially, critics of the global trade regime levelled accusations of social dumping. Variations in labour

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Josephs,. "Upstairs Trade Law; Downstairs, Labor Law" (2001) 33 The Geo. Wash. Int'l L. Rev. 849 at 870-871).

[129] Blackett, *ibid*. at 375 ("the WTO's Appellate Body moves beyond the simple assertion that balances need to be struck to suggest where one might begin to look to identify those balances. This inquiry is the equilibrium line analysis which, I argue, has the potential to foster a robust interpretation of the role of a broad range of internationally articulated norms in the WTO framework"). But see Foster's critique of Blackett's equilibrium line: "Professor Blackett notes that there is territory yet to be explored in what she terms 're-distributional balances'. But it is here that I wonder if the actual terrain demands not just 'balance' and 'legal equilibrium' but rather the primacy of human rights and the necessity of urgent action embodying that assertion" (John W. Foster, "Equilibrium or Justice: A Brief Commentary on Adelle Blackett, "Mapping the Equilibrium Line" (2002) 65 Sask L. Rev. 393 at 400).

rights and labour costs across countries within the global trading regime form the basis of the social dumping and associated race-to-the-bottom hypotheses. Social dumping refers to the utilization of low labour standards to produce competitive products for export. This was said to constitute a form of comparative advantage in which developing countries capitalized on patchy and ineffective labour protections, and on surplus labour, to achieve low labour costs for the purposes of attracting foreign direct investment. Concerns about a regulatory race to the bottom were articulated by commentators within developed countries who feared that drastic economic fallout – including diminished wages, as well as lost employment opportunities and foreign direct investment – would ensue from the importation of products manufactured by low-wage workers. This would trigger competitive pressure to trim back labour standards in developed countries in an effort to drive down the local costs of labour.

Social dumping, and similarly race to the bottom, provides normative justification for transnational regulation. Social dumping frames the debate over the relationship between trade and labour in the economic terms of labour costs. In an attempt to equilibrate the global trade regime with respect to labour costs, transnational labour regulation would do away with the "social" causes of depressed labour standards and costs – but leave in tact "legitimate" competitive factors related to productivity.[130] In this vein, the oldest and most salient approach to transnational regulation calls for the insertion of a social clause unilaterally or multilaterally in trade liberalizing agreements, including the wider

[130] Hepple, *supra* note 69 at 14.

global trade and financial legal frameworks. As a corrective instrument, a social clause would impose trade sanctions against countries not in compliance with designated labour standards with the objective of harmonizing standards across countries, and ensuring observance of international or domestic labour rights.[131]

Calls for the insertion of social clauses, as alluded to earlier, were met with emphatic counter-assertions of disguised protectionism. In particular, many argued that the imposition of higher labour standards on developing countries would erode what often was – and continues to be – their most prevalent source of competitiveness, low labour costs. Important findings, moreover, exposed a number of fundamental weaknesses in social dumping and race to the bottom hypotheses.[132] The spreading if not pervasive view is that supporters of both hypotheses overstated the empirical case.[133] As Hepple asserts, very little empirical evidence exists to confirm comparative advantage flows from social dumping.[134] But, as he acknowledges, there are notable exceptions. For one, EPZs have surfaced to become important economic developmental ventures.[135] Operating most conspicuously within developing countries, EPZs constitute "de-territorialized" industrialized fortresses that attract foreign direct investment with, among other incentives, reduced taxes and labour standards. As spheres onto themselves EPZs sanction (oftentimes serious) infractions of labour standards and,

[131] *Ibid*. at 89-90.
[132] *Ibid*; Blackett, A Labour Law Critique, *supra* note 75 at 49.
[133] Blackett, *ibid*. at 49; Banks, *supra* note 91; Hepple, *ibid*.
[134] Hepple, *ibid*. at 15.
[135] *Ibid*. at 15. For a detailed discussion of EPZs in the context of corporate codes of conduct see Blackett, A Labour Law Critique, *supra* note 75.

as a rule, exclude the operation of trade unions and abstain from the formal protection of the right to freedom of association.

The "emerging consensus" on race to the bottom is that deregulated labour markets have not occurred under contemporary trade liberalization initiatives and that labour standards are not dictating competition for investment.[136] Trade liberalization preserves the privilege in foreign direct investment and product market share of developed countries.[137] Moreover, stronger labour standards may even foster economic growth.[138] As well, race to the bottom has a "tendency to abstract relationships between international economic integration, labour markets and labour policies from the industry conditions and political systems in which they are embedded".[139] Ignoring for the moment normative justifications, the empirical difficulties which this abstraction creates are evident.

In other respects, the race to the bottom hypothesis privileges structural explanations. As illustrated in the context of "the NAFTA effect"[140], the race to

[136] Banks, *supra* note 91 at 542; and see generally.
[137] After reviewing the empirical literature, Banks concludes: "despite significant unit labour cost differences between industrialized and developing countries, and despite increasing economic openness between the developing and developed world in key sectors such as manufacturing, there is no evidence that such openness has had a widespread impact on labour laws or labour markets in industrialized countries. Competition for investment and product market share appears instead to continue to favour the advanced industrialized economies as much as it ever did" (*Ibid*. at 548-549).
[138] *Ibid*. at 549.
[139] *Ibid*. at 550.
[140] Employing the comparative example of labour market regulation in the federal states of Canada and the U.S., Tucker concludes "a regime that creates the structural conditions for regulatory competition [i.e. Canada] may still have strong labour laws, while a more centralized one [i.e. U.S.] may not. The structural scope for regulatory competition within federal states is only one factor that determines the trajectory of labour law" (Tucker, *supra* note 77 at 107). This lesson,

the bottom hypothesis is inattentive to the relevance and impact of intervening political economic factors.[141] There is a need for a more nuanced or contextualized theory – in line with socio-legal understandings – to account for the social complexity of labour law legislative reform.[142] That said, the emerging consensus is itself overstated.[143] It is developed within an "artificially narrow" analytical frame which leaves out the negative and downward impact of trade liberalization on public sector collective bargaining and, more to the point, neglects the efficacy of domestic labour and employment law regimes.[144] In other respects, the emerging consensus overlooks evidence from developing countries that "globalization may be exerting important competitive pressures on labour standards there".[145]

The normative assertions embedded within the arguments for social clauses also have been subjected to rigorous scrutiny. Certain normative assertions have been

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Tucker notes, has been applied to regional and international arrangements to build the emerging consensus against the race to the bottom hypothesis.

[141] See e.g. Tucker, *supra* note 91 at 98-99 ("It argues that the model upon which their predictions were based was overly structural and that a more nuanced one is needed. Such a model must better take into account a range of factors that mediate the impact of NAFTA-style trade liberalization on labour market regulation. These mediations occur at the economic level, within the collective bargaining regime itself, and in the external environment that shapes the direction of state action").

[142] Tucker, *ibid*. at 109-118. There is passive deregulation, a regulatory technique parading as indifference.

The complexity of economic factors, the "internal adaptation" or adjustment mechanisms of the labour and employment regime and the impact of external factors such as law, politics, ideology, and social context on public policy, all mediate labour law regulatory engagement with trade liberalization arrangements. *Ibid*. at 109-118.

[143] See Banks, *supra* note 91; Tucker, *ibid*.

[144] Tucker, *ibid*. at 98 (in the context of public sector bargaining in Canada and the United States after a decade under NAFTA). These arguments are fuelled by the belief that developments in public sector bargaining legislation are somehow disconnected from the processes of globalization. The fiscal and tax policies of governments, along with public service downsizing and privatization, all reflect the links to globalization (*Ibid*. at 109). As well, the efficacy of labour market regulation is measured in more than formal statutes but in whether defined objectives are met (*Ibid*.).

[145] Banks, *supra* note 91 at 536 (Banks refers to this phenomenon as segmentation).

widely discredited. For instance, the legitimacy of relying on low labour costs to secure a comparative advantage is no longer in question. A reliance on cheap labour as a comparative advantage is accepted as a fundamental premise of the global trade regime. That said, the general melding of labour standards with labour costs is not defensible.[146] The claim of social dumping relies too heavily on labour costs as an explanation for corporate relocation such as runaway shops, and for comparative advantage.[147] Yet other normative assertions may enjoy acceptance. The assertion that neo-liberal trade liberalization arrangements construct conditioning frameworks within which capital, labour and governments engage, has received empirical endorsement.[148] The claim then is that while the empirics of race to the bottom revise the hypothesis, the normative thrust behind the critique of neo-liberal trade liberalization is forceful. The neo-liberal trade agenda is not above scrutiny and genuine concern about freer trade informs attitudes toward the implementation of open markets.

In mounting a trenchant critique of neo-liberal trade liberalization, Hepple contests the social clause approach to transnational regulation. The social clause approach attempts to configure the trade-labour encounter by relocating labour law within the sphere of international trade law.[149] Through a rigorous questioning of the value of this relocation, Hepple argues that liberal conceptions of comparative advantage cannot account fully for the realities of contemporary economic globalization. Comparative advantage, as Ricardo understood it,

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[146] For a normative critique of social clauses see Blackett, Labour Law Critique, *supra* note 75 at 50-52.
[147] Hepple, *supra* note 69 at 14; 15.
[148] See Tucker, *supra* note 77.
[149] Hepple, *supra* note 69 at 271; and see generally chapters 4-6.

embraces capital immobility, a premise invalidated by contemporary globalization.[150] Together with the growth of intra-firm trade, the internationalization of capital marks a defining feature of the prevailing global political economy. As well, comparative advantage relies upon the faulty premise of the fixed mix of endowments of trading countries. But the global variety of national labour laws also provides comparative advantages.[151] The cross-border relocation of a firm or specialized division may occur as an attempt to benefit from the particular institutional framework in operation in the new national locale.[152]

For Hepple then, the explanation for why globalization has not in fact led to a regulatory race to the bottom in respect of labour laws rests with institutional advantage.[153] Building on the varieties of capitalism thesis, Hepple constructs an institutional theory of labour law regimes. Hall and Soskice's liberal market economies versus coordinated market economies distinction figures prominently. In liberal market economies, of which includes Britain, Canada and the United States, hierarchy and market competition order the activities of large businesses. Because of their already deep reliance on market forces, firms pressure governments to further impose market forces or – as race to the bottom predicts – deregulate.[154] The activities of unionized workers are constrained and indeed

[150] *Ibid*. at 23.
[151] *Ibid*.
[152] Labour laws, according to Hepple, "are but one element of a wider political economy that includes industrial relations, corporate governance, vocational education and training, and inter-firm relations" (*Ibid*. at 253).
[153] *Ibid*. at 252-253.
[154] *Ibid*. at 252.

disciplined by market forces. In contrast, firms operating within Belgium, Germany, Japan and other coordinated market economies favour non-market relations. Reregulation receives diminished support in these countries as they derive comparative institutional advantages from non-market-based coordinated or co-determined arrangements.

Two specific points emerge from the review of the international trade and labour approach to the impact of globalization on labour. The first relates to the encounter between trade and labour issues. Most if not all of the proposals operate within the zone of the global trading regime, aiming to fortify the integrity of the regime. A few scholars challenge the growing invasiveness of the trade regime. In so doing, they problematize the trade-labour distinction, arguing, for instance, that it is not a question of being outside or inside the purview of international trade as trade and labour are innately related issues; that the rules of the international trading regime obscure states' regulatory capacities[155] – but that this concealment prompts challenges to the efficacy of state regulation;[156] and that new transnational regulation must contest if not transcend the (static) trade-labour linkage debates. Despite these important efforts aimed at challenging the expanding zone of international trade, the trade and labour approach leaves unchallenged the core precepts of international trade theory. In particular, it

[155] Blackett, A Labour Law Critique, *supra* note 75 at 428.
[156] See Blackett, Toward Social Regionalism, *supra* note 73 at 913 ("In the increasingly invasive trade law landscape, the effectiveness and applicability of labour regulatory frameworks are invariably challenged; the changing structure of labour markets engenders new regulatory pressures").

accepts the dictates of the market and the treatment of labour as a factor of production.

A second point drawn from the international trade and labour approach relates to the emphasis on the regulation of labour and trade in the place and space of developed countries. There is a predisposition in empirical research towards the context of the developed world.[157] Just as race to the bottom tends toward abstraction, emerging consensus draws from the specific cases of the developed countries to make more general or universalistic claims about globalization.[158] The privileging of empirical evidence from developed countries undermines the relevance of both place and space in analyses of globalization. The importance of deepening perspectives to account for developing countries has been lost on all but a few scholars.

An important exception is Blackett's study of social dimensions in the sub-regional trading blocs of the Americas. It treats regionalism as both place and space and identifies sub-regionalism as an analytical point of focus.[159] According to Blackett (through Michael Niemann): "[r]egionalism should be seen as 'a

[157] Banks, *supra* note 91 at 550.
[158] *Ibid*. at 550 ("To generalize on the basis of this evidence is to assume that the competitive advantages of established industrial democracies can also be secured relatively easily in the developing world, and that something will similarly offset competitive pressures on labour standards"). Hepple primarily speaks to the developed world, drawing distinctions between the member countries of the OECD. Developing countries receive indirect attention. The analysis does not speak to the relationship between developed and developing countries with respect to institutional development and advantages.
[159] Social regionalism must develop in a way that "avoid[s] overstating the potential importance of a social dimension within a framework that has had at its core a particular neo-liberal vision of economic integration". Blackett, Toward Social Regionalism, *supra* note 75 at 916.

process of constructing a new layer in global social space, a layer which does not have the kinds of ambiguous continuities of the state layer, a layer which in its makeup reflects the constitutive desires and needs of those social forces which can no longer operate properly in the contexts of existing layers".[160] Social dimensions in regional trade, or social regionalism in Blackett's terms,[161] "turn[s] attention back onto the particular social conditions within the various sub-regions of the Americas, and force[s] policymakers to grapple with these disparities in a manner that is reflective of the distinct cultural contexts in the region".[162] Differences in focal points aside, place and space represent cues to deepen and widen our understandings of the impact of globalization on labour law.[163]

Trends in Labour Law and Globalization

There are important questions about the validity and inherent capacity of transnational regulatory regimes. As noted earlier, a lack of empirical research on transnational labour regulation hinders attempts to confront the outstanding questions. Broadly speaking, scholarly opinion about the effectiveness of transnational labour regulation appears indifferent. On critical reflection,

[160] *Ibid*. at 920 (citing Michael Niemann) It must be said that although taken by itself these remarks read as an endorsement of state declinist or perhaps even globalization without the state theses, Blackett rejects these views. See also Blackett, A Labour Law Critique, *supra* note 75 at 404 (arguing for an emphasis on peripheral regions).

[161] Blackett, Toward Social Regionalism, *supra* note 75 at 916-917. In Blackett's words, "Social regionalism […] can begin to bind the area into a community that is able to address many of the considerations that render deeper integration meaningful" (*Ibid*. at 917). A dearth of analyses on regional developments that rethink the importance of regional reorganizations of economic relations

[162] *Ibid*. at 904.

[163] *Ibid*. at 904. See also Blackett, A Labour Law Critique, *supra* note 75. Importantly, social regionalism opens space for the involvement of civil society groups in the operation of trade liberalization. and "they draw civil society actors into the process of building cosmopolitan democratic structures or social dialogue, to ensure that social policies are increasingly brought to the center of liberal trade in the Americas" (*Ibid*.).

corporate codes of conduct are seen to offer uneven enforcement of international labour standards. When implemented, corporate codes rely on firm initiated action thus privileging the "business as usual" wishes of TNC executives. Transnational worker, consumer and other social movement mobilization has occurred through efforts to bind TNCs to corporate codes. While it is important not to overstate the case, the strengthening of transnational solidarity networks appears encouraging. But the corporate code of conduct strategy works on a selective or case-by-case basis. In addition, the difficulty with certain industries such as textiles is in enforcing a corporate code of conduct in forward and backward linkages in the commodity chain beyond first tier suppliers.[164]

The fundamental human rights approach, as a strategy for transnational regulation, follows a path well traversed.[165] Insofar as the approach turns on international human rights mechanisms, the long-standing problem of international enforcement exists. The ILO Declaration achieved important global consensus but it takes a narrow view of labour standards, articulating four core standards, and omits protection in fundamental areas such as workplace safety and health. The idea of global compulsory core labour standards thus far lacks global

[164] This point was made by labour studies scholar Don Wells in a 2005 presentation. For those workers not employed in TNCs or local large-scale firms, these forms of regulation are likely not in play.

[165] On some measure the tactic relies upon domestic courts, which can provide individual victories but lack the political will and power to intervene too deeply in state action/inaction. Domestic courts in Canada have shown a particular unwillingness to interfere with the "freedom" of capitalists to do with their capital as they see fit. They, of course, do produce victories for individual complainants, but the process is often lengthy, expensive and drawn out, and requires in some cases a return to court for enforcement.

appeal.[166] Transnational proposals targeting the global and regional trade liberalization framework also lacks much needed developing world support. Quite likely, the WTO provides a poor "fit" for labour standards enforcement.[167] Trade sanctions may work at times, but it cannot form the centre piece of an approach.

Despite the proliferation of research examining transnational regulation, the substantive deficiencies of transnational labour regulation remain.[168] More broadly, this section discerns and categorizes five problematic tendencies or trends within the research[169]: (1) "One-size-fits-all" Globalization; (2) Assumptions of State Decline (including "Globalization without the State"); (3) Inattention to the Politics of Place; (4) Trade Centrism; and (5) Labour Law without Labour Power.

[166] "a main argument of this paper is that core labour standards should not be made compulsory and that different sets of interventions are called for in many developing countries, if the interests of labour as a whole are to be taken into account in the short as well as the longer term. This position is quite distinct from the neo-liberal argument that labour market interventions, such as the core labour standards, create distortions in the labour market and misallocate resources, and should therefore be avoided" (The Global Labour Standards Controversy, *supra* note at 52).

[167] Hepple, *supra* note 69 at 150.

[168] For some, the state of labour regulation is so dire that they minimize the negative experience of transnational regulation electing instead to focus on the development of particular proposals. The desire to bring about reform in effect bolsters the deterministic tendencies evident in certain strands of the labour law and globalization scholarship. In large measure the work on transnational labour regulation presents a rather pessimistic vision or a sort of TINA (There Is No Alternative) outlook. Certain strands might also be characterized as "corporate codes or bust".

[169] Each of these tendencies has been designated with a short form which attempts to capture the essence of the critique. While the analysis draws lines of connection through each tendency, it makes no serious effort to construct a theoretical understanding of the relationship between each – although it should now be clear that while the critiques are not strictly speaking hierarchical, they emanate from the first; and they are inter-related. In the context of global political economy, the next chapter takes on the task of sorting through the critiques. The point here is to utilize these critiques in the development of an alternative methodological approach, outlined below.

1. 'One-Size-Fits-All' Globalization

In turning to transnational regulatory regimes, scholars of labour law and globalization frequently assume a universalistic and homogenizing vision of globalization. This vision, methodologically speaking, aligns with neo-liberal ideology which reifies the processes of globalization.[170] The related processes are treated as a sort of "meta-historical force" that similarly and equally affects all states and that, as such, "develops outside of human agency".[171] This constitutes the ideology of globalism: A "belief in the inescapability of the transnationalization of economic and financial flows".[172] Globalism tacks on to neo-liberalism working in service of the wider ideological agenda.[173]

It is not so much that labour law and globalization scholarship expressly endorses globalism. Indeed, most prominent commentators in the field openly contest many aspects of the neo-liberal agenda. In not employing methods that explicitly confront globalism however, the universalistic vision obscures the functioning of this conservative and constraining ideology. In its lack of both scope and depth, the vision amounts to a 'one size fits all' methodological treatment of globalization and its discontents which manifests in a collective indifference to

[170] Neo-liberalism, to employ Ankie Hoogvelt's reasoning, represents "the belief in the efficiency of free competitive markets and … that this efficiency will maximize benefits for the greatest number of people in the long run". Hoogvelt, Globalization and the Postcolonial World: The New Political Economy of Development, 2nd ed.. (Baltimore: John Hopkins, 2001) at 155.

[171] This, as Hoogvelt goes on to state, "condition[s] and limit[s] the scope for action of individuals and collectivities alike, be they nation-states or local groups" (Hoogvelt, *ibid*.). The policy options available to states are said to be narrow and limited.

[172] *Ibid*. at 155. See also Hilbourne Watson, "Globalisation and the Caribbean In the Age of Neo-Merchantilist Imperialism" in Kenneth O. Hall & Denis Benn eds., Governance In the Age of Globalisation: Caribbean Perspectives (Kingston: Ian Randle, 2003) 27 at 38.

[173] Watson, *ibid*. at 37. For Watson, for example, globalism works with neo-liberalism to further entrench the dominance of corporate capital and suppress concerns about imperialism and, more generally, shroud the contradictions within capitalist accumulation.

the developing world.[174] That is to say with few exceptions the literature contains very little theorizing around the relationship between developed and developing countries.[175] The task, therefore, is to reorient the field's methodological commitments. One size fits all globalization represents an overarching tendency within labour law and globalization which taints each of the following trends.

2. Assumptions of State Decline

A second – indeed core – theme relates to prevailing assumptions about the impact of globalization on the state. A fundamental assumption embedded within much of labour law and globalization discourse is that contemporary economic globalization impacts on all states equally and in the same way. This culminates, for a few, in the view that globalization dis-empowers the state. Characterized earlier as globalization without the state, the thesis employs superficial arguments about the regulatory capacity of states. With few but important exceptions, a consensus now appears to exist across much of the literature that state regulatory power is – while not yet exhausted – on the decline. Here, scholars observe not a clear-cut process of decline; rather a dynamic and contested one.

A further point of contention develops in respect of the widely promulgated claim that the state encompasses multiple – if not pluralist – legal normative orders. By

[174] James Mittelman, for instance, asserts: "globalization is not a single, unified process, but a set of interactions that may be best approached from different observations points" – such as historical, material and ideological. James H. Mittelman, "Globalization: Captors and Captive" (2000) 21:6 Third World Quarterly 917 at 923.

[175] I return to the particulars of this critique, specifying some precise methodological failings, in the critiques which follow.

definition, claims to state multivalence extend into the realm of global legal governance. A global legal pluralist order is now widely believed to exist, although the precise configuration (and designation) of the order is in dispute. The emergence of global labour law, to draw on one prominent formulation, constitutes the strands and remnants of a mishmash of legal normative orders from corporate practices to domestic statutes, regional trade agreements and accepted international labour standards. This presents a particular methodological challenge which few scholars have undertaken.

As an analytic category, and in its paradigmatic formulation, global labour law appears descriptively endowed but weak on explanation. The prescriptive shortcomings are perhaps most evident in the treatment of the relationship between state-based regulation and non-state normative orders. In this respect, the methodological challenge is not so much that the category leaves open the question of the relationship – although this requires deeper scrutiny.[176] After all, according to proponents of global labour law the relationship is in a state of flux due to globalizing economic and financial forces. Rather, it is with overcoming the indifference to the specificities of any given place – and, in light of one-size-fits-all globalization, "place" refers chiefly to nation states in the developing

[176] To leave open the supplanting of the state by alternative normative orders, particularly in the foreseeable future, seems in some ways to minimize the importance of the state. States construct and maintain labour markets; broadly lend legal, political, economic and ideological support to the imperatives of capitalist markets and the wider system, and allocate extra-state authority to stand-alone entities such as the WTO and IMF. David Trubek, David M., Jim Mosher & Jeffrey S. Rothstein, *supra* note 80 at 1196-1197.

world.[177] Collective indifference obscures questions about the relationship of a given state to the maintenance and perpetuation of the global legal order. In global legal governance not all states are similarly situated or rendered equal.

Recognition of the nation-state as a multivalent legal order and global legal governance as similarly so, does not in itself correct the devaluing of the state. Similarly, a multivalent legal order does not in and of itself constitute a declining state.[178] Opinions on what the multivalent state means for domestic labour regulation of course vary. That said, to say the nation-state remains the arbiter of labour market regulation in the absence of any mutually agreed-upon effective alternatives to state-based standards setting,[179] as if the state does so only by default, is a truism which wants for retrospective reflection.

[177] It must also be noted that for a few the constraints of a less than sophisticated legal pluralist analysis, particularly the desire to only perceive equivalence (and not tension, hierarchy or contradiction) between normative orders, may hinder the exploration of the relationship. The analytical deficiency manifests itself as a sort of institutional path dependence where new forms of transnational labour regulation, such as corporate codes, are taken as a defining and inescapable feature of the newly established global legal order. Even if this is true, which of course is debatable, there is little space in such an analysis for human agency and resistance. And, to expressly make the point of this theme, the decline of the nation-state is presumed and not, empirically speaking, observed.

[178] I argue that if multivalence refers to a numerical plurality of normative orders within the state and not to a political plurality or to the equivalence of those orders per se, the insights prove helpful. Scholarly analyses focussed on the specific level at which relations between these normative orders occurs have the potential to compliment accounts at more abstract levels of analysis – so long as the specific accounts refrain from over-determining the role of the state.

[179] Harry Arthurs, The Collective Labour Law of a Global Economy" in C. Engels & M. Weiss eds. Labour Law and Industrial Relations at the Turn of the Century (Deventer-Boston: Kluwer Law International, 1998) at 143, 148; Arthurs, "Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation" in J. Conaghan, K. Klare, M. Fischl eds.. Labour Law in an Era of Globalization: Transformative Practices and Possibilities (Oxford: Oxford University Press, 2001). That is not to say that Arthurs' point ends there; it is to say that, from a critical perspective, it cannot.

Appraisals of the role of the territorial state in the new economy far too often privilege the disempowered and declinist state theses. The declinist state thesis leaves little room for human agency and collective resistance against the dominance of capital; and overlooks the uniqueness and specificities of the prevailing global order.[180] We must investigate the claims of the rise of the new economy by revisiting assumptions about the regulatory role of the state in labour relations.[181] That is not to make historical claims about the positive and constructive nature of the state. Rather, it is to make a more fundamental point: analytical inquiries into the globalization of the state ought to assume "[t]he state is neither transcended nor unaltered in some overarching, all-encompassing fashion".[182] A far more useful starting point than state decline (or disempowerment) is state reorganization and complexity.[183]

3. Inattention to the Politics of Place

The politics of place captures and attends to the lack of spatial awareness in much of the labour law and globalization scholarship. How do we capture the asymmetrical or unidirectional development of globalization? Simply put, we encourage heightened awareness for spatial and contextual dispersal. The spatial dimension pertains to the significance of states as sites or locales in the new

[180] In particular, the declinist state thesis overlooks the inherently contradictory yet evolving distinction between the "political" and the "economic" in capitalist societies. See e.g. Ellen Meiksins Wood, Empire of Capital (New York & London: Verso, 2003).
[181] Arthurs, Labour Law without the State, *supra* note 100 at 4; Bill Dunn, Global Restructuring and the Power of Labour (New York: Palgrave MacMillan, 2004) ["Global Restructuring"].
[182] Payne, *supra* note 75 at 158.
[183] See Leo Panitch, "Globalisation and the State" in Ralph Miliband and Leo Panitch eds., Socialist Register 1994: Beyond Globalism and Nationalism (London: Merlin Press, 1994) 60 at 63; *Ibid*. at 157-159; Panitch, "The New Imperialist State" (2000) II:2 New Left Rev..

global economy. Whether characterized as the impact of globalization on the state or as the role of the state in the new economy, the politics of place relies upon and is uniquely responsive to context. The contextual dimension concerns the relationship between social and spatial dispersal in the contemporary era of globalization. Taken together, these dimensions bring into focus the economic, political and social context which shapes legal processes and institutions.[184]

There is the question of where particular states are situated in relation to transnational labour regulation and wider global legal ordering. This is global state positioning with regard to emerging transnational labour regulation. The matter of global legal governance poses particular spatial and contextual challenges. In the regime of global labour law, for instance, we are left – in large measure – to speculate on the alignment of states relative to each other. But to criticize the labour law research for incompleteness of data and lines of inquiry is not to capture the particular inclination of that research. A forceful critique levelled at the wider field of globalization studies, but every bit applicable here, points to the privileging of affluent countries in dominant discourses on globalization.[185] Even in analyses considerate of the socio-political specificities of the developing world, there remain questions about the politico-legal

[184] These accounts aim to "problematize the unifying and homogenizing tendencies of discourse about globalization". Ruth Buchanan, "Border Crossings: NAFTA, Regulatory Restructuring, and the Politics of Place" in Nicholas K. Blomley, David Delaney & Richard T. Ford, The Legal Geographies Reader: Law, Power, and Space (Oxford, UK; Malden, MA: Blackwell Publishers, 2001) 285 at 290. These accounts reject the imposition of "a false unity and teleology on the 'processes of globalization'" that develops from the unidimensional perspective and the concealment of the constitutive nature of the state in the transnational arena (*Ibid*. at 285).

[185] Represented more or less by their membership in the Organization for Economic Co-operation and Development (OECD), these countries garner primary attention in scholarly debates surrounding globalization processes. Mittelman, *supra* note 174.

determinants of development and, more fundamentally, underdevelopment.[186] In a question: what is the relationship between impoverished and affluent countries in the world economy?[187]

Hence the politics of place assists in the articulation of an alternative to prevailing assumptions about the state in the new global economy. Yet the state itself must be contextualized. It is not simply a convenient descriptor or subject of study. The state constitutes an object of study on class and economic power, a unit of analysis in which the struggle of capital-labour relations unfolds. An emphasis on "internal" context sustains not only theoretical questions of worker resistance to globalization, but resistance itself. In general terms the aim is to avoid non-contextualized approaches which "ris[k] fetishizing the question of globalization by blaming it for much of what is contradictory and intractable about politics in the 'new economy', without actually examining the politics or economics of change in any particular place".[188]

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[186] A disinterest in the sources of underdevelopment is not new to legal studies. This formed the basis of Trubek and Galanter's "self-critique" of early law and development. See

[187] In line with the emerging perspective and political commitments of Third World Approaches to International Law (TWAIL), the question is deliberately framed as South-North as opposed to North-South relations.

[188] Buchanan, *supra* note 184 at 285. Buchanan's study of the discourse surrounding the introduction of the NAFTA advocates critical engagement with the particulars of regulatory restructuring in a given place. Buchanan warns against the false dichotomization between state and transnational arenas of regulation. That is to say, "[i]nstead of being a narrative about retreat in the face of an inexorable advance, globalization becomes a story of local contestation, resistance, and compromise that has numerous conflicting and contradictory meanings. If 'place' is constructed in and through social processes, differentiation between places becomes as much an artefact of uneven capitalist development as the difference between classes" (*Ibid.* at 286). Citing David Harvey's dictum that "difference and otherness is produced in space through the simple logic of uneven capital investment and a proliferating geographical division of labor" [Harvey's words], Buchanan notes that "[e]conomic globalization can be understood in terms of its role in constituting new geographies of centrality and marginality" (*Ibid.* at 286). See also Blackett, A Critique of Labour Law, *supra* note 75 at 424 (challenging the prevailing perception of economic globalization as symmetrical and temporally linear). The approach advocated by Buchanan leads

As we have seen, alternative interpretations of the politics of place exist. Regionalism, in particular, captures the essence of the concern for spatial and contextual attentiveness. Blackett's analysis of the social impact of trade liberalization in the Americas punctuates the analytic category of sub-regional groupings. In theory, regionalism (and sub-regionalism) offers a viable method of exploring the impact of globalization on individual sub-regions and specific nation states, while avoiding the local-global dualism.[189] In practice, however, the approach suffers a methodological flaw in that, in the first instance, it approaches regionalism separate from political, social and historical context.[190] In this way the category is divorced from negative connotations drawn from past experience.

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to the conclusion that the degree to which optimistic or perssimistic post-Fordist scenarios will be realized within various localities in North America depends on the particulars of the new regulatory-institutional regimes that are imposed. The NAFTA lays out a framework for this restructuring but provides little else. All of the transformations linked to the economic integration of North America are contested, not in the abstract but on the ground where they are affecting the lives of individuals, the profits of companies, and the quality of air, soil, and water.

[189] The point is that "it is also crucial to investigate the sites at which a challenge to a totalizing vision of globalization through trade liberalization may manifest itself" (Blackett, Toward Social Regionalism, *supra* note 75 at 916). An important aim of contesting "a flattened, unidirectional vision of globalization is precisely to assert that the specificity of different countries and sub-regions within the Americas deserves attention" (*Ibid*. at 918). Such an approach "may provide room for regions to resist unitary visions and totalizing approaches to globalization, by creating the structures that enable them to challenge globalization through the particulars of each geopolitical space" (*Ibid*. at 904). The wider point is that: "Globalization has an asymmetrical impact on the scope and effectiveness of labour laws in developing countries; these deficiencies leave the terrain open for alternative non-State approaches" (Blackett, A Labour Law Critique, *supra* note 75 at 425). Thus, "[i]n many developing countries, the asymmetry is reflected in material constraints that lead to a mushrooming of the 'informal sector' and that prevent State labour inspection services and industrial relations dispute resolution mechanisms from functioning fairly and efficiently in the adversarial workplace context" (*Ibid*. at 424).

[190] The concern here is not that a focus on regionalism fails to confront the faulty "assumption that market integration occurs autonomously of state action", indeed as Blackett asserts it can confront that assumption. But in holding regionalism as the point of focus, Blackett maintains an inward moving analytic. But then does not account explicitly for the inward pressures most pertinent to heterogeneity in the Americas: colonialism and imperialism. There is also a need to account for outward counter-forces in the form of human agency and group resistance. For instance, sub-regional integration of the Caribbean has been an on again off again process which at critical times has been deeply contested by "the locals".

In the Commonwealth Caribbean, political efforts towards sub-regional integration have been deeply contentious. While it is true there is a lengthy history of studying the Caribbean as an analytical unit, and the same might be said of the Americas,[191] the Caribbean and wider western hemisphere contains disparate terrains, with distinct cultures and peoples who have not, as a rule, developed a sophisticated and unified pan-Caribbean sense of identity. The internal dynamics of the region and wider hemisphere warrant an approach that – whether in the context of sub-regionalism, regionalism or the state – "comes to grips" with the internal histories, struggles and turmoil.

4. Trade Centrism

Increasingly, the new transnational regulation emerging to govern economic globalization engages globalization within the analytical framework of global trade. The emergence of trade-centred labour regulation presents challenges to understandings of established and prospective regulatory vehicles. At its extreme, the trade-centred approach displaces labour law with international economic law, and the impact of economic globalization is visible only through the specific and limiting lens of liberalized trade.[192] In the expanding zone of the global trade

[191] Treatment of the Americas as a cohesive unit extends as far back as to the ideas of Simon Bolivar and Jose Marti. More recently, an Americas studies literature is emerging. See e.g. Claudia Sadowski-Smith & Claire F. Fox, "Theorizing the Hemisphere: Inter-Americas Work at the Intersection of American, Canadian, and Latin American Studies" (2004) 2:1 Comparative American Studies 5; Felipe Fernández-Armesto, The Americas: A Hemispheric History (New York: Modern Library, 2003).

[192] For instance, some of the social clause arguments locate the defense of labour and labour law squarely within the logic of international trade theory, although admittedly these arguments attempt to carve out their own niche through the application of international labour standards.

regime some would have it that trade law-based labour regulation necessarily trumps labour law regulation as the final arbiter in the new global economy.[193]

In a more general sense, much of the trade-centred scholarship functions to tweak the global trade regime. Notwithstanding the validity of these proposals,[194] resistance is mounted not only through the logic of the regime but with a view to internal reforms and modifications. The debate surrounding social clauses, for example, is assessed on the basis of the ability to modify the regime while, in the final analysis, preserving its integrity. The difficulty is that in several cases the desire to develop trade-centered regulatory reforms entails a commitment to the defence of the trading regime. Such proposals fail to scrutinize the logic of international trade theory and the dictates upholding the prevailing global trading regime. There is a need to take seriously the deficiencies in neo-liberal trade

[193] The implication, to abstract, is that we are all free traders now. Admittedly, the construction of "labour issues" and "trade issues" is problematic and may itself limit rigorous analysis of the relationship between these "distinct" areas (traditionally understood), and the seeming convergence of these areas in, for lack of a better term, "new economy" scholarship. One might argue that the distinction is based on our scholarly efforts to "discipline" two broad and otherwise unmanageable areas of study. When, how and by whom these fields of study were divided are important questions that require deeper scrutiny. Even if our definitions of the "new economy" consistently implicate notions of global trade, the framework still presupposes regulatory solutions that privilege international trade law over labour law sources.

[194] The intent here is not to raise and debate the normative issue of whether the regime should in fact remain in tact – although, I believe, one must acknowledge both the validity and importance of such on-going, albeit historically contingent, debates. The simple assertion that trade is unqualifiedly good or bad is disingenuous and encourages an artificial and unhelpful dichotomy. Both sides, particularly the side in support of the neo-liberal trade liberalization agenda, already have their apologists. Nor is the aim to reject the economic benefits that accrue from global trade for developing countries in particular.

Any effort to challenge the benefits derived from the global trade regime, the logic of the underlying theory of international trade and the regime's supporting pillars, including liberalized markets, necessarily develops within the global legal order. That is not, however, to suggest the expanding zone of international trade constitutes global legal governance alone. However, the dominance of the global trade seems without question.

liberalization, and perhaps more profoundly the historical antecedents of modern international trade which set the parameters of the contemporary regime.[195]

In the prevailing orthodoxy of international trade theory all participants must accept the organizing principle of comparative advantage. Commentators have pointed to the cracks in the theoretical foundation of the concept. More generally, the logic of international trade, with its regard for labour as a factor of production, and with its reliance on the dictates of the market, ensures the commodification of labour.[196] In normative terms, efforts to resist the quest to subsume labour law within trade law should stress – not obscure – labour's commodification and abstraction in international trade theory and practice.[197] The modern history of international trade reflects a sustained commitment to the treatment of labour as a commodity.[198]

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[195] On the history of the so-called triangular trade see Eric Williams, Capitalism, *supra* note 7 . Perhaps because of the unwieldiness of such an approach, or more likely because of uncritical and even defeatist mindsets, the prevailing structure of the global trade regime is far too often taken as a given. As a practical point one might reject the logic of comparative advantage and international trade theory to address labour exploitation yet still acknowledge the need to achieve a more equitable and even principled regime.

[196] This is not the place to develop a full critique of the logic of international trade. Nor is this the appropriate forum to articulate the relationship between states and markets. But it is important to note that international trade, states and markets subordinates labour to economic issues. Simply put, to rephrase the ILO's celebrated declaration, labour is not a commodity – but increasingly within the global trade regime labour is commodified. Hilarly Josephs argues that "[i]ncluding labour and employment issues in the original GATT framework would have required that Marxism, and the theory of 'surplus value', be taken seriously"; which in the political and ideological context of Cold War, was not going to happen" Josephs, *supra* note 128 at 857).

[197] Both labour law and trade law, moreover, differ with respect to their internal histories and institutional development. Any attempt at subsumption must account for these differing contexts and the likelihood that the contexts will frustrate desired outcomes.

[198] The commodification of labour is highlighted by a number of students of the colonial/post-colonial moment. See e.g. Williams, Capitalism *supra* note 7 at 156 (detailing the relationship between the movement of goods, people and metropolitan economic enrichment (namely the financing of the British Industrial Revolution) and colonial economic impoverishment (underdevelopment) in the seventeenth and eighteenth centuries).

The claim, then, is that trade-centred approaches which engage with economic globalization by employing uncritically the logic of trade liberalization are inclined to sell short the opportunities for worker-based resistance. The significant attention paid to internal institutional reform, at the expense of organic critiques of trade theory, necessarily overstates the relevance of trade law reform to resistance efforts. Worker resistance to the existing social order, from this straightforward account, derives from (modified) institutional arrangements. Social clauses, for one, are meant as a corrective to the anti-democratic institutional framework of global trade. In theory, these mechanisms are meant to formalize the consideration of issues related to the intersection of trade and labour. Empirically, certain claims contained within social clauses have been discredited. The point here is that social clauses structure engagement with globalization on behalf of "labour" in a manner that is abstracted from labour in its economistic regard for labour costs and through detached, top-down governance or representation.[199] While it would be equally problematic to deny the potential of global trade institutional reform in efforts to thwart the neo-liberal trade agenda, it is certainly not correct to say that law determines resistance, not without an attentiveness to nuance.

To say that the global trade regime currently constructed suffers from anti-democratic or anti-worker sentiments, however, is not to foreclose trade-based

[199] That is to say workers and their representatives are not directly involved in the international trade governance. State intervention is the only formal means of involvement. In this respect, social clauses resemble the Canadian and American industrial democratic schemes of the late twentieth century. We might also note that the state's formal capacity to intervene in international trade governance may stand as a further example of the continued regulatory relevance of states.

argumentation and proposals in the protection of workers. It is trade-centrism which contributes little in the way of critical interrogation of the international trading regime.[200] We must guard against the expanding zone of trade yet take the disciplining nature of the trade regime seriously.

5. Labour Law without Labour Power

The previous themes hone in on four negative and limiting tendencies in the labour law and globalization literature: its one-size-fits-all vision of globalization; its diminution of the nation-state; its highly descriptive assessment of global legal governance; and its acquiescence to the dictates of the market and the widening zone of trade. Taken together, these tendencies pose momentous challenges for the protection of workers in the new global economy. The fifth theme, labour law without labour power, addresses these collective challenges to and sentiments about workers. Insofar as the literature assumes, methodologically speaking, a top-down or globalization from above perspective it perceives workers as being acted upon and not as actors in the new global economy.[201] Thus, the methodologies employed minimize human agency and this is the fundamental point, workers and their allies are regarded as passive and powerless objects of contemporary economic globalization.[202]

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[200] But while social dumping and race to the bottom arguments overstate the empirical case, we should take heed to the normative spirit behind these arguments.

[201] A body of research is emerging as a counter to the exclusion of human agency within globalization studies. For a discussion of "counter hegemonic globalization" see Boaventura De Sousa Santos & Cesar A. Rodriguez-Garavito ed., Law and Globalization From Below: Toward A Cosmopolitan Legality (Cambridge: Cambridge University, 2005).

[202] As Bill Dunn argues in his recent study of European automotive workers, "workers and trade unions are not necessarily passive objects of processes of economic change". Dunn, *supra* note 181at 52.

In minimizing the role of workers in the new global economy, the literature leaves little room for worker resistance. A critique of the top-down emphasis must point to the institutional and legal formalistic focus of labour law and globalization scholarship. A sort of institutional path dependence conditions the perspectives on labour and worker resistance. Countervailing power is securely fixed to the institutional agenda or analysis, meaning worker resistance to globalization will only emerge through the imposition of transnational labour regulation. There is a need to, while not romanticizing worker resistance or precluding it from critical reflection, free analyses of labour law and globalization from the legal institutionalist paradigm. This will open space for critical discussions on resistance to globalization which take workers seriously, and, in taking the state as a site of capital-labour contestation, will allow for more thorough interrogation of the relationship between state power and corporate power.

Conclusion

The transnational turn in labour law and globalization studies has not placed enough attention on the impact of globalization on individual nation states – specifically states in the developing world. In critiquing existing approaches, the chapter calls for an alternative methodological approach to the labour law-economic globalization nexus in the contemporary era. An alternative approach reorients the focus of the prevailing debate to account for epistemologies at and about the developing world, and to overcome problematic assumptions about the

symmetries of contemporary economic globalization, about the regulatory capacity of nation states, about the dominance of international trade, and about the role workers might play in transforming the global political economy.

The next chapter strives not merely to sort through the debris of these crumbling methodologies, but to pose and articulate an alternative, historically-informed methodological approach to the study of labour law and globalization. Having argued that the methodological commitments emanating from the labour law and globalization literature require revision, and having drawn out five areas of concern with the prevailing methodologies, chapter two sketches the methodological reorientation. It constructs the political economy of law methodology through a synthesis of the five themes identified. It does so in the broader context of theoretical debates about political economy and the state in ongoing processes of globalization with a keen attention to the Caribbean and South-North relations. Thus, the next chapter constructs a theoretical lens through which to critically interrogate the historical development of the relationship between the state and labour regulation in Trinidad.

A political economy of law approach contests the institutional focus and legal formalism of labour law and globalization literature. The institutionally-based and top-down approach obscures the operation of class relations within the state and the functioning of capital and labour as non-state actors in the global political economy. It leaves unchallenged the dictates of the market and the commodification of labour power. The claim is not that contemporary economic

globalization does not exist; nor is it that the state (at least in its present form) is the counter to markets. Rather, I argue that from a methodological perspective orthodox labour law and globalization leaves little room for individual nation states and workers to resist the negative forces within globalization; and very little analytical space to explain change, in particular how resistance impacts change.

Generally speaking, the political economy of law method relies on the broadening of the epistemological (theoretical and methodological) horizon currently observed by labour law and globalization scholars. There is a need to bring in theories of and about the developing world and to employ methods which do not further marginalize the developing world. Overcoming this epistemological bias ought to reorient the study of labour law and globalization. The far more formidable task lies, however, in overcoming what amounts to an ideological predisposition toward the developed world or, perhaps more aptly, away from developing countries.[203] The dissertation proceeds on the basis of the desire to confront both shortcomings through a contextualized methodological and theoretical approach. By drawing on local experiences of workers with the state, and by acknowledging the roles of external or externally-initiated forces in setting the parameters of state action, we can move beyond the assumptions about state disempowerment and decline which ground the dominant discourse on labour law

[203] This problem, as both fields of study attest, is particularly glaring when we consider the centrality of the Commonwealth Caribbean to globalization as the process occurred in the past. Its inextricable linkages to earlier phases of economic and financial internationalization, particularly in the forms of colonialism and imperialism, rendered the region a crucial testing ground. In effect, "the Caribbean offers a chronicle of the impact produced by exposure to many previous rounds of transformations of global capitalism". Klak, *supra* note 5 at 6.

and globalization.[204] In targeting legal formalism, political economy of law emphasizes not the rule of law but "the role of law in the constitution of both local and global political economies"[205] and daily social relations. In this latter respect in particular, the insights of critical legal theory including legal consciousness are drawn on, but not without rigorous reflection, to re-orient the top-down emphasis of formalistic approaches to the study of law.

[204] See e.g. Leo Panitch, "The New Imperialist State" (2000) II:2 New Left Review; Panitch, "The Impoverishment of State Theory" in S. Aronowitz and P. Gratsis ed., Paradigm Lost: State Theory Reconsidered (Minneapolis: University of Minnesota Press, 2002).
[205] Cutler, *supra* note 108 at 3.

CHAPTER 2

Political Economy of Law: A Constitutive Approach

Introduction

This chapter articulates a political economy of law approach through an engagement with contemporary globalization of the state and Marxist legal theory.[206] It turns not only on the historical importance of the nation-state in Caribbean (and wider) social relations but also on the ongoing interactions between law and the state.[207] Applying this approach, the chapters that follow situate historical developments in Trinidad's sugar industry with a view to understanding the legal regulation of unfree labour.

Eschewing the notion of free labour,[208] the analysis here turns on the concept of labour unfreedom. As explored at the outset, the free-unfree labour distinction

[206] I am not here suggesting political economy of law is a new approach. For a look at earlier efforts to explicitly carve out a materialist political economy of law perspective see Ghai, Luckham & Snyder eds., The Political Economy of Law: A Third World Reader (Delphi: Oxford, 1987). The political economy of law joins the sociology of law and international relations as the main disciplinary frameworks for the exploration of law and economic globalization in the context of global legal governance. Snyder, Economic Globalization and the Law, *supra* note 96 at 625.

[207] See e.g. Lawrence Nurse, Trade Unionism, *supra* note 52 at 108 ("[T]he role of the State and the nature of state action and policy are extremely critical in Commonwealth Caribbean industrial relations. It is necessary, therefore, to develop a deeper understanding of the character of state intervention in industrial relations"). In terms of the interaction between law and the state, Nurse argues that "[i]t is not enough to be concerned with the effects of legal regulation. We need to establish the social and economic bases of labour law in the Commonwealth Caribbean, since the law does not exist apart from or above society" (*Ibid*. at 112). This chapter -- and the wider dissertation -- heed Nurse's call for a more theoretically engaged, materialist appreciation of the law-state relationship.

[208] That said, the dissertation makes reference to the ideology of free labour. As an ideological construct, free labour constitutes rationalization for existing conditions of labour exploitation and dependency. Conceiving the historical trajectory in linear terms, that is as "a transition towards unconditional liberty" (to borrow Pétré-Grenouilleau's phrase), the free labour ideology downplays the impact of past conditions on the present to emphasize the inevitable rise --and ultimate triumph -- of individualistic conceptions of freedom from coercion. Employed here, the phrase refers to how ideological reformism informs social developments and change, especially from the perspective of elites. For instance, sugar plantation owners mounted "a vigorous

corresponds not to a "simplistic antinomy of 'slavery' and 'freedom'" but instead to a "complex continuum of forms and practices" marking the varying uses of physical and/or politico-legal coercion.[209] Following in this vein, the study concerns itself with the forms and practices which make up the conditions and relations of labour unfreedom within Trinidad's colonial and early post-colonial capitalist development. The aim is to lay bare the shifting forms or regimes of labour unfreedom as strategic claims made through the state by capitalists over labourers and as such over the whole of productive and social life.

Labour Law & Globalization

As the last chapter pointed out, the labour law and globalization literature assumes far too intently an essentialist or homogenizing perspective on the impact of contemporary globalization on particular nation states. On this "one-size-fits-all" account, the processes of globalization are seen to similarly and equally affect all

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campaign" to minimize the impact of Emancipation as well as to rationalize the importation of labourers, pointing to concerns such as the high cost, inconsistency and shortage of existing local labourers, as well as the absence of arable land. This campaign, which proved successful in undermining the resistance efforts of workers and their allies, captures the specificities of the ideology of free labour in early nineteenth century. See Kusha Haraksingh, "Control and Resistance Among Overseas Indian Workers: A Study of Labour on the Sugar Plantations of Trinidad, 1875-1917" (1981) 14 Journal of Caribbean History 1 at 2 ["Control and Resistance"]. Anti-slavery abolitionists countered planters ideological conceptions of "free labour" with their own views . Many anti-slavery abolitionists subscribed to the strategy of "gradual emancipation" which narrowed the scope of free labour ideology and which, although helpful, ultimately "watered down" workers' claims against the regime of enslavement. For a discussion see Williams, Capitalism, *supra* note 7. Due to Trinidad's late development as a sugar producing colony, as discussed next chapter, the ideology of free labour applied in eighteenth century Trinidad is largely pre-formulated in the context of other Caribbean colonial settings. But yet Trinidad also comes to represent a "model colony", especially in terms of rolling out the legal Emancipation agenda, and so nineteenth century social developments in the island may have played an instrumental role in remaking free labour ideology.

[209] Nigel Bolland, On the March: Labour Rebellions in the British Caribbean, 1934-39 (Kingston, Jamaica; London: Ian Randle, 1995) at 143["On the March"]; Hay & Craven, *supra* note 3.

states which, in one sense, culminates in the view that the nation-state is disempowered, transcended or in decline, leaving very little space to account for differences within and between states. In another sense, this account portrays these processes as occurring beyond human agency. This prevailing account of economic globalization diverts attention from what has been labelled the "space of places" or the "politics of place".[210] The lack of attention to the actual political economy of global restructuring outside of the most dominant places invites a sense of inevitability with respect to the impact of globalization. Such an account encourages trade-centric – as opposed to labour-specific – arguments, strategies and proposals that replicate top-down, anti-democratic or anti-worker forms of neo-liberal governance, and that confine the problematic of globalization to global institutions and processes or to advances within the global space alone. Sassen describes this particular construction of the problematic as an "endogeneity trap" of sorts, noting its neglect of the state as a crucial site of social contest and conflict.[211] We might add that it reinforces top-down, "globalization from above" sentiments in that workers and labour power hardly if ever factor in. That is, to return full-circle, workers are acted upon and not actors in the global political economy, leaving little space for their resistance – both in theory and in action.[212]

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[210] Ray Kiely, The New Political Economy of Development: Globalization, Imperialism, Hegemony (New York, Palgrave MacMillan, 2007) at 91 (revising Manuel Castell's understanding); Buchanan, *supra* note 184 at 285.

[211] Saskia Sassen, Territory, Authority, Rights: From Medieval to Global Assemblages (Princeton, N.J.: Princeton University, 2006) at 4.

[212] Dunn, supra note 181; Dunn, "Capital Mobility and the Embeddedness of Labour" (2004) 18:2 Global Society 127; Burnham cited in Bieler & Morton *supra* note 249.

In not investigating the political economy of local restructuring, in viewing global restructuring as a universal force understood only in terms of the Global North, labour law and globalization studies merely reinforces the developed-world focus of wider globalization studies. That is not to claim, however, that Caribbean workers and their respective states somehow exist beyond the problems of global capitalism. Recent evidence on the impact of economic globalization on workers in the Caribbean is cause for concern. Workers in the region have encountered firsthand the deleterious effects of global capitalist restructuring. These effects are reflected in the erosion of the quality and quantity of employment;[213] the flexibilization of labour markets;[214] the relaxation of labour law enforcement and protections;[215] the corporate rejection of unionism[216] in conjunction with the trampling of established rights and interests of workers;[217] all of which has posed particularly troubling dilemmas for women in the working classes in the region.[218]

With respect to Caribbean national states, there appears to be general consensus among popular and academic commentators as to the inevitability of economic

[213] ILO 2002.
[214] Wade Mark & Veronica Oxman, The Social and Labour Dimensions of Globalization and Integration Process. Experience of CARICOM (International Labour Organization: Lima, Peru, 2002).
[215] Sherrie L. Russell-Brown, "Labor Rights as Human Rights: The Situation of Women Workers in Jamaicas Export Free Zones" (2003) 24:1 Berkeley Journal of Employment and Labor Law.
[216] Clive Thomas, "Globalization, Economic Fallout, and the Crisis of Organized Labour in the Caribbean" in Perry Mars & Alma H. Young eds., Caribbean Labour and Politics: Legacies of Cheddi Jagan and Michael Manley (Detroit: Wayne State University Press,2004).
[217] Linden Lewis & Lawrence Nurse. "Caribbean Trade Unionism and Global Restructuring" in Hilbourne Watson ed., The Caribbean in the Global Political Economy (Boulder Colorado: Lynne Rienner, 1994) 191; Thomas, *supra* note 216 .
[218] Russell-Brown, *supra* note 216; Rosetta Khalideen & Nadira Khalideen, "Caribbean Women in Globalization and Economic Restructuring" (2002) 21-22 Caribbean Women in Globalization and Economic Restructuring 108. See also Shannon Storey, "Neoliberal trade policies in agriculture and the destruction of global food security: who can feed the world?" (2002) 21-22 Canadian Women Studies Journal 190.

globalization. This has manifested in, for example, a widespread commitment to satisfying the perceived interests of global capital. Every bit enticed by the ideological and material trappings surrounding the transnationalization of capital, national political elites in the region point to the constraining nature of the so-called new global economy to justify their acquiescence. The political move resembles the scholarly one performed in certain respects in labour law and globalization studies.

Claims to newness always hinge on characterizations of concerns with "the old". Whether those claims have captured the true essence of "the old" becomes a crucial fault-line of contestation and debate, although not all perceive this to be so. Herein lies the issue. The contention here is that mainstream law and social scientific analysis of globalization does not problematize the past with enough nuance. As such, their claims to the newness of the global economy today fail to capture the essential characteristics of the "old" economy. In terms of both the new and the old their accounts miss the mark. Yes, economic changes have occurred -- and seemingly continue to occur -- on a global scale. Yes, countries in the Global South and Global North are faced with more or less dramatic shifts in their domestic economies. Yes, calls for a return to "the old" are as misguided as they are ahistorical. These calls are vague not only as to what constitutes "the old" but as to how to get "there" from "here"; resting on, in both respects, valorized accounts of a bygone era.

All that said, it is not yet evident that we have reached the destination in the formation of a new historic global "compromise";[219] it is not yet evident that the old patterns of uneven development on a global scale have been replaced by fundamentally "new" patterns; it remains to be seen whether there is truly no alternative to the global processes of economic adjustment. And so, if we are to take seriously the contingencies and indeterminancies of the current moment, or were at the very least to perceive it as a sort of transitional phase, one perhaps comparable to earlier transitional phases, there is a need to register a "less categorical" commitment to globalized economic processes,[220] to proceed on a more tentative yet more rigorous analytical basis, and to question the empirical foundation upon which assumptions about globalization turn.

To be clear, the chapter's explicit contention, that labour law and globalization scholars, like mainstream social scientists, have not "got the story right" about globalization, rests on an underlying claim to the importance of historical interpretation. However, it is not simply that, in the context of the globalization debate, "history matters" -- as that has long been irrefutable. The claim is more that, in the current contestation over state regulatory contingencies, there is lack of clarity as to historical processes. Later, the chapter notes the particular and

[219] For instance, scholarship of the South and North take the Second World War as a pivotal event the impact of which hardened social relations to foster a distinct or definable period, referred to as the post-war moment. In the North, that period captures the emergence of the welfare capitalist state which, to varying degrees, assumed responsibility for certain social protections or more readily shifted responsibility onto capital. In the South, the return of soldiers served as a catalyst for the mobilization of more militant social forces, including national independence and organized labour movements. The point here is not to overstate the significance of the post-war moment but rather to acknowledge the existence of such a period and to suggest that neoliberalism largely has eroded the defining outcomes and features of that moment.

[220] Dunn, *supra* note 181 at 133.

deliberate type of historicism from which this ambiguity stems and which is characterized as "historical amnesia", following Ray Kiely's insightful intervention. For now, the need for clarification of the explicit historical assumptions and associated lines of reasoning that drive labour law and globalization analyses is the crucial point. In the remainder of the chapter, I set about to articulate an analytical approach that helps to fulfill this task.

Globalization and Caribbean Nation-States

The critical task then is to situate Caribbean nation-states, and the diversity of interests within those states, in the historical (and contemporary) global order. The relationship of nation-states in that region to the globalizing forces of transnational capital can be fully appreciated only within the context of global capitalist relations and the accompanying uneven development.[221] From this perspective, the regulatory alternatives available or not available to individual Caribbean states -- and to the region as a whole -- follow from protracted contact with imperial regimes of Europe and North America. Attempting to sort through and make sense of the theoretical place of Caribbean national states in global capitalism, this section of the analysis engages with notions of the globalization of the state. However, it begins by reflecting on the state-law interaction in Marxist legal theory.

[221] Kiely, Politics of Labour, *supra* note 46 .

A Marxist Theory of Law & the State

What is the relationship between the nation-state and law? In capitalist societies the state predictably and invariably turns to law with the distinctive purpose of mediating relations of production.[222] In serving this mediation function, the capitalist state's ongoing task is to "institutionalize" and "contain" struggle within the labour market.[223] Like other markets within capitalism, labour markets "are always constituted by the law that enforces the bargains made in them".[224] Hence "legality is a crucial, if not the primary, mode of regulating the contradictions that arise from capitalist production relations".[225] This is true of law or legality even in instances of state inaction. Ultimately, "[w]hether and how the state intervenes or abstains is expressed largely through legal rules and their enforcement (or deliberate nonenforcement)".[226]

In capitalist societies, law rests on the core value or "essential legal relation" of private property.[227] Although private contract emerges historically as an essential legal relation, it is law's fundamental devotion to private property which sets the parameters of productive (and wider social) relations under capitalism. And it is on this basis that, even in the face of claims to formal equality and fairness, law can be seen to privilege certain claims over others. In functioning as a legitimate

[222] For a contemporary exposition of this thesis see Fudge & Tucker, *supra* note .
[223] *Ibid*. at 6.
[224] Hay & Craven, *supra* note 3 at 26.
[225] Fudge & Tucker, *supra* note at 4.
[226] Hay & Craven, *supra* note 3 at 26.
[227] Alan Stone, "The Place of Law in the Marxian Structure-Superstructure Archetype" (1985) 19 Law and Society Review 39. As Stone maintains: "Capitalism can function effectively under a wide variety of cultural arrangements without significantly impeding its daily operations, but a breakdown of such essential legal relations as property or contract will destroy the basis for fundamental capitalist operations" (*Ibid*. at 54).

form of social control and authority, law naturalizes material conditions of inequality. Through this naturalization process, law also masks the deeply flawed logic of private property.

Law assumes a crucial role in ensuring that the capitalist state's mediation in labour markets occurs not, as typically claimed, on "neutral terms" but through a privileging of property ownership. That said, the scope of the essential legal relation of property is dictated by social contestation and struggle. Whereas law discourages questioning of the basis of its authority,[228] concerted worker resistance erodes legal regulatory control. This forces the state to respond through a re-fashioning or re-assertion of the mechanisms of control, typically -- but not always -- on terms solely consistent with the preservation of private property.[229]

Law both shapes productive relations and is itself shaped by social developments. This dynamic and dialectical process helps to explain generally how capitalism continues and is in fact reproduced. That said, there is a tendency within dominant scholarly discourse to emphasize the "legal culture of lawmakers"[230] and the capitalist elite at the expense of an appreciation of the impact of legal structures on the thought and actions -- the legal consciousness -- of ordinary

[228] For some preliminary reflections on this see Adrian A. Smith, "Legal Consciousness and Resistance in Caribbean Seasonal Agricultural Workers" (2005) 20:2 Canadian Journal of Law and Society 95.

[229] In contemporary terms, this reflects the emergence of protective statutes for minimum wage, vacation time or workplace discrimination to provide a few examples. The phenomena of legal protections for workers, as we will later see, is far from new. Under the oppressive regimes of the nineteenth century examples exist of the Trinidadian state initiating protections for the clothing and feeding of enslaved workers, although the rationale for those protections differ considerably from what is advanced in later times.

[230] See Alan Watson, Slave Law in the Americas (Athens, GA: University of Georgia, 1989).

people and vice versa. There is a need to re-frame examination of the role of law in shaping relations without de-valuing the shifting dynamics of human interaction especially the centrality of resistance in the lives of workers and the supportive agitation of allies. Because people engage in ongoing struggles and, however efficacious, mount resistance, such an emphasis reveals the impact of law in mediating and institutionalizing resistance to bolster and extend capitalist development.

In the context of unfree labour, defined by the imposition of physical or politico-legal compulsion to exact labor power, law's mediation function is even more acute. In one sense, law enables and legitimizes physical compulsion or, as suggested, serves as a distinct means of compulsion in association with political constraints. In this way, it constitutes the unfree labour market, regulating its offensive and contradictory nature. In another sense, we find law mediating struggle and resistance in particular ways which serve to bolster and extend capitalism by regulating regime change, as within the shifting form of a given unfree labour regime and as a way of transitioning between regimes.

Each form or regime of unfree labour represents "an abstract expression of the actual relations in which particular people engage in their productive and social life".[231] The historically specific nature of these actual relations requires that any critical inquiry take as its central emphasis the specific development of social roles, relations and formations. A crucial dimension of law's role in unfreedom

[231] Bolland, On the March, *supra* note 209 at 124.

relates to the construction of expectations, behaviours and social roles which are constrained in extra-ordinary ways.

Situating Law in 'the National' & 'the Global'

Law and the nation-state are twisted together in the tangled mass of capitalism. To what extent have law and the state remained entangled in the face of neoliberalism? Contesting mainstream pronouncements about the neoliberal globalization of the state, the account here aligns with the recent intervention by Ray Kiely. In it, he argues that "the neo-liberal view of the non-interventionist state is a myth […] that sceptics take too seriously".[232] Mainstream perspectives are perceived as detangling or disembedding the processes of globalization from the state. But those processes essentially develop within national productive relations. Thus, an appreciation of the state-law relationship in the current epoch requires consideration of those relations.

Although "the increased globalization of capital does not mean that transnationality has led to the end of the nation-state",[233] the question of the relevance of neoliberalism remains. Recognition of the ongoing significance of the nation-state "does not itself undermine the view that there has been a shift towards neo-liberalism, no matter how nationally specific, uneven and uncontested".[234] What is needed then is a way to characterize the impact of the policies and ideologies associated with neoliberalism on nation-state regulatory

[232] Kiely, New Political Economy, *supra* note 210 at 161.
[233] *Ibid*. at 91.
[234] *Ibid*. at 162.

capacities in the context of labour relations. Because of the historical embeddedness of this analysis, the deeper aim is to identify over time core continuities and breaks in the pressures imposed on, and the practices of, the nation-state. Thus for Kiely, neoliberal globalization has not undermined the nation-state system, which, although grounded on the idea of sovereignty and formal equality, remains hierarchical.[235]

We must guard against not only analytical accounts that promulgate the decline, disempowerment or transcendence of all nation-states, but, more to the point, understandings of globalization and the state that assume the contemporary dynamic is "new". As Kiely suggests, these understandings are constructed on a particular type of historicism, one that treats "the idea that events in one territory were affected by events in another … as historically novel".[236] This represents "historical amnesia": we have forgotten, as Kiely asserts, "the ways in which nation-states have always been influenced by relations that transcended nation-states".[237] This calls for a historically-grounded approach attentive to the complex relations within the national state, as well as between states within the global order.

Just as the critical challenge lies in redressing historical amnesia, it too demands protection from uncritical perspectives on the role of the state in capitalist

[235] *Ibid*. at 91.
[236] *Ibid*. at 4. There is great irony, or more aptly Eurocentricism, captured in the fact that, as Kiely notes, "some theorists of globalization talked of the transformation or even the death of the nation-state, at a moment when some territories had only just won independence and sovereign statehood" (*Ibid*. at 4).
[237] *Ibid*. It is the concealment of key historical assumptions or the deliberate and particular reading of history to downplay the achievements of the least privileged and the injustices perpetrated by the victors, and not a simple neglect of the past, which this chapter is concerned.

development. Much of today's Caribbean-focused development theory and practice replicates mainstream development thought on the Global North by promulgating an instrumentalist view of the nation-state.[238] Fully engaging with the proposition that Caribbean states are, and historically have been, constrained by the global political economy and by dominant states and actors, the analysis developed herein contests "[mainstream] visions of development that are entrenched in global neoliberalism and the consequent failure to imagine that the contemporary Caribbean state could do anything but serve capital".[239] It is therefore "historical amnesia" on one hand and "instrumentalist defeatism" on the other, that an analysis striving to assess state regulatory capacity must ward off.

'The National' & 'The Global'

This section constructs an analytical approach cognizant of the historical specificities of the Caribbean region and firmly situated in a critique of the nature of global capitalism.[240] International Political Economy (IPE) provides a forceful

[238] On the late twentieth century crisis in Caribbean development theory and practice see Clive Thomas, "The Crisis of Development Theory and Practice: A Caribbean Perspective" in Kari Levitt & Michael Witter eds., The Critical Tradition of Caribbean Political Economy: The Legacy of George Beckford (Kingston, Jamaica: Ian Randle, 1996) 223.

[239] Thomas Klak & Raju Das, "The Underdevelopment of the Caribbean and Its Scholarship" (1999) 34:3 Latin American Research Review 209 at 222.

[240] The task of locating the reorganization of Caribbean states in historical context requires sidelining two otherwise pivotal issues, that of what aspects of anglo-Caribbean history are shared (in analytical terms, historical versus cultural specificities), including an analogous debate on the significance of regionalism, and, perhaps paradoxically, that of the historical specificities of Caribbean political economies from traditional resource extraction to tourism and newer services, to political economies transitioning in-between. That is to say the analysis will continue to operate at a sufficient level of abstraction to broadly delineate contours and commonalities in the historical development of Caribbean nation-states. Here, the 'Caribbean' represents an analytical category or marker employed not simply in conventional terms to denote a geographically-defined area with common experiences fundamentally derived from colonialism and imperialism, but also as a reminder of the need to further contextualize investigations of the national-global relationship. Future chapters ground the exploration in the historical specificities of colonial Trinidad and do not attempt to make country-specific arguments or claims.

and cogent base from which to proceed. Countering realist, liberal and Gramscian-inspired international relations (IR) theory,[241] IPE offers critical insight into the relationship between 'the national' and 'the global' spheres, and into the institutions of global governance, in the contemporary era of global restructuring. In particular, the discussion draws on IPE and related accounts that contest the separation of the national state and global economy, that link state interests and power with a wider critique of capitalist relations, and that take as paramount the character of labour, capital and state relations.[242]

This is not to ignore the developed world inclinations of certain IPE accounts. In truth, while it provides a quite useful intervention particularly on the grounds just discussed, IPE does not escape critical scrutiny. Pertinent to the social history of

[241] As the aim here is to develop a framework for understanding the national-global relationship in the Caribbean, we might begin with an outright rejection of realist and liberal forms of IR in relation to the Caribbean (Jacqueline A. Braveboy-Wagner, "The Caribbean's Wider World: Re-thinking Global South Institutionalism" (2005) 1 Journal of Caribbean International Relations. 2005). In addition to promulgating an overly descriptive account of states in the global sphere – one cognisant of power yet disengaged from capitalism – and to assuming the dichotomy of 'state' and 'market', realist and liberal IR places almost exclusive emphasis on "great power behaviour" at the expense of peripheral countries (*Ibid*.). In its place, Neo-Gramscian scholars following the work of Robert Cox have posed the 'transmission belt' metaphor as a particularly cogent conceptualization. Stated quite broadly, Cox posits that national states internally adjust to the development of international obligations and agreement. Commencing with international consensus building, the nation-state functions to transmit or internalize international dictates and logic to the national economy. The "transmission belt" metaphor has encountered sharp criticism, adaptation, and, ultimately, abandonment on the basis of its inward-moving directional flow or analytic (See e.g. Leo Panitch, "Globalisation and the State" in Ralph Miliband and Panitch eds., Socialist Register 1994: Beyond Globalism and Nationalism (London: Merlin Press, 1994) 60). That said, the metaphor is instructive in that it conveys critical information about the directional design of an analytical approach appropriate for the study of Caribbean colonial and imperial relations. That said, the core criticism directed at neo-Gramscian perspectives of IR such as Cox's seminal work, questions the metaphor's capacity to assist in the formulation of a lucid account of the relationship between class relations and the state in present-day global restructuring. For an engagement and critique including from an "open Marxism" perspective see Andreas Bieler, et. al. eds.. Global Restructuring, State, Capital and Labour: Contesting Neo-Gramscian Perspectives (Houndmill, Basingstoke, Hampshire; New York, N.Y.: Palgrave Macmillan, 2006).

[242] See e.g. Bieler et al., *ibid*. That said, rather than a full-fledged account of IPE, the chapter critiques the field as a whole ultimately presenting a highly selective account grounded in Marxist theory.

the Caribbean region, and to the shortcomings of conventional wisdom on globalization, IPE must face up to three critical concerns.

First, concern arises in respect of relations formerly termed core-periphery. Liberal strands of IPE adopt an analytical and empirical inclination toward the core at the expense of the periphery.[243] To overcome this inclination, attention must be given to the continuing hierarchical basis of the nation-state system.[244] Critical scholars such as Ankie Hoogvelt advance claims as to the transformation of the core-periphery relationship. Once geographically defined, Hoogvelt contends that social aspects, such as "identity politics" and to a lesser extent class, now better explain the persistence of global hierarchy and inequality. But it is not so much that geography has given way to the social dimension of core-periphery relations[245] (although in some instances a sort of geographic inversion has

[243] Ian Taylor, "Globalization Studies and the Developing World: Making International Political Economy Truly Global" (2005) 26:7 Third World Quarterly 1025 at 1033-1034 ("… when was the last time [mainstream scholars] read an argument that took the experiences and initiatives of the developing world as part and parcel of the global structure, rather than as acted upon or as a side-story to the exercise of great power").

[244] In the context of the hierarchical state system, the issue of imperialism proves pivotal although, because of the attention given to historical developments in local relations of production in Trinidad, this dissertation does not explore it. That said, Trinidad (and the wider Caribbean) encountered two main currents of imperialism, first driven by the British until around the Second World War and second by the U.S. where the building of the military base in the island in the 1940s solidified American dominance. In addition, a country such as Canada has assumed an important role in pursuing its own imperialist agenda in the region most notably through the interpenetration of financial capital and military interventions (both in conjunction with as well as independent of the larger imperial powers), as well as through resource extraction firms and Christian missionaries. A related outcome of this, I argue, is visible in twentieth century migration patterns, both temporary and permanent. In temporary migration especially Caribbean workers sojourn to Canada (and the U.S.) as a reserve army of unfree labour.

[245] John Saul, "Globalization, Imperialism, Development: False Binaries and Radical Resolutions" in Leo Panitch & Colin Leys eds., Socialist Register (2004); See also Kiely, New Political Economy, *supra* note 210.

occurred[246]), it is that the social-geographic binary is artificial, and we must "register instead their irreducible simultaneity" in the context of a critique of imperialist relations.[247]

To say the reproduction of imperialist relations occurs on both social and geographic bases, however, is not to minimize the racialized nature of the global nation-state system. Like class relations, capitalist state power is infused in and constructed on processes of racialization. And thus the critical task is to keep alive this critical avenue of explanation.

A second concern is that IPE has a tendency to adopt an overly formalistic understanding of law and legal institutions, including a neglect of critical socio-legal analysis and insights.[248] An attempt must be made to move beyond

[246] Take, for instance, the case of Caribbean migrant farm workers in Canada who, since 1966, have served as a provisional labour force within Canada's agricultural sector. The actual geographic site of exploitation of these workers is Canada and the Canadian state structures the relationship between labour and land domination, and thus this presents a different phenomenon than typically understood in classical constructions of imperialism advanced by VI Lenin, Nikolai Bukharin and even Rosa Luxemburg. Yet, the circumstances of their "unfreedom" remains a product of uneven geography and land-labour domination. In Saul's words, "there is still a great deal about the global hierarchy that remains spatially-defined" (Saul, *ibid*.). Although the claim that twentieth century Caribbean labour migration to Canada represents a geographic inversion, it actually aligns with earliest colonial aspirations. In seeing in the indigenous population of the Caribbean "the real riches of the West Indies" (to employ Eric William's phrase), Columbus sought to export Caribs to Spain in 1498. Thus, according to Williams, "[t]he slave trade in the Caribbean ... began as outward and not inward cargoes". Williams, Columbus to Castro, *supra* note 12 at 31-32.

[247] *Ibid*.

[248] See Cutler, *supra* note 108 at 3 (On Cutler's account, "[f]ormalism treats the law as an external, autonomous, self-sustaining, and independent order, neutralized of" political and extra-political conflict and contestation. This neglects "how law empowers actors as legal subjects or identifies legitimate sources and voices of the law or confers the authority and legitimacy to resolve disputes and determine outcomes or 'who gets what' […]". It also overlooks how "law disempowers, delegitimizes, and disenfranchises subjects and sources of law" and "tends toward a form of historicism that empties the law of a past and a future"). I am attempting to forge a fine distinction in terms of the law-state interaction. In one sense I contend that, because labour law and globalization scholarship under-theorizes the role of the state (in class relations and the global state system), there is a need to search out better theories and assumptions about the globalization of the state. In another sense, I argue that in turning to a field such as IPE to sharpen our understanding

questions of the *rule of law* to examine the *role of law* in workers' lives. This concern, coupled with the third, serves as a justification for the critical reliance on worker action and resistance.

The third concern, related to the role of human agency and workers in IPE, provides the basis from which the remainder of the chapter confronts the relation between "the national" and "the global" spheres. Fundamentally, the concern is that "class relations (and by implication, struggle) are viewed as external to the process of [global] restructuring, and labour and the state itself are depicted as powerless".[249] An effort must be made to avoid the tendency common within mainstream globalization studies and assumed within mainstream strands of IPE, to tie the fate of workers to the that of the nation-state.[250] This ignores the "tangentially" global nature of capitalist relations.[251] Bill Dunn's intervention

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of the state and globalization, we must address the tendency toward formalistic treatments of law. Certain segments within the IPE approach help to enhance our understanding of the role of the state but, paradoxically, may undermine how we understand the role of law (in contrast with the rule of law). This is ironic in a non-legal pluralist sense, as the state-law relationship is definitive in that the state has a monopoly on law making. But I acknowledge this with full recognition of legal pluralist challenges to the state-law relationship, which develop through a questioning of the centrality of the state, through a de-centring law, or perhaps both. It is this questioning of the centrality of the state which I contend raises especially acute difficulties in the current epoch; although de-centring law remains equally contentious too.

[249] P. Burnham, "Globalization, Depoliticisation and 'Modern' Economic Management" in W. Bonefeld & K. Psychopedis eds., The Politics of Change: Globalization, Ideology and Critique (London: Palgrave, 2000) at 14 cited in Andreas Bieler & Adam David Morton, "Globalization, the State and Class Struggle: A 'Critical Economy' Engagement with Open Marxism" in Andreas Bieler et. al. eds.. Global Restructuring, State, Capital and Labour: Contesting Neo-Gramscian Perspectives (2006) 155 at 163. See also Dunn, *supra* note 181; Dunn, *supra* note 212; Robert O'Brien, "Labour and IPE: Rediscovering Human Agency" in Ronen Palan ed., Global Political Economy (London; New York : Routledge, 2000) 89.

[250] Dunn, *supra* note 212.

[251] Ellen Meiksins Wood, "Global Capital, National States" in Mark Rupert & Hazel Smith eds.. Historical Materialism and Globalization (London; New York: Routledge, 2002) 17; Dunn, *ibid*.

appears apt: "The notion that social relations could ever be 'wholly mapped' territorially was always deeply problematic".[252]

Because workers are not passive objects of change, there is a need to make central to our analysis worker struggle and resistance within productive relations. To recall an earlier point, resistance must be taken seriously to avoid treating workers as faceless automatons. We must take the centrality of resistance and struggle within the relations of production while still "giv[ing] due weight to the extraordinary forces of oppression and exploitation in Caribbean history".[253]

It is on this basis that a constitutive analytical approach is adopted. Critical strands of IPE, particularly those influenced by Robert Cox's Neo-Gramscian approach, have employed the metaphor of the 'transmission belt'.[254] Stated quite broadly, Cox posits that national states internally adjust to the development of international obligations and agreement.[255] Commencing with international consensus building, the nation-state functions to transmit or internalize international dictates and logic to the national economy.[256] The 'transmission belt' metaphor has encountered sharp criticism, adaptation, and, ultimately, abandonment on the basis of its inward directional flow or analytic. The point here is not to argue in support of the metaphor's capacity to assist in the formulation of a lucid account of the connection between productive relations and

[252] Dunn, Global Society, *supra* note 212 at 129. Dunn goes on to "remind us that even if the national level has long been crucial, strategies for labour need not, in principle, be limited to winning reforms from benevolent governments". (*Ibid*.).
[253] Bolland, Politics of Labour, *supra* note 10 at 17.
[254] Robert Cox, "Global Perestroika" in R. Miliband & L. Panitch eds., The Socialist Register: New World Order? (London: Merlin Press. 1992).
[255] See *Ibid*. at 32.
[256] *Ibid*.

the state in present-day (or historical) global capitalist restructuring. Rather, it is to highlight the directional orientation of the analytical approach, which helps to clarify the need for a constitutive approach.

Although alert to the failings of top-down configurations of power within and 'beyond' the state, Cox constructs an "outside-in" analytical approach to the national-global relationship.[257] This inward-moving analytic presents an overly formalistic and top-down distinction between the global and the national.[258] An essential corrective attends to, initially and fundamentally, the social relations of production or class forces at play within the nation-state. True: "the changing nature of the state is at the heart of the process of globalization [but] the state is neither transcended nor unaltered in some overarching, all-encompassing fashion".[259] That is to say "there is a tendency to ignore the extent to which today's globalization both is authored by states and is primarily about reorganizing, rather than bypassing, states".[260] In this respect, "the role of states remains one not only of internalizing but also of mediating adherence to the untrammelled logic of international capitalist competition within its own domain".[261]

[257] Panitch, *supra* note 104 at 18.
[258] *Ibid*. at 20.
[259] Anthony Payne, The Global Politics of Unequal Development (Basingstoke: Palgrave Macmillan, 2005) at 33 cited in Kiely, New Political Economy, *supra* note 210 at 162; Payne, *supra* note 75 at 158.
[260] Panitch, *supra* note 104 at 12.
[261] *Ibid*.

By taking "the national" as the focal point in which class relations essentially are situated, we reject both 'externalization' of class relations, as noted above, as well as the artificial separation of politics and economics – the basis of the dichotomies of the state and the market as well as the state and globalization. The call then is for a fundamental appreciation of the "'social constitution' of globalization within and by states" with the capital-labour relationship understood as constitutive of global restructuring.[262]

A constitutive analytical approach to the global-national relationship has strong – albeit indirect – support in the Caribbean context. The basis of this support stems from complimentary understandings of the historical role of the state in the region, from the outlook of leading contributors to anti-colonial Caribbean thought, as well as from Caribbean labour history generally. In this first respect, as Clive Thomas remarked in the late 1980s, the Caribbean region is "witnessing efforts to alter the direction of state activity, and not in fact a movement to liquidate the centrality of its 'economic function' " and "this shift in direction may well be paralleled with more openly activist roles for the state in the process of economic concentration and the further hierarchicalization of economic and social relations".[263] Thomas' insights are, in a sense, abstracted from the historical development of Caribbean thought. To correct this deficiency, we might locate

[262] Bieler & Morton, *supra* note 249 at 163.
[263] Thomas, "Restructuring the world economy and its political implications for the Third World" in Arthur MacEwan and William Tabb eds., Instability and Change in the World Economy (New York: Monthly Review Press, 1989) 340 at 344 cited in Richard L. Harris, "Resistance and Alternatives to Globalization in Latin America and the Caribbean" (2002) 29:6 Latin American Perspectives 136.

the constitutive approach within the political vision and agenda constructed by leading anti-colonial thinkers such as CLR James, Eric Williams and Frantz Fanon.[264]

James brilliantly captured the general sentiments underlying the agitation for Independence in the Caribbean region. He uncovered global imperialism within Melville's Moby Dick, and the push for Caribbean nationhood within the stodgy confines of cricket; but it was in the "black masses" of the Haitian revolution that James found the core of Caribbean social history: resistance! In his own words, "in the history of the West Indies there is one dominant fact and that is the desire, sometimes expressed, sometimes unexpressed, but always there, the desire for liberty".[265]

James' commitment to resistance developed within a wider critical understanding of the development of Caribbean social history. Again in his own words:

[264] This part of the analysis addresses specific facets of anti-colonial thought and does not undertake a full-fledged exposition. With respect to Eric Williams, the historian turned prime minister of Trinidad & Tobago, I strive to divorce his historical writings, which demonstrate anti-colonialist commitments, from his deeds as political leader discussed in later chapters. It seems fitting to begin with James. His unique perspective shaped Williams' own viewpoint, beginning while the latter was a schoolboy and later when Williams became a historian (providing, in Williams' own admission, the essential arguments behind the "Williams' Thesis"). For a discussion of this see the annotated bibliography in Williams, *supra* (where he credits James for, in effect, inventing the Williams' Thesis). It is worthwhile to recount the radical shift in analytical approach primarily encouraged through the works of CLR James and Eric Williams. (See e.g. Darity, *supra* note . There are deep ironies here as the ideas of Williams the celebrated historian come into deep contradiction with those of Williams the noted political leader and, in turn, clash with the worldly ideas and activist spirit of his mentor CLR James. These contradictions bear themselves in the course of Trinidad & Tobago labour relations in the 1970s when then Prime Minister Williams worked to crush labour radicalism and stratify the country along ethnic lines – in both senses at the expense of James' commitments to worker collective organization (he was, after all, not just a literary critic, journalist, public speaker and scholar, but also a union organizer) and to ethnic unity in the spirit of the internationalist labour movement.

[265] James, *supra* note at 177 cited in Bolland, Politics of Labour, *supra* note 10 at 15. *Ibid*. at 19 ("place [the] relationship of oppression and resistance at the centre of the study of social change").

"Wherever the sugar plantation and slavery existed, they imposed a pattern. It is an original pattern, not European, not African, not a part of the American main, not native in any conceivable sense of that word, but West Indian, *sui generis*, with no parallel anywhere else".[266] These sentiments speak to the essence of James' vision and agenda. An appreciation of the resistance strategies of Caribbean peoples calls for an original understanding of social relations within the region. The adoption of "external" theories and ways of knowing occurs at the expense of "internal" ways of knowing, serving to mimic the top-down trajectory of imperialism and colonialism.

Notwithstanding the importance of Eric Williams' contribution,[267] it must be understood as a derivative of the vision and agenda attributed to James. An appreciation for its reliance upon James' vision is best seen in Williams' classic text, Capitalism and Slavery. Written as a counter to the popular hagiographies of that period – which, stressed the role of elites – and to British capitalism more generally, *Capitalism and Slavery* explicitly links the Caribbean to the early historical development of global capitalism.[268]

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[266] James, *supra* note at 391-392. James adds: "The history of the West Indies is governed by two factors, the sugar plantation and Negro slavery" (*Ibid*. at 391). See also Sidney Mintz, "The Caribbean as a Socio-cultural Area" in Michael Horowitz ed.. Peoples and Cultures of the Caribbean: An Anthropological Reader (Garden City: Natural History, 1971) 17 at 36-37.

[267] For an overview of the debates see e.g. Matt D. Childs, Review of Carrington, Selwyn H. H., The Sugar Industry and the Abolition of the Slave Trade, 1775-1810. H-LatAm, H-Net Reviews (February, 2004), online: <http://www.h-net.org/reviews/showrev.php?id=8918>.

[268] "The West Indian islands were discovered", as Williams put it prior to the launch of his seminal work, "to assist in the solution of Europe's problems. Thus they were from the very beginning, an extension of Europe overseas". The lecture, entitled "The British West Indies in World History", was held on 19 April 1944 at the Trinidad Public Library. (Cited in Colin A. Palmer, Eric Williams and the Making of the Modern Caribbean (Chapel Hill: University of North Carolina, 2006) at 15).

Capitalism and Slavery's central idea, now dubbed the "Williams' thesis" and still widely regarded as formative, advanced the claim that the profitability of slavery in the colonies triggered events in the metropole that ultimately led to slavery's demise. As Williams' contends: "The commercial capitalism of the eighteenth century developed the wealth of Europe by means of slavery and monopoly. But in so doing it helped to create the industrial capitalism of the nineteenth century, which turned round and destroyed the power of commercial capitalism, slavery, and all its works. Without a grasp of these economic changes the history of the period is meaningless".[269]

Setting aside its highly economistic overtones, the Williams' thesis makes another valuable contribution. The Williams' thesis undermines historical amnesia in its illustration of how Caribbean states more or less always have been influenced by metropolitan interests. It is on this basis that we turn to Fanon's insights into decolonization. In the spirit of finding new ways to situate the Caribbean working classes and states in explorations and understandings of the effects of globalization, Fanon leads the way. The new ways of knowing ought not discard

[269] Williams, *supra* note at 210. The Williams' thesis is not without criticism. The debate over its continuing significance has racialized overtones with some defenders arguing that its critics are all white. See Childs, *supra* note . That said, a number of scholars continue to defend its underlying premise. For an overview of the debate see Childs, *supra* note . The Williams' thesis has endured criticism for its economistic portrayal of colonial-metropolitan relations. This is said, among other things, to have downplayed issues of "race" and racism in imperialist relations. To a certain extent this criticism is valid. However, in light of *Capitalism and Slavery*'s close affinity with the perspective of C.L.R. James, we might allow his intervention to address this criticism. James insists that, in sum, the "race question is subsidiary to the class question in politics, and to think of imperialism in terms of race is disastrous. But to neglect the racial factor as merely incidental is an error only less grave than to make it fundamental" (James, *supra* note 6). This dissertation seeks to apply a more subtle view of the relationship between racism and racialization and class, noting how both processes inform class relations and state power including the state-law interaction.

the old ways simply because of Eurocentrism. Here, Fanon implicitly adheres to Marx's famous line that, in scavenging through the wreckage of the old ways of knowing in search of insights and inadequacies, "[t]he real history of humanity will begin".[270] Or in Fanon's own equally compelling terms:

> It is a question of the Third World starting a new history of Man [sic], a history which will have regard to the sometimes prodigious theses which Europe has put forward, but which will also not forget Europe's crimes, of which the most horrible [were] committed in the heart of man, and consisted of the pathological tearing apart of his functions and the crumbling away of his unity. And in the framework of the collectivity there were the differentiations, the stratification, and the bloodthirsty tensions fed by classes; and finally, on the immense scale of humanity there were racial hatreds, slavery, exploitation, and above all the bloodless genocide […].[271]

Taken together, these anti-colonialist insights lead the discussion back to the constitutive approach. The centrality of resistance underscores James' perspective; as does too a commitment to the development of "Caribbean-centred" ways of knowing. The fact that, as Williams attests, the discovery of the Caribbean was meant to satisfy metropolitan needs does not undermine the racialized context in which imperialist relations are embedded. The critical task, returning to James, is to keep alive the interrogation of the fundamental commitment to labour and land exploitation -- referenced below -- that drove imperialism. This demands that the development of new ways of knowing follow not from an outright rejection of "the old". Rather, in the case of Fanon's

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[270] Cited in James, *supra* note 6 at 401.

[271] Frantz Fanon, The Wretched of the Earth trans. Constance Farrington (New York: Grove, 1963) at 315; 312 ("Come, then, comrades, the European [and North American] game has finally ended; we must find something different … we must grow a new skin, we must develop new thinking, and try to set afoot a new man [sic]").

intervention, the desire to take seriously Europe's (and North America's) crimes against humanity and prodigious theses must guide critical reflection on the way forward

The collective anti-colonial account turns on a distinct narrative of colonial and imperial relations in the past. That narrative contests the strictly "outside-in" orientation of leading analyses of imperialism.[272] A reorientation is necessary to capture the dialectics of post-colonialism. In the post-colonial moment, and in its lead up, the developed world has attempted time and again to rid itself of formal obligations to the developing world all the while renewing the conditions of hierarchy and underdevelopment.[273] More specifically, we must reorient the frame of reference to situate class struggle and resistance at the centre of the analytical approach without losing sight of the racialized context on which the hierarchical relations between the developed and developing worlds are structured.[274]

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[272] James' succinct articulation of the idea is found in The Black Jacobins: "From the beginning the colonists were at variance with the French Government and the interests it represented. The French, like every other Government in those days, looked upon colonies as existing exclusively for the profit of the metropolis. Known as the Mercantile system in England, the French called this economic tyranny by a more honest name, the Exclusive. Whatever manufactured goods the coloniests needed they were compelled to buy from France. They could sell their produce only to France. The goods were to be transported only in French ships. Even the raw sugar produced in the colonies was to be refined in the mother-country, and the French imposed heavy duties on refined sugar of colonial origin. 'The colonies', said Colbert, 'are founded by and for the metropolis'. This was not true. The colonists had founded San Domingo themselves, and the falsehood of the claim made the exploitation all the harder to bear" (James, *supra* note 6 at 46).

[273] For a similar critique see Peter Clegg, "Britain and the Commonwealth Caribbean: Policy under New Labour" (2006) 95:385 The Round Table 411.

[274] Although the dissertation does not explicitly engage with gender, it assumes a crucial role in explaining hierarchical relations. In a recent reconsideration of Sidney Mintz's classic anthropological work on sugar production in Puerto Rico, Judith Carney encourages a refashioning of the analysis to account for "the fundamental significance of gender to the development of capitalism". Carney, "Reconsidering Sweetness and Power Through a Gendered Lens" (2008) 16:2 Food and Foodways 127 at 128. In this respect, Carney articulates a hypothetical agenda to

Caribbean Labour History

The basis of support for the constitutive approach also stems from prominent accounts of Caribbean labour history. Nigel Bolland's recent study of early twentieth century labour history in the Caribbean presents fertile ground for the development of a historically-grounded approach. An instant classic by virtue of the breadth and rigour of its comparativism, Bolland's historical sociological account serves to illustrate the importance of a constitutive approach to the region. For Bolland, the "Caribbean societies, constituting a colonial zone of the capitalist system, were based on the extensive exploitation of both land and labour".[275] With particular reference to the control and exploitation of labour, Bolland observes "basic and long-term continuities in the contradictions of the relations of production, despite changes in the legal forms of these contradictions".[276] It is in striving to appreciate the continuities between slavery, Emancipation, Independence and the contemporary period that one finds opportunities for critical socio-legal inquiry. Accordingly, formal legal breaks or ruptures, namely Emancipation and "constitutional decolonization" or Independence, are regarded as "largely symbolic".[277] Despite alterations to these formal legal structures, the core authoritarian roots of colonial capitalism remain in tact over time.

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reflect the gender insights not explicitly available to Mintz when he first wrote. That agenda "draws attention to the ways women are unevenly incorporated into commodity production as workers and consumers as well as the implication of workforces dependent on female labour for the reproduction of households" (*Ibid*.).

[275] Bolland, Politics of Labour, *supra* note 10 at 7.

[276] *Ibid*. at 24.

[277] *Ibid*. at 22.

At the core of the continuities, Bolland identifies "the prolonged and pervasive nature of colonialism in the Caribbean [which] has led to a particularly close interrelationship between the internal and external aspects of the political dimensions of [the] struggle" against it.[278] Careful to stress the analytical, and largely not real, basis of the internal-external distinction, Bolland finds that the "dependent nature of the largely plantation economies and the crucial role of the state, both during and after the period of direct control through colonial administration, are organically and dynamically interrelated with the extreme inequalities of power, wealth and privilege within these societies".[279] From this perspective, then, "colonialism is constitutive of Caribbean society, not just external to it".[280] While a great deal more could be drawn from Bolland's theoretically rich and engaged account, this brief synopsis serves to clarify the role of colonialism in linking events in the metropole with events in the colonies. The complexities of colonial relations are as such that the affects flow both ways and thus, except in a narrow analytical respect, cannot be extricated. As the control and exploitation of labour has proved formative in colonialism in the Caribbean, the societal inequalities to which Bolland refers rest with the relations of production or class relations.

Bolland's careful and prescient historical accounting of Caribbean labour relations allows for sound generalizations about class relations within the nation-states of the region. Due consideration must be given to the construction of scholarly

[278] *Ibid*. at 24.
[279] *Ibid*.
[280] *Ibid*. at 22.

accounts of the national-global relationship attentive to colonialism among other historical specificities of the class character of territorial states in the region.

A more general account of the national-global relationship can be constructed on the basis of a critique of the role of the state in the capitalist system. The relations between the national and the global must be appreciated in view of the specific and ongoing functions of national states as they facilitate the reproduction of capitalism and uneven development. These essential functions of states are rooted in the nature of capitalism. As Wood remarks (to cite her at length):

> … while capitalism's historic connection with the territorial state has continued to shape its patterns of reproduction, the persistence of that political form is not simply the result of tenacious historical legacies. The contradiction between capitalism's globalizing tendencies and its national form is not simply a transient confrontation between forces of the future and remnants of the past. It is not just a matter of capitalism's persistent inability to overcome a historic contradiction and grow into its 'proper' political form. The point is not simply that capitalism has so far failed to produce a global political 'superstructure' to match its global economic 'base'. The critical point is that there is an irreducible contradiction between two opposing tendencies, both of which are rooted in the nature of capitalism.[281]

The very fact of the ongoing and "irreducible contradiction" between the national form and the globalizing tendencies of capitalism, points to the limited utility of transnational labour law. As understood through the dominant approaches, transnational labour law sustains an artificial binary of state and globalization. A constitutive approach shifts emphasis away from a rigid or binary construction of the globalization problematic – that is, 'internal' versus 'external', 'insider' versus

[281] Wood, *supra* note 251 at 30.

'outsider', 'us' versus 'them', state versus globalization – to the social constitution of globalization thereby implicating nationally-rooted class relations but not limited to it.[282] It also serves to reinforce the interaction of the national and the global. They are not "two mutually exclusive zones for theorization, empirical specification, and politics".[283] Indeed, "the global economy cannot be taken simply as a given"; quite the opposite, "[it] is something that has to be actively implemented, reproduced, serviced, and financed".[284] And in this respect, "there is no 'global economy' abstracted from the particular local, national, and regional economies that constitute it, or from the relations among them, whether among major capitalist powers or between imperialist powers and subaltern states".[285] In reasserting the role of states as active agents in facilitating and mediating the processes of globalization, a constitutive analytical approach opens space for exploration of the class character of the national-global relationship. This entails consideration of relations not only within but also between states as hierarchy and uneven development define the global state system.

The challenge of charting the way forward for future labour law and globalization analysis falls on more integrated accounts of the interaction between the national and the global. A constitutive analytical approach grounded in the insights of

[282] The shift in emphasis highlights different considerations, namely socio-legal conceptions of the historical continuities of class inequalities – as opposed to largely symbolic or formal legal ruptures – which proves fertile ground for exploration.
[283] Saskia Sassen, "Spatialities and Temporalities of the Global: Elements for a Theorization" Public Culture (2000) 12:1 Public Culture 215 at 219.
[284] *Ibid*. at 217.
[285] Wood, *supra* note 251 at 17.

IPE, anti-colonial thought and the development of Caribbean labour history, opens avenues for deeper exploration of the significance of the national-global interaction. Despite claims to the contrary, the field of labour law and globalization is largely disengaged from the critical insights of IPE on state, capital and labour relations in the current epoch.

Mainstream explorations fall short in exploring the national-global relationship, far too often leaving unquestioned the fundamental structures of capitalist relations including the central mediating role of the state. Acknowledging the need to take seriously labour-capital-state relations in explorations of the national-global relationship, the analysis captures the class character of Caribbean national states which, while not disembedded from global political economy, are not simply to be understood as an offshoot of the region's economic dependency. And so, following Bolland who views colonialism as constitutive of, and not purely external to, Caribbean society, we must examine contemporary globalization along analogous lines. In this way, the focus of attention rests on the relations and struggles in which the working classes within the Caribbean find themselves now and historically; and there, we would have to account for the decisive and continuing, albeit shifting, role of the state as turns to law to mediate production relations.

Conclusion

In the absence of any meaningful investigation of the globalization of specific national states in labour law scholarship we are left to construct an approach

suitable for an analysis of the ongoing relationship between the state and law in capitalism. This requires real and explicit commitment to historical interpretation.

The chapter articulates a constitutive analytical approach which fits within the re-orientation of Caribbean thought in the lead up to formal Independence, following, in particular, interventions from the likes of James, Williams and Fanon. The approach is situated within the general contours of global capitalist development, but keenly attentive to the particular dynamic of the historical development of Caribbean production relations. Attuned to the relationship between 'the national' and 'the global' from the standpoint of the nexus of labour-capital-state relations, the constitutive approach guards against both a type of historicism that treats "external" intervention in the affairs of the state as historically novel, and an unqualified willingness to serve only the interests of global capital. In both instances, the historical role of the globalized state takes centre stage. The task going forward is to apply the analytical approach to labour relations in Trinidad & Tobago.

CHAPTER 3

The Trinidad State & Law in the Long Nineteenth Century

Introduction

Probing the nexus of relations between the colonial state, capital and labour, this chapter undertakes a historical overview of the nineteenth-century development of relations of production in the sugar industry of Trinidad. In constructing the historical narrative of the role assumed by the colonial state, the chapter explores the relationship between colonial political governance and relations of production. It explains the emergence of the plantation system in which sugar production occurred as the particularized institutional expression of colonial capitalism. The plantation represented the primary institution for capital accumulation on a grand scale and the consolidation of foreign and local political authority.

While this chapter considers the plantation as a capitalist institution, it also served as a real and distinct place inhabited by people engaged in intensive production. In Sidney Mintz's words, sugar cane "when fully grown, can tower fifteen feet above the ground. At its mature glory, it turned the plain into a special kind of hot, impenetrable jungle...".[286] The work consisted of "... cutting 'seed', seeding, planting, cultivating, spreading fertilizer, ditching, irrigating, cutting and loading cane – it had to be loaded and unloaded twice before being ground – [these] were all manual tasks...the cutters...were working in intense heat and under great

[286] Sidney W. Mintz, Sweetness and Power: The Place of Sugar in Modern History (New York: Penguin, 1986) at xviii.

pressure... [it was a space filled with] the lowing of the animals, the shouts of the [foremen], the grunting of the men as they swung their machetes, the sweat and dust and din ..." and above all, "the sound of the whip".[287]

Constituting Crown Colonialism

Celebrated Trinidadian historian Eric Williams once remarked that "[t]he Crown Colony system made Trinidad safe for the sugar plantation".[288] Although that system was imposed from above -- first by the Spanish then the British Crown -- its real expression came from the often bitter and ongoing contestation of productive forces locally. Focus on local political dynamics contextualizes the development of colonial political governance and productive relations. Rather than understanding colonialism as a top-down phenomenon, it is more aptly appreciated through, as the previous chapter suggests, the localized context. To be sure, the colonial state embodied the deeds, aspirations and ideology of the imperial regime, particularly in the construction and maintenance of the plantation economic order on which large-scale sugar production was grounded. This meant that the plantation economy in Trinidad as elsewhere in the British island colonies was deeply embedded within, and beholden to the dictates of, international trade.[289] However, those economic dictates left some room for variation in the design and functioning of relations of production in a given place. In Trinidad, the colonial state was driven to act, or abstain from acting, in the relations of production largely to account for peculiarities of local affairs and circumstances.

[287] *Ibid*. at xviii.
[288] Williams, Capitalism, *supra* note 7 at 85.
[289] *Ibid*.

In particular, the creation and early development of the plantation economy required certain forms of capital, land and labour to exist. These forms were brought into existence through direct and concerted intervention of the colonial state; and, once invented, the state's task was to preserve -- and when possible extend -- the particularized relations of production which had emerged. In this way, the colonial state functioned to create and sustain the emergent form of productive relations in sugar.

It is the form of colonial state intervention, both through action and inaction, especially its deployment of labour law which forms the basis of the analysis in the ensuing chapters on the nineteenth and twentieth century. Here, the chapter sets the particular context within which state, capital and labour were brought together to create a largely one-sided political and legal infrastructure that facilitated the dominance of the propertied elite over imported labour -- beginning, as this analysis does, with the importation of slave labourers.[290]

[290] Although I begin with enslavement, it is important to remember an earlier period of indentured servitude predated slavery in the Caribbean. From the seventeenth century onwards, poor white Europeans were brought to the region as unfree labour with the expectation that upon satisfying a typically three-year term of service, they would receive land grants. (See Williams, Columbus to Castro, *supra* note 12 at chapter 8). In addition to indentured servants, convict labour also emerged at as a category of labour control. In Williams' words, "If the existence of a contract gave a semblance of legality to the system of white indentured labour, convict labour was also surrounded with the aura of the law by the commutation of sentences involving death or imprisonment to transportation and servitude in the colonies for a term of years" (*Ibid*. at 99). A third source of pre-slave labour, nonconformists or deportees, represented opponents primarily of Oliver Cromwell whether Irish Catholics or Scottish and English political competitors (*Ibid*. 100-102; 39). Even before the use of white unfree labour, the early exploitation, plunder and extermination of indigenous Taino, Arawak and Carib peoples occurred throughout the region. Columbus' early efforts to export Amerindians to Spain began in 1498 when six hundred were transported on his third voyage (*Ibid*. at 31-32). Spanish colonial efforts later turned to enslavement of the remaining indigenous peoples.

The Early Development of the Colonial State

Trinidad stood "undeveloped and isolated" for almost two hundred years following the formal establishment of Spanish colonialism in 1592.[291] The island was nothing more than "a colonial slum in the Spanish empire".[292] "The king at Madrid, the viceroy at Bogota", wrote the king himself, "gave up on Trinidad, leaving the island to its fate".[293] For two centuries that fate rested on Spain's disinterest, if not utter neglect. The colonial authority lacked the economic wherewithal and sustained access to labour power for empire building, let alone for development of an island which possessed little in the way of exploitable natural resources such as precious metals or a dense indigenous population. That it remained covered in thick tropical forest further detracted from the island's utility to potential settlers or colonizers. In the absence of incentives on the part of colonialists to encourage population growth in Trinidad, contractors charged with supplying slaves to the Spanish empire and private enterprise ignored Trinidad for more profitable locales.[294]

Spanish colonial neglect notwithstanding, Trinidad's close proximity to the South American continent attached a geo-strategic importance to the island from the perspective of the Spanish Crown -- and, later, British imperialists.[295] That said, imperial security concerns could not overcome the deep complexities of colonial

[291] Bridget Brereton, History, *supra* note 59 at 2.
[292] James Millette, Society and Politics in Colonial Trinidad (Cuerpe, Trinidad; London, 1985) at 1.
[293] Brereton, History, *supra* note 59 at 8.
[294] *Ibid*. at 4; 10.
[295] *Ibid*. at 10.

rule. Until the late 1770s, Trinidad fell under the jurisdiction of the viceroy and audiencia (high court) of New Granada at Bogota, two months' journey away.[296] As Brereton surmises: "The empire was so vast, communications were so slow, the terrain was often so difficult, that directions and laws from Madrid could never be fully enforced, especially in the remoter colonies like Trinidad, far from viceroys, audiencias and bishops".[297] For three-quarters of the eighteenth century, authority within Spanish Trinidad was grounded in local or self governance which rested in the hands of the few white Creole settlers who "tended to act as [they] pleased, contemptuous of the law"[298] or "lawless" according to Bolland.[299]

Spanish imperial governance structures were revisited in the last quarter of the century. Spain ushered in a series of political reforms, at least in part to address concerns over the inability of newly liberalized trade to provide benefits for inhabitants of the island.[300] Trinidad was brought under the jurisdiction of the captain-general of Venezuela and the intendant at Caracas with access to judges of the audiencia at Caracas for appeals and confirmation of capital punishment sentences.

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[296] *Ibid*. at 8.
[297] *Ibid*. at 9.
[298] *Ibid*. at 9, 10.
[299] Bolland, Politics of Labour, *supra* note 10 at 11. Bolland acknowledges that "[t]he colonial officials and settler elites imposed a variety of controls, such as slave codes and created institutions, such as municipal councils and courts, to impose their power over the majority, while they continued to rely in a crisis on the military might of the metropole" (*ibid*.). Insofar as I suggest a revised understanding below, it is in full awareness of the nuance with which Bolland makes his initial assertion of lawlessness.
[300] Brereton, History, *supra* note 59 at 11.

Beginning to accept that foreign immigration would be essential to develop and defend Trinidad, the Spanish Crown introduced incentives in the form of tax breaks and land grants around 1776.[301] These incentives functioned to lure a group of French planters from Grenada in 1777; followed by French and Irish catholics who were approved for emigration in 1779.[302] But this amounted to nothing more than a trickle of settlers to Trinidad. Two years later the Crown committed more fully to the development of Trinidad as a large-scale agricultural producer. A decree issued from Madrid in late November 1783, the Cedula of Population, which applied specifically to Trinidad, was aimed at inducing French planters to immigrate to the island. The Cedula of Population offered a free grant of land for every white settler arriving with slaves, provided the settler was Roman Catholic and the subject of a nation friendly to Spain. Free black settlers who emigrated as property-owners and slave-holders were entitled to half the amount granted to the white emigrant. Spanish citizenship rights and privileges flowed to settlers who remained for longer than five years in Trinidad with no distinction drawn between white and non-white immigrants.[303]

The 1783 Cedula fuelled a substantial population surge in Trinidad and altered considerably the structure of local agricultural production. The French planters arrived with slaves and, armed with an in-depth knowledge of tropical cultivation methods, transformed the structure and composition of Trinidadian society. In the earliest period of post-contact history, slavery had proven insignificant to the

[301] *Ibid*. at 14.
[302] *Ibid*. at 12.
[303] *Ibid*. at 14.

political and economic development of Trinidad. But now with the infusion of a foreign source of slave labour, slavery would forever alter the course of development and relations in the country.

Within a year of the Cedula's introduction, French settlers outnumbered Spanish ones. Both groups, however, were eclipsed in size by African and Creole slaves.[304] The infusion of slave labour marked the transformation of the country into a dominant force in agricultural production. This generated great wealth for the planter and merchant elites. By the 1790s the island was "an international, frontier colony" with its capital, Port of Spain, ranking amongst the busiest city centres in the region.[305]

In addition to its obvious role in wealth creation for new settlers and merchants alike, the Cedula of Population made a fundamentally profound contribution to solidifying the relations of domination within Trinidad. The larger the settler's labour force, the more extensive the land grant one received. In linking the ownership of slaves with the granting of land, the Cedula ensured that the local exploiters of labour and land would be one in the same; and that this would occur along racialized lines.

[304] *Ibid*. at 15 (In addition to being brought to Trinidad by planters, enslaved people were stolen and kidnapped from neighbouring colonies (especially Grenada) and they were imported directly from Africa by British slave traders).
[305] *Ibid*. at 19.

Spanish-English Law Conflict

Trinidad's transformation from colonial slum to palace for the planter elite prompted attention from Spain's chief competitor, Great Britain. Under the control of General Ralph Abercromby, the British military seized control in early 1797. Britain's military intervention was driven by the singular and immediate desire to discredit Spanish colonialist aspirations.[306] This was quite evident in the early development of British colonial rule of Trinidad. The articles of capitulation brought a formal end to Spanish sovereignty and installed British sovereignty with Lieutenant Colonel Thomas Picton appointed as military governor. Picton's political authority was virtually limitless with brutality proving particularly acute in the period preceding 1801 at which time the two colonialist competitors ultimately forged a peace agreement.[307]

Picton instituted a narrow form of civil government through the appointment of prominent local members of the propertied elite to sit on a governing committee, the Council of Advice. Although the Council lacked legislative authority, the elite found sympathetic rule in the governor. An estate and slave owner himself, Picton governed by proxy for the island's slave owners particularly on issues related to slaves and free blacks.[308]

[306] Millette, *supra* note 292 at 35.
[307] Among his atrocities, Picton issued a French West Indian-inspired Slave Code in 1800 which permitted harsh punishment of offending slaves, discussed next chapter, and an almost equally brutal treatment of free blacks. (Brereton, History, *supra* note 59 at 36.)
[308] *Ibid*. at 37.

London's wider aim in seizing Trinidad could be found in its approach to resolving the apparent conflict of laws stemming from the emergence of British sovereignty over Trinidad. Despite the British takeover of Trinidad, the implementation of British law was not a foregone conclusion. In fact, over the course of several decades British sovereignty in Trinidad was constructed on, indeed fortified by, Spanish law. This is best demonstrated by Abercromby's final charge to Picton, in his own words, to "exercise Spanish law as well as you can: do justice according to your conscience".[309] Picton's conscience turned out to offend even the sensibilities of the emergent British imperialist order and, ultimately, led to formal initiatives to dilute his political authority. But the fact remained that, despite the detestable idiosyncracies of colonial rule under Picton, Spanish law tended to prevail.

Well into the late 1820s a special commission set up to examine the colony's legal framework reported that Spanish law remained the dominant common and statute law of Trinidad. It was not until the 1840s that a "legal revolution" was carried out which brought deeper integration of Trinidad's legal system with that of the metropole.[310] To note the prevalence of Spanish law in British-ruled Trinidad, however, is not to downplay the complex interaction of the Spanish and English legal traditions.

[309] *Ibid*. at 34.
[310] *Ibid*. at 72-73.

British ministers acquiesced to Spanish law in Trinidad throughout much of the century's first decade.[311] Notwithstanding early ministerial acquiescence, British officials did not uniformly desire to maintain the status quo of Spanish legalism. From the outset of British rule over Trinidad, Spanish law underwent varying degrees of adjustment and modification with efforts aimed at the removal of provisions deemed hostile and the retention of favourable ones.[312] That said, one must be careful not to overstate or impute the level of intent behind that acquiescence particularly during the earliest period of transition to British rule over Trinidad. Spanish and English legal intermixing occurred both intentionally and accidentally fueled as much by official ignorance of Spanish legal norms as by official hostility toward it.[313] Although the collective intent of British imperialists was to harness certain existing Spanish legal norms through the integration of British legal norms, the intervention proved far more complex.

Countless exceptions to the dominance of Spanish law existed of which English trade and navigation laws proved most notable. With specific reference to Trinidad, trade and navigation law bound the entire Caribbean island colonial sphere.[314] Criminal law -- which formed an important basis for early labour controls -- represented another crucial exception although it was administered not on a strictly English legal basis but "according to whatever prescription of

[311] Millette, *supra* note 292 at 61.
[312] *Ibid*. at 65, 66.
[313] Brereton, History, *supra* note 59 at 71-72 . Not only did ignorance exist amongst the British ministerial set, a general ignorance of Spanish law extended throughout the island's inhabitants. As Millette asserts, "[t]hree hundred years of neglect had done little to establish a widely diffused knowledge of Spanish law throughout the community" (Millette, *supra* note 292 at 36).
[314] Brereton, *supra* note 59 at 72.

convenience currently prevailed".[315] These areas exceptionalized English law providing an important means by which imperialist co-optation of Spanish legality could occur.

That said, British imperialism actually made its greatest strides in exploiting the gaps and shortcomings and conflicts between Spanish and English legal precedents. The strength of British imperialism in turn-of-the-century Trinidad derived from ambiguities and inconsistencies which emerged in the complex interaction of Spanish and English law. The ambiguities built into Trinidad's legal apparatus complemented imperialist pursuits and facilitated an island administration grounded in the exercise of "expedience", "convenience" and "caprice".[316]

The intermixing of these legal traditions proved beneficial to planters and imperialists (and the wider status quo), but it was the latter group who more greatly benefited. Although the continued application of Spanish law bolstered the economic might of planters, including through the facilitation of planter political dominance over merchants, British imperialists managed to utilize the legal admixture to solidify authority over the island colony. The legal intermixing furthered British concerns about imperial security.[317]

[315] Millette, *supra* note 292 at 60.
[316] *Ibid*. at 60, 66.
[317] *Ibid*. at 66 (The existence of Spanish law "permitted the introduction of torture as easily as it facilitated the substantial modification of the rights of the free coloured population".) .

In the midst of these legal intermixing initiatives a reformist challenge emerged to confront the political administrative malaise. Led by planters and bolstered by the Council of Advice, the political reformers advocated the outright displacement of Spanish law. In its place, planters called for the introduction into Trinidad of a singularly British legal and constitutional framework. The British state worked to offset planters' political demands through its acquiescence to Spanish law tempered with, as we have now seen, both the deliberate and accidental injection of certain English legal norms.

More profoundly, British common law assumed a pivotal function in encouraging the shift to more hardened and direct supervision by the metropole. Since the 1780s the British government had come to feel that it should maintain a greater degree of direct control over the colonies and that any new colony acquired by military conquest should not be granted a representative assembly, especially since a conquered colony invariably populated by foreigners could not be expected to be familiar with the British constitution. As long as the king had not relinquished legislative authority over a colony, British law was interpreted so as to uphold the king's authority to impose duties and taxes as he wished.[318] Thus, an elected law-making assembly, the form of government associated with a British constitution (and the accordant British laws), was not on offer in Trinidad. But planter mobilization in support of one had gained momentum nearing the end of the century's first decade.

[318] Brereton, History, *supra* note 59 at 42.

Viewed in this context, the imperial elite perceived legal intermixing as a way to reconcile the interests of local planters and imperialists while quashing the political discontent emerging from the former. The formal erosion and eventual displacement of Picton's political authority might be viewed through this lens of reconciliation. Faced with growing scrutiny over the form of political governance in Trinidad and, as we are about to see, over the slave trade, Britain substituted a three-person commission to mediate the personalized rule of Picton. This short-lived commission, of which Picton was a member, disbanded due to internal political conflicts. London then handed political authority and the decision over Trinidad's future form of government to a new governor, Thomas Hislop, who initially at least advocated a nominated legislative council -- a sort of modified assembly that would wield law-making powers but whose members would be appointed by the governor rather than elected. This approach was ultimately adopted in 1831 -- although Hislop himself eventually converted to the movement for the adoption of a British constitution.[319]

Notwithstanding the displacement of Picton, London held the line at the introduction of British constitutionalism to Trinidad.[320] This unwillingness to accede to planters' demands clarified the true nature of British imperialist rule. London assumed the peculiar position of rejecting the extension of British legal norms. This peculiarity occurred in spite of mounting concerns from planters and

[319] *Ibid*. at 43.

[320] This not only marked the failure of the reform movement advocating the introduction of British laws and constitution among other pertinent factors, such as the usurpation of the Chief Justice's (Smith) and Council authority, this "resulted in a greater exercise of imperial authority than had previously prevailed" (Millette, *supra* note 292 at 266).

their allies, and by 1812 from within the British ruling elite itself, that Trinidad's legal apparatus had become, to employ Brereton's words, a "confusing and uneasy mixture of Spanish law and British procedures".[321] Even in the face of these reformist urgings to simplify the island's legal framework, London rejected the imposition of British law on its new colony.[322] But, in the face of growing political discontent amongst the planter elite, that rejection could not stem the tide of reform. The proverbial writing was on the wall.

Legal reformism gradually gained traction and the imperial authority established the Commission of Legal Enquiry to mediate. The Commission recommended the creation of a new governing council for Trinidad with legislative authority over local matters. The British government obliged. Through its law-making powers -- which it continued to share with the British government, although Britain retained the right to legislate directly by Order in Council -- the Commission initiated more sweeping political and legal reforms. Notwithstanding earlier political institutional tinkering, crown colony government arrived officially in 1831 and 1832 with the emergence of the Council of Government. The structural composition of the Council of Government later referred to as the Legislative Council, which remained more or less the same for almost a century, included a president (the governor) and twelve additional members, six "Officials" (who became the leading officers of the local government) and six "Unofficials" comprised of prominent local citizens nominated by the governor to represent the

[321] Brereton, History, *supra* note 59 at 71-72.
[322] Millette, *supra* note 292 at 66.

whole taxpaying community. From the outset, the Unofficials were understood to be planter or planter-merchant-dominated positions with property ownership and considerable wealth being the chief qualifications for appointment.[323]

On the recommendation of the Commission of Legal Enquiry, the Legislative Council carried out gradual legal remediation throughout the 1840s.[324] Sensing partial acquiescence to their earlier demands, planters renewed agitation for representative government in the ensuing decades. The Colonial Office rebuffed planter calls for elected assemblies and additional planter-dominated reformist campaigns developed during the mid-1880s and the early to mid 1890s. Although they could not claim resounding victory, planter agitation cleared space for future gains and aroused political interest among teachers, artisans, clerks and other working class elites.

The British government's longstanding commitment to partially adhere to existing Spanish legal norms masked deeper struggle and contestation over the governance of Trinidad.[325] The intermixing of the dominant legal traditions provided the imperialist state with modest but sufficient space to sidestep planter efforts to

[323] The Legislative Council wielded authority to enact ordinances. However, such ordinances required assent by the governor and king (Colonial Office).
[324] Brereton, History, *supra* note 59 at 72.
[325] Rather than suppressing conflict over local governance, however, British acceptance of Spanish law in Trinidad fed the political aspirations of locals. Early planter calls for stronger and more formalized governance mechanisms later grew into a full-fledged movement for self-government based on the introduction of British constitutionalism within Trinidad. Grounded in the desire to politically integrate the local planter elite, the movement posed a challenge formidable enough to push London into altering the political structure of rule in Trinidad. But these alterations, which were by no means transformative, did not occur until after the intermixing of Spanish and English law had run its course.

achieve more formal political representation. The appearance of maintaining the legal status quo acted as a concession to local elites.

The highly personalized and detached nature of Picton's formal political authority proved excessive even by impoverished imperialist standards. The move to de-personalize Picton's rule came as a way of responding modestly to concerns of planters and other elites without disrupting the status quo. The existing relations of domination largely remained intact. The legal complexity triggered by this response proved more not less disconcerting. Trinidad now required more direct supervision and intervention from London to address the gaps and inconsistencies of legal intermixing. Thus, the official embrace of Spanish law, albeit on a partial and inconsistent basis, led to further intensification of imperial authority.[326] In turn, that authority became more glaringly problematic and contradictory.

The patchy and uneven composition of political authority within nineteenth century Trinidad resulted from and in turn reinforced a considerable degree of imperial administrative experimentation. Throughout the century, Trinidad typified the highly experimental nature of imperial governance which gripped the British Caribbean islands. The Colonial Office in 1812 remarked that "Trinidad is a subject for an anatomy school or rather a poor patient in a country hospital on which all sorts of surgical experiments are tried, to be given up if they fail and to

[326] Millette, *supra* note 292 at 266.

be practised on others if they succeed".[327] At times, however, social forces rendered the island more unruly patient than colonial cadaver.[328]

In an effort to fortify sovereign authority over Trinidad, the imperial state turned to law to mediate (with a view to tempering) the demands of planters. London's rejection of British legal and constitutional order in Trinidad propelled a conflict of laws and political governance. This, in turn, intensified the need for more activist imperialist intervention to sort out the contradictions arising from the legal and political conflict. Much already has been made of ongoing imperialist efforts to confront and divert the political claims and aspirations of the planter elite. In a similar vein, the imperialist state also set about to confront the claims of labourers.

The Struggle Against Slavery

Despite emerging quite late as a society dependent on slaves, Trinidad experienced worker struggles against enslavement. The agitation of slaves within Trinidad as well as in older colonial island societies, along with concerted support from abolitionists, proved too much for the imperial state to bear and it focused attention on mediating anti-slavery demands through the drawn out process of

[327] cited in Brereton, History, *supra* note 59 at 52.

[328] While the colonial political administrative structure functioned to divide and fragment colonial islands, it too had a cumulative effect which, in certain respects, helped to bolster the anti-slavery demands of workers and abolitionists. Opposition mounted in a given colony had much wider implications and effects. Although difficult to trace, slave agitation that occurred in particular parts of the colony benefited the wider anti-slavery cause throughout the entire colony. The point then is not to suggest colonial administration proved advantageous for the oppressed but rather that, inroads were made through the effects of hard-fought struggles in Trinidad and other British colonial settings.

official Emancipation. A series of legislative measures were introduced culminating in the dismantling of official legitimation of slavery within the first half of the nineteenth century. Most notably, in March 1807 the British Parliament outlawed the slave trade with the passing of the Slave Trade Act, which established fines for British ship captains caught transporting slaves. This was followed by English imperial legislation passed in early 1825 which prohibited the transporting of slaves between colonies (save personal domestics) without formal approval from the secretary of state. Since slave proprietors would not immigrate from established colonies without their chattel property, this move effectively stemmed the tide of planter settlement in Trinidad that began with the Cedula of Population four decades earlier.[329]

In mid-1833 the British parliament took the extraordinary step of enacting legislation to abolish slavery. The Abolition Act of June 1833, which came into force the following year, included two critical measures or adjustments designed to induce acquiescence from planters by moderating the impact of legal Emancipation. First, the Apprenticeship system compelled slaves older than six years of age to serve a period of apprenticeship with their former masters. Second, the former proprietors of slaves were granted compensation for their loss of slave property (roughly half of the estimated average value of slaves in the eight years preceding 1830). Both measures, but compensation especially, coaxed planters by offering financial assurances to smooth out the transition to

[329] Brereton, History, *supra* note 59 at 56.

Emancipation. The lump sum payment for loss of slave property provided economic enrichment for planters.

Curtailing anticipated political assertions of the emancipated populace provided justification for imperial statutory intervention.[330] The imposition of apprenticeship added the additional element of labour discipline and control. Former slaves would not be freed from the hierarchical constraints of existing production relations. In this way, the structure of post-emancipatory political authority did not merely resemble political authority prior to Emancipation but was in fact rooted in it. These highly personalized forms of authority stemmed not from the peculiar characteristics of a given leader such as Picton. Nor did adjustments in the composition of leadership after Picton's dreadful reign alter the fundamental dominance of propertied classes over the non-propertied. The tinkering with political authority therefore could barely provide modest or incremental shifts in the composition of ruling relations. Rather, political authority derived from the particularly trenchant form of capitalist relations of production. Plantation owners asserted chattel property rights in workers and by extension commanded authority over them.

Legal Emancipation left unscathed the primacy of private property. In fact, throughout this process of imperial legislative intervention, according to Bolland, the principle of private property was never threatened.[331] More than that, private

[330] Bolland, Politics of Labour, *supra* note 10 at 68.
[331] *Ibid*. at 30-31.

property rights were actually preserved and extended -- even if, as we will later see, planter superiority now would require some reformulation. Thus, legal Emancipation renewed or reinscribed the sanctity of private property as a fundamental pillar of governance in post-Emancipation Trinidad, and the imperial state harnessed and invoked law to encourage continuity between pre- and post-Emancipation forms of labour control.

Political Governance Reform within the Plantation System

The Crown Colony system made Trinidad safe for the sugar plantation system as the latter was the institutional expression through which the former derived meaning.[332] But because it demanded ongoing and constant "on-the-ground" supervision, plantation estates, which embodied colonial and imperial relations, were constitutive of and not external to Trinidad society during the period of enslavement. The negotiation and consolidation of political authority, and the domination over land and labour, occurred within the framework of the sugar plantation.[333] Thus, the plantation system, despite its late development and its

[332] On a formal constitutional basis, Trinidad stood as one form of governance structure, crown colonial rule, and the elected assembly in Barbados served as an opposing form. In Trinidad, the hierarchy of authority flowed top-down from the Colonial Office, which ruled through the governor who in turn ruled through the executive. This approach proved indicative of the other British Caribbean states (save for Barbados and Bahamas, which did not replace the old regime with the crown colony system). That said, the range of difference between these colonial structures was quite narrow. See *Ibid*. at 68 ("when seen as systems of domination, rather than in formal terms, these colonial states have more in common than otherwise because they all sought to contain the latent political threat of the former slaves". Following Emancipation, fear of the formerly enslaved and their kin worsened).

[333] On the mutually reinforcing nature of land and labour domination in the British Caribbean (*Ibid*. at 114) (The civilizing nature of the plantation, which was contingent on the exploitation of labour, was effected through capital and state strategies contingent in a pivotal way on the control of land. "The plantations needed to keep the costs of production low, including labour costs, in order to remain competitive, and so they had to ensure that any alternatives to plantation labour, especially small farming, would yield only the most meagre incomes"). See also Bolland, "Reply

relatively limited existence in Trinidad, emerged out of the tremendously skewed interaction between the propertied elite and slave labourers.

As it represents the institutional expression of capitalism through which the Crown Colony system functioned, the plantation is the means through which foreign and local political authority were consolidated. Notwithstanding disputes over political authority, local masters benefited greatly through the particularized political and economic structure of the plantation. Their close proximity to ongoing affairs provided planters with an important advantage over the otherwise more politically authoritative imperialist elite.[334] Yet, in more generalized terms, the ruling elite as a whole enjoyed decisive political and economic advantages in the highly differentiated social context of colonial Trinidad. These advantages explain the limitations of specific initiatives to reform political governance in Trinidad. Although ultimately credited with de-personalizing and diluting political rule, planter initiatives preserved the continuing exclusion of labourers from governance.

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to William A. Green's 'The Perils of Comparative History'" (1984) 26 Comparative Studies in Society and History 120; Bolland, "Systems of Domination after Slavery: The Control of Land and Labour in the British West Indies after 1838" (1981) 23 Comparative Studies in Society and History 591; George L. Beckford, Persistent Poverty: Underdevelopment in Plantation Economies of the Third World (New York: Oxford University Press, 1972) at 96 ("[T]he basic pattern of adjustment to the abolition of slavery was the same: plantation monopoly of the land to prevent the ex-slaves from being independent of plantation work; legislation by planter-controlled governments to force the ex-slaves to continue working on the plantations; other measures to keep the ex-slaves 'attached' to the plantations; and immigration of new labourers where all else failed"). For competing, albeit problematic, formulations see William A. Green, "The Perils of Comparative History: Belize and the British Sugar Colonies after Slavery" (1984) 26:1 Comparative Studies in Society and History 112 (linking the availability of land to population density).

[334] But the "civilizing agency" of the plantation (Brereton, History, *supra* note 59 at 94) also brought Colonial Office officials closer to the source of colonial wealth: labour. In this respect, and by virtue of the economic and political clout enjoyed by planters, it could be said that a plantation system did emerge in Trinidad.

And yet it is from within the narrow and confining parameters of plantation relations that worker struggle and resistance occurred. From this perspective, despite its noted shortcomings, the planter-led political movement did help to open up possibilities for wider political and economic reforms. As discussed later, workers collectively capitalized on these possibilities in the twentieth century, and through struggle reshaped the scope of labour control in important ways. The claim here is that early capitalist development in Trinidad, organized as it were around the essential legal relation of private property, was contingent on the racialized and racist processes of unfree labour exploitation. This initially became evident with the introduction of the Cedula of Population which, in integrating slave ownership and land tenure, solidified ongoing coordination of labour and land exploitation. The implicit or underlying basis of the 1783 Cedula rested with the sanctity of private property relations. Historical struggle would re-shape the scope of property relations but the extent to which it eroded or undermined such relations forms a pivotal issue within the remaining chapters.

Conclusion

The highly personalized form of political authority in early nineteenth century colonial Trinidad stemmed not merely from the characteristics of a given leader, whether the autocratic Thomas Picton or otherwise, but more profoundly from the particularly acute form of capitalist relations of production in which plantation owners monopolized authority by claiming chattel property rights in people. A

more formal but still brutal state administrative apparatus eventually emerged in which the governing elite, and their corresponding factions within capital, could resolve their differences more expediently. This occurred within the context of political debates about the formalistic and substantive basis for the rule of law in Trinidad.

In view of the sustained reliance upon both Spanish law and the personalized nature of colonial rule under Picton, it might be more apt to view the period in question not so much from the perspective of lawlessness (as certain scholars have suggested) but rather as a product of concerted design which, not in spite of its ambiguities but because of them, strengthened the authority of certain segments of the political elite over others. That said, at a more abstract level any confusion in formal legal rules served to maintain status quo relations of domination irrespective of which segment of the ruling classes held the most sway. And, on this basis, law functioned to facilitate the furtherance of capitalist accumulation. As later chapters illustrate, an analogous legal process is employed to organize and constrain collective worker resistance.

CHAPTER 4

Sugar & Labour Relations in Twentieth Century Trinidad

Introduction

This chapter examines how the nineteenth-century development of political authority through the early colonial state informed the nexus of relations between the state, capital and labour in twentieth-century Trinidad. In engaging with the development of relations of production in Trinidad's sugar industry in this period, the continued aim is to lay the ground work for subsequent chapters to theorize the interactive role of law and the state in imposing legal regulatory controls on sugar workers.

The first half of the twentieth century is marked by definitive changes in the development and organization of both capital and labour in Trinidad. The consolidation and concentration of capital within the Trinidadian sugar sector, which transpired in unprecedented ways, brought about considerable and sometimes dramatic alteration of productive relations. The emergence of giant corporate branch plants primarily occurred as an outcome of planter capitalist's political and economic dominance in the previous century, but also as a response to both shifts in the international sugar market and rising trends within collective worker resistance.

For their part, Trinidadian labourers in sugar and elsewhere developed a collective self-confidence seemingly unmatched to that point in history and in the decades to follow, at least until the emergence of the Independence movement. The transformative moment of the 1930s, in important respects triggered by collective worker resistance just prior to the 1920s, and inspired by the possibilities opened up through the planter-driven political reform movement in the previous century, produced real breakthroughs. Nevertheless, the institutionalization of a specific form of trade unionism, characterized as responsible unionism, also proved debilitating. Rather than undermining labour unfreedom, new regimes of labour control re-inscribed certain core elements of it.

The analysis is divided into two sections. The first maps key historical developments within capital, and the second maps pivotal developments within labour organization. In both sections, the relationship to the development of the state is central.

I. Sugar Capitalists Unite

The intensification of foreign capital involvement in the Trinidad sugar industry marks a distinct and important moment in the development of the plantation economy.[335] The processes of restructuring, amalgamation and consolidation of capital in Trinidad and elsewhere in the region created gigantic sugar estates which served as prototypes for contemporary transnational corporate entities.[336]

[335] Bolland, Politics of Labour, *supra* note 10 at 113.
[336] *Ibid*.; Thomas, *supra* note 5 at 167-168.

In Trinidad's sugar industry these drawn out processes commenced in the middle to late nineteenth century. By the 1860s, Trinidad had already experienced a heavy concentration of foreign corporatized ownership. The aggressive intervention of UK capitalists, particularly via Tate & Lyle, deepened the concentration of foreign capital through a concerted process of consolidation.

Fresh from a merger of sugar and refining family firms in Liverpool and Glasgow and boasting expertise in sugar refining dating back to the previous century, Tate & Lyle set its sights on Caribbean sugar in the mid-1930s.[337] The London-based firm acquired sugar producers in both Trinidad and Jamaica. Driven by the acquisition and merger of Trinidad's second and third leading sugar producing estates (the Caroni and Waterloo estates),[338] Tate & Lyle's creation of Caroni Ltd drove factory modernization while greatly narrowing competition within the industry.

Trinidad's leading producer in this period, Usine St Madeleine factory[339] owned by the St Madeleine Sugar Company, expanded at the end of the First World War, saw the addition of a refinery for the production of granulated sugar in 1923. At the end of the 1940s the St Madeleine strengthened its position by acquiring Reform Estates. In 1948 nine firms operated ten sugar factories. But as the postwar period progressed Tate & Lyle's Caroni Ltd. and the St Madeleine

[337] For an indepth history of the firm see Philippe Chalmin, The Making of A Sugar Giant: Tate and Lyle 1859-1989 (London: Harwood, 1990).
[338] Brereton, History, *supra* note 59 at 213.
[339] Owen Baptiste, Crisis (St. James, Trinidad: Inprint Caribbean, 1976) at 115.

Company emerged as the predominant sugar entities. Tate & Lyle soon dominated the industry in Trinidad through its acquisition of St Madeleine. The acquisition of another estate, Gordon Sugar Estates Ltd. and the extension of the annual production of the Brechin Castle factory, solidified Tate & Lyle's dominance.

A concerted program of factory re-development and expansion commenced in the 1940s. Caroni Ltd introduced a new modern facility at Brechin Castle to replace three outdated factories (Brechin Castle, Caroni and Waterloo).[340] After 1952, the new Brechin Castle facility became responsible for the grinding of all Caroni Ltd sugar cane. These modernization initiatives drove considerable technological change within the industry. Trinidad's plantation economy encountered increased mechanization of sugar cane cultivation processes, the introduction of new types of canes, as well as a change in transportation infrastructure led by the replacement of railways with modern roadways utilized by tractor-drawn trailers for the transport of cane. Caroni Ltd. also introduced new worker housing schemes. These developments made possible a significant expansion in production and exports.[341]

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[340] Brereton, History, *supra* note 59 at 213.

[341] Despite wielding considerable influence within employer circles prior to the solidification of its reign over the industry, Tate & Lyle faced important coordinated resistance from competing sugar producers. All sugar companies, save for Caroni Ltd, formed an employers' organization in January 1944. The newly minted Sugar Manufacturers Federation were pressured into negotiating with the leading sugar workers' union and, in the face of periodic labour stoppages throughout its first year, reached a collective agreement at the outset of 1945. (Kusha Haraksingh, "All Trinidad Sugar and General Workers Trade Union Growth and Development" in A Tribute to Rienzi: A Collection of Speeches Delivered at the Opening of the Rienzi Complex (San Fernando: Battlefront Publications, 1992) at 6)["All Trinidad"]. Despite the Federation's recognition of the All Trinidad union, which lasted until 1948, there was sufficient evidence to the contrary. In 1948,

By the late 1950s, then, British corporate dominance was all but complete. Tate & Lyle had expanded its operation by swallowing up numerous existing sugar producers in Trinidad and beyond (including Canada's Red Path in the 1950s) -- and was well on its way to becoming the world's leading "sweetener" company which it did through strategic investments in the United States in the ensuing two decades. This period proved prosperous for the London-based entity, which enjoyed a stable market and reasonable prices.

The additional acquisition of Woodford Lodge Estates Ltd meant that Caroni Ltd. controlled all the sugar cane harvested land in Trinidad & Tobago excluding that owned by two small entities (Forres Park Ltd and Orange Grove), and by independent farmers. The company owned over 73000 acres, operated four raw sugar factories whose combined grinding capacity was said to rank amongst the largest within the Commonwealth,[342] and manufactured most of the sugar produced in Trinidad.[343] At the time of Independence, Tate & Lyle dominated the

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the Soulbury Commission blamed the Federation for hindering developments in labour relations in the sugar sector. The Commission pointed to the Federation's unwillingness to allow union activity on company property and to provide corporate information related to productivity and profits. Trinidad and Tobago. Report: Commission appointed to Enquire into the Working of the Sugar Industry of Trinidad, 1948. (Port-of-Spain, Trinidad: Government Printing Office, 1963).

[342] Basdeo Panday, "The Trinidad Scene – Role of Sugar in the Economy – Some Historical Facts" in Rev Idris Hamid ed., The World of Sugar Workers. Papers presented at the International Sugar Workers' Conference, San Fernando Trinidad,23-28 July 1977 (Caribbean Ecumenical Programme, 1978) 27 at 29.

[343] Brereton, History, *supra* note 59; Panday, *ibid*. at 29.

industry.[344] By 1962 there were six factories operated by only three firms and four of these were owned by Caroni Ltd.

As in the lead up to Independence, in its aftermath Trinidad's sugar industry underwent changes typical within the Commonwealth. The amalgamation of estates and the concentration of ownership, which began in the nineteenth century were pushed to their logical conclusion in this period.[345] As Bolland remarks: "The economic ties between plantations and the metropole, which were always close, became increasingly the ties that bind, as plantations became mere subsidiaries of metropolitan firms that had branches in more than one colony".[346]

II. Organized Labour Breaks Through

The processes of restructuring and consolidation which drove the twentieth century restructuring of capital also, in turn, contributed momentously to the development of formalized labour organization. As will be explored in the next section with respect to regimes of labour regulation, indentured servitude gave way to "free" market waged labour. Sugar workers broke the remaining bonds of chattel property only to find that, under the new regime of work organization, wages and private contract now explicitly mediated if not dictated the nature of the productive relationship. It is in workers attempts to resist the "tyranny of

[344] Caroni controlled ninety percent of the country's sugar production (Baptiste, *supra* note 339 at 115). Taken together, the oil and sugar sectors accounted for ninety percent of Trinidad's exports with foreign capital dominating, generating well over three-quarters of the taxable corporate revenues (Ron Ramdin, From Chattel Slave to Wage Earner: A History of Trade Unionism in Trinidad and Tobago (London: Martin Brian & O'Keaffe, 1982) at 195).
[345] Brereton, History, *supra* note 59 at 217.
[346] Bolland, Politics of Labour, *supra* note 10 at 105.

wage labour" that collective and concerted assertions of labour power found legal institutional expression.

Collective labour mobilization grew more persistent throughout the century with flash points of labour unrest in 1919, 1934 and 1935 culminating in mass disturbances in 1937. A General Strike in that year marked the most fertile and infectious moment in the history of organized worker activity in Trinidad. Collective worker organization hardened into an institutional form, the trade union, which presented exciting possibilities for assertions of collective power. But just as trade unionism held out hope for mass mobilization and resistance and the democratization of productive and wider social life, it too turned on -- indeed contained -- the authoritarian contradictions of colonial capitalism, a fundamental feature of British Caribbean society to date.[347] It is upon these contradictions that the political aspirations of the working class were constructed. Accordingly, certain segments of the working-class elite made claims for more inclusive political authority (at least more inclusive of the interests of labour elite) and to build personal and national wealth through strategic alignments with foreign capitalists -- a commitment which, from its inception, the post-colonial state internalized and to this day remains indebted to.

The particular form of trade unionism which emerged lent itself to internal fragmentation and even at times to co-optation by capitalist forces within the state. Again political elites, including organized labour leaders, invoked ethnic

[347] See *ibid.*

distinctions to solicit support from certain segments of the working class deemed to bear the proper ethnic attributes. Ethnicity in twentieth century Trinidad, which its peddlers propogated as a means to secure political authority sometimes igniting bitter confrontation and violence and always encouraging fabricated divisions, continued to be mediated by racialized constructions of difference.[348] This tended to divide the working class into African and Indian enclaves and the division of labour into corresponding urban and rural segments.

Organized workers transcended the ethnic fragmentation at historic moments. In so doing, they managed to disrupt the persistent and acute disparities within Trinidadian productive relations. In these moments the state was forced to alter the form or intensity of its intervention. Whereas the next chapters explicitly examine the role of law as the state's most commanding form of intervention and mediation in productive relations, the remainder of this chapter unpacks the key historical developments in labour organization.

From Indentureship to 'Free' Wage Labour

The twentieth century began with indentureship as the dominant regime of labour regulation in Trinidad. Although the use of enslaved labour ceased formally in the 1830s, the transition from slavery to indentureship occurred along contested lines. While indentureship shed some of the most egregious elements of the slave

[348] Allahar captures these sentiments in his reference to "the emergence of politically skilled, petty-bourgeois ethnic entrepreneurs who use appeals to race and ethnic solidarity as distractions". Allahar, "Situating Ethnic Nationalism in the Caribbean" in Allahar ed., Ethnicity, Class, and Nationalism: Caribbean and Extra-Caribbean Dimensions (Toronto: Lexington Books, 2005) 1 at 21.

labour regime, it could not escape the structural conditions imposed by its predecessor.[349] Further, from the perspective of estate owners, the introduction of Indian workers over these years offered a countervailing force to freed slaves.[350] The encouragement of labour market competition disciplined formerly enslaved workers, shaping both their working conditions as well as the manner in which indentured workers were incorporated.

Legal Emancipation renewed the longstanding dilemma of labour supply which, as the previous chapter noted, was resolved initially with the large-scale influx of Africans primarily through the Cedula of Population. The establishment of relations of apprenticeship resolved the dilemma, if only temporarily, but plantation owners were soon in search of a new source of steady and reliable labour. Thus, the introduction of Indian indentured workers from the (late) 1830s onwards proved more than satisfactory from the perspective of planters.

All told, Trinidad & Tobago received at least a third of the 500,000 Indian indentured labourers brought to the Caribbean in the late nineteenth and early twentieth centuries.[351] At the same time, most former slaves exercised their newfound legal "freedom" by trekking to Port of Spain in search of paid work.

[349] Make no mistake, the indentureship regime was backed by brutal physical coercion coordinated through the Trinidadian state. That coercion became evident at key moments, most notably when the state moved to repress outward cultural and religious expression of Indian workers during the Hosein festival of 1884. Having passed an ordinance to restrict Carnival (the festival of poor Creoles of African descent), the state followed with an ordinance regulating processions in the Hosein festival. When festivities went ahead, police fired on the processions wounding over a hundred people and killing at least sixteen.

[350] Sahadeo Basdeo, Labour Organization and Labour Reform in Trinidad, 1919-1939 (San Juan: Lexicon Trinidad, 2003) at 125.

[351] Bolland, Politics of Labour, *supra* note 10 at 10.

Those freed slaves who did not flee plantations were ultimately displaced by the newly introduced labour force. At the peak of Indentureship in the mid-1870s, indentured labourers constituted ninety percent of the pool of sugar plantation labour.[352] The introduction of these workers proved momentous perhaps even definitive in the formative years of trade unionism which emerged as an outcome of concerted efforts aimed at collective worker organization.

Trade Unionism As Institutional Expression

Considerable debate surrounds the relevance of emergent trade unionism in early twentieth century productive and wider social relations in the Caribbean. Sociologist Susan Craig, for instance, argues that "... the establishment of trade unions and collective bargaining was the express design of the Colonial Office and the major capitalist interests in the Caribbean to stifle the militancy of the workers...".[353] Other critical commentators reject this contention as it slots labour under the full and uncontested authority of capital, taking what amounts to an overly instrumentalist account of productive relations.

Sociologist Lawrence Nurse contests the claim that, as Caribbean countries lacked a meaningful industrial base, unions emerged in direct response to industrialization. Rather in Nurse's view, unionization arose as an expression of

[352] Kusha Haraksingh, Control and Resistance, *supra* note 208 at 2-3.
[353] Susan Craig, "'Germs of an Idea'" Afterword in A. Lewis, Labour in the West Indies: The Birth of a Workers' Movement (London & Port-of-Spain: New Beacon Books, 1977) at 63.

the political aspirations of the oppressed.[354] Borrowing Manley's words, Nurse asserts that the trade union movement was composed of those "who felt spiritually enslaved and were first of all in search of a sense of personal freedom as workers within their society. This is not an industrial response. It is not essentially a trade union response. Rather, it is a political response happening to express itself in trade union terms".[355]

If articulations such as Craiggs appear overly instrumentalist, Nurse's explanation by way of Manley succumbs to a similarly one-sided view in that it attributes the reformist political agenda of a few well-positioned elites to the whole of the working class. In this way, it undermines both the human agency of non-elite workers and within the emergent institutional power structures, the dominance of elites in leadership capacities within the organized labour movement.

In contrast, trade unions emerged as the institutional expression of collective worker organization. Although rank-and-filers and working class elites alike found opportunities for expression of their interests and claims, they did so often for distinct reasons. This account, therefore, rejects the tendency to regard the working class as a unified whole which embraces a shared vision of how to remake the world. Further, trade unions were not independent of the hierarchical and contradictory nature of colonial capitalist relations but in fact deeply

[354] Lawrence Nurse, "Organized Labour In the Commonwealth Caribbean" in Christine Barrow & Rhoda Reddock eds., Caribbean Sociology: Introductory Readings (Kingston: Ian Randle, 2001) 736 at 743.
[355] *Ibid*.

embedded within it. Just as these institutions represented a collective response to the internal turmoil of colonized societies, they arose with no special immunity from it.[356]

Applying a more nuanced perspective requires revisiting three longstanding assumptions which inform the dominant historical narrative on unionization. First, the history of organized labour did not begin with the emergence and legalization of trade union activity. Collective resistance is an endemic feature of the human condition and therefore the collective assertion of workers' labour power occurred during the period of enslavement. This fact moves against the ahistorical idea of the inevitability of trade unionism or of any particular form of trade union activity. In fact, as we will see, although Trinidad's first trade union organization emerged in the late 1890s, collective worker resistance occurred until at least 1919 without the direction of formalized trade unions. Even then, trade union leadership and hierarchy remained a contentious issue on the agenda of workers mounting resistance against status quo relations in work. Worker resistance, at times, was directed toward not only employers but select labour leaders as well. Further, trade unionism may rise or fall but the collective

[356] The characterization of trade unions as managers of discontent of the working class is sometimes perceived to encapsulate this critique. Yet, as I argue, the idea does not offer enough subtlety when applied in this specific context. Indeed it would be far too cavalier to characterize early twentieth century Caribbean trade unionism in this way. After all, any given institutionalized response of organized workers necessarily develops within the systemic parameters of capitalist relations and so to a certain extent should be expected to bear the markings and scars of conflict within that system of production. Despite deep contradictions, the establishment of trade unionism represents an important achievement in the historical struggle of Caribbean organized labour although, as the next chapter suggests, putting aside that grand achievement one must be highly critical of the authoritarian structure and the (partial) unwillingness to confront the root causes of labour oppression. The critical challenge is to reach into the nuances of trade unionism to appreciate these limits and to identify how workers organized to transcend the constraints of capitalist relations of production.

assertion of worker power is a distinct and irreducible feature of human development.[357]

Second, throughout much of the twentieth century the rising elite within the local working class represented a buffer which, by virtue of its location between capitalist owners and the critical mass of the working class, could just as soon mount resistance to the ruling elite as reinforce that ruling order. Certain segments of the elite sided with foreign capital in its efforts to further land and labour exploitation in the island. A contingent committed to anti-imperialist, anti-racist and anti-capitalist politics did however reject this direction.[358]

Third, and by extension, the early twentieth century development of trade unionism in Trinidad and the wider British Caribbean points to some troubling discrepancies between the commitments of trade union leadership and a sizeable segment of the working class. A divergence of commitments cut through the emergent labour movement, often and at crucial moments demonstrated by the curtailment of rank-and-file worker activity by union leaders.[359] Despite the

[357] The dissertation returns to this point in the final analysis in the discussion of worker solidarity and mutuality.

[358] For sustained critical engagement with the intersection of ethnicity and class within Caribbean independence movements see Allahar's trilogy Allahar *supra* note 348; Allahar, "Black Power and Black Nationalism: Lessons from the United States for the Caribbean?" in Allahar ed., Ethnicity, Class, and Nationalism: Caribbean and Extra-Caribbean Dimensions (Toronto: Lexington Books, 2005) 121; Allahar, "Class, 'Race', and Ethnic Nationalism in Trinidad" in Allahar ed., Ethnicity, Class, and Nationalism: Caribbean and Extra-Caribbean Dimensions (Toronto: Lexington Books, 2005) 227.

[359] Most in the leadership ranks took their cue as much from their own narrow constructions of class interests which turned on highly problematic conceptions of nationalism, as from the reformist political sensibilities of core British trade unionists turned state officials like Walter Citrine and Sidney Webb, even to the point of receiving formal indoctrination in the dominant labourist ideology of Fabianism where responsible unionism became the rallying cry. Some of the

conservative and stifling orthodoxy perpetuated through trade unions, at crucial times the actions of rank-and-file trade unionists proved far more dynamic, concerted and proactive. It was these collective assertions which, in breaking the stranglehold of elitist reformism, provided opportunities for organized worker gains. Armed with these revised assumptions, we can revisit the historical developments within labour organization in the twentieth century.

Early Trade Unionism

Working class organization intensified in the British Caribbean in the late 1890s and extended to the beginning of World War I.[360] In Trinidad, concerted collective organization of labour occurred during this early period with the emergence of the Trinidad Workingmen's Association (TWA). Formed around the late 1890s, the TWA enjoyed broad-based support among skilled workers, but also appealed to a broader spectrum of urban black workers, particularly those employed on the railway and at the waterfront.[361] Although similar in

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complexity of the period lies in sorting through the impact of British trade unionists in the historical development of the orthodoxy of Trinidad (and wider Caribbean) trade unionism. Indeed, a comparative study of responsible unionism throughout the British Commonwealth is in order. Although responsible unionism represented the political agenda of the British TUC, it meshed with the political sensibilities and aspirations of political and labour elites in the British Caribbean. Yet, it also captured the political imagination of large swaths of the rank and file. A study which came to grips with these phenomena would assist in improving our socio-legal understanding of capitalist legal transplantation or how notions and conceptions of law travel across space and time.

[360] The earliest recorded efforts occur at the turn of the century with Jamaican workers in the skilled trades, who initiated a number of trade unions and took strike action against their employers, and with Guyanese labourers, especially in Georgetown who organized defiantly but failed to sustain organization in the face of employer repression. In 1905, widespread strikes and disturbances occurred in Guyana, the most serious in the region prior to the First World War. Richard Hart, "Origin and Development of the Working Class in the English-Speaking Caribbean Area: 1897-1937" in Malcolm Cross & Gad J. Heuman eds., Labour in the Caribbean: From Emancipation to Independence (Basingstoke: Macmillan, 1988) 43; Bolland, Politics of Labour, *supra* note 10 at 184.

[361] Hart, *ibid*. at 44.

composition to the early Jamaican trade unions, the TWA promoted a conception of trade unionism that encompassed reformist political organization,[362] a fact to which the TWA may owe its early appeal as well as its eventual decline. Having actively engaged in these pursuits until WWI, the TWA all but disappeared -- following a division in its leadership ranks into two camps -- then re-emerged as an effective activist force in the early 1920s only to have, by the end of the decade, its efficacy wane yet again.[363]

Collective labour organization surged as soldiers returning from war "swelled the ranks of the discontented".[364] Having encountered explicit racial discrimination overseas, a fact which during the war generated discontent among the working population back home, the returning soldiers injected a more militant commitment to collective resistance into the activities of organized labour. The collective discontent grew more intense as wages stagnated and the cost of popular imported items rose considerably which was furthered by a decline in the quantities of imports. Against this backdrop, workers engaged in more overt collective struggle. The first manifestations occurred with strike activity in February 1917 in the oilfields at Fyzabad and Point Fortin. Employer intimidation pressured

[362] *Ibid*.; Bolland, Politics of Labour, *supra* note 10 at 192.
[363] Hart, *ibid*. at 45. The TWA's decline is in no small measure attributable to its inability to gain a foothold in the agricultural sector dominated by indentured Indian workers. Trade unionism emerged within the context of an entrenched system of indentureship. Indian indentureship provided the most obvious example of the divergence elites and working class rank-and-file in the development of the institutions of trade unions. Indentureship proved a momentous obstacle to the conservative and nationalistic agenda of those who arose to lead the trade union movement and their supporters within the rank and file. The TWA leadership not only rejected the indentureship scheme but also explicitly denied its membership shared common ground with Indian labourers in the sugar fields.
[364] Hart, *supra* note 360 at 50.

these workers back to work[365] but in the same month asphalt workers at the Pitch Lake engaged in their own disruptions. Armed troops were deployed to crush the discontent at the Pitch Lake and a serious fire caused considerable property destruction.

Although efforts were made to revive the TWA during this period, the TWA leadership played no known role in organizing the oilfield and pitch lake disruptions. TWA leadership did wield enough support by May 1919 to negotiate on behalf of asphalt workers and they secured significant gains in wages and working conditions, including employer promises of improved living accommodations suitable for small-plot agriculture.[366] That said, the TWA remained of largely marginal importance to workers throughout much of the next two decades.

The TWA enjoyed a resurgence in the lead up to and following World War II. This was in the face of growing marginalization from more militant activists within and without the worker association. A number of important militant worker movements arose to contest the reformist political tendencies of the TWA under its new leader Captain Cipriani. Dismissing internal criticisms, Cipriani opted for an agenda of party politics devoted to the promotion of resistance

[365] *Ibid*. at 53.
[366] The stevedores strike in late 1919 also generated great upheaval during this period. See e.g. W. P. Elkins, "Black Power in the British West Indies: The Trinidad Longshoremen's Strike of 1919" (1969) 33:1 Science and Society 71.

through conventional legal and constitutional channels.[367] Under his reign, and with the blessing of leaders in the British Labour Movement following regular consultation,[368] the TWA withdrew its registration under Trinidad's Companies Ordinance and refused registration as a trade union. The Cipriani-led Trinidad Labour Party (TLP) emerged in August 1934 as a replacement for the TWA. Trinidad now had its first political party.[369]

Labour radicalism emerged in response to that alienation through organizations such as the National Unemployed Movement (NUM), the Trinidad Citizens League and the Negro Welfare Cultural and Social Association. The NUM, in particular, forged new ground for labour militancy advocating relief work for unemployed workers and rent controls, and agitating for social transformation on the streets.[370] The latent power of the NUM rested in its capacity to unify formerly indentured workers from India with the urban workforce largely of African descent. From 1933 and onwards, the NUM led hunger marches, most notably in June of that year to the Red House in Port of Spain (the seat of colonial government); all of these in defiance of Cipriani's wishes. Other groups followed suit soon after.

The marches marked the intensification of collective worker agitation within the British Caribbean. In 1934, collective labour disturbances swept through

[367] Bolland, On the March, *supra* note 209 at 83.
[368] Basdeo, *supra* note 350 at 118-119.
[369] Like its emergent trade unions, Trinidad's political parties could not escape the authoritarian elements of colonialism. See Bolland, Politics of Labour, *supra* note 10 .
[370] Bolland, On the March, *supra* note 209 at 84.

Trinidad, Belize and Guyana. The next year St Kitts ignited, as too did the sugar plantations of Guyana and the wharves of Jamaica.[371] The disturbances in Trinidad, which occurred throughout July, began with nearly a thousand sugar workers at the Brechin Castle and Esperanza estates in the central sugar belt.[372] Following violent confrontation with the police and several arrests, fifteen thousand workers engaged in demonstrations on the estates of Couva, Chaguanas, Tunapuna and San Fernando. The sugar belt had erupted. On 20 July 1934, sugar workers and NUM supporters coordinated a hunger march to travel from the Caroni region to Port of Spain, but the police force intervened halting the demonstration. "When the workers ask for bread", NUM co-founder and organizer Elma Francois would later put it, "they get bullets and jail-sentences".

The concerted and collective agitation of workers generated interest in more formalized structures of decision-making and organization. Trinidadian trade unions initially emerged out of the agitation of workers in the sugar and oil industries, and in the urban core -- particularly at the docks and in public works.[373] Hardly any of the interest in trade unionism could be attributed to the post-war resurgence and agitation of the TWA. Although it held sway within a segment of

[371] Hart, *supra* note 360 at 65-66; Bolland, Politics of Labour *supra* note 10 .
[372] Bolland, On the March, *supra* note 209 at 85.
[373] By the 1930s, the oil sector, which began at the turn of the century, had come to dominate exports by the 1930s totaling sixty percent of total value compared to thirty-three percent for sugar, rum, molasses and cocoa. Due to its capital-intensive nature, however, far more people remained employed in agriculture. The sugar and cocoa sectors employed nearly seventy thousand workers , whereas oilemployed less than nine thousand. Bolland On the March, *supra* note 209 at 82-83 ("From the point of view of labour, therefore, plantation agriculture remained the dominant sector, but from the point of view of imperial officials the oil industry was critical, especially in terms of defence policy. The fact that Trinidad had become the British empire's largest producer of oil 'was an important determinant of imperial policy towards the labour disturbances").

the urban and oil belt work force, albeit in declining fashion especially after 1935,[374] the TWA failed to generate momentum with sugar workers. This became most apparent during the 1934 disturbances as sugar workers refused to consult with the TWA, opting instead for a diffuse and anonymous leadership. TWA head Captain Cipriani even paid a visit to workers in the sugar belt to request they return to work in exchange for his assistance in negotiating with employers and the governor. The workers rejected the offer.[375]

Through this concerted collective struggle sugar workers opened space for trade unionism to emerge -- and not the other way around. That said, securing a trade union was not the explicit foremost objective of workers. The central and immediate motivating impulse behind the 1934 disturbances rested with unemployment, which, having grown since the Great Depression, reached dismal levels by June of 1934 through the onset of extraordinary drought.[376] Coupled with the demand for work and food, workers' distain for managerial policies toward disciplining, intensification of work and withholding pay, drove the initial disturbances.

[374] A series of marches and strikes began in the oil belt in early 1935 and spread to the harbour, water-supply schemes and the Quare Dam project culminating in demonstrations by the urban unemployed. These labour disturbances, particularly a hunger march organized with the assistance of Trinidad Labour Party executive Tubal Uriah Buzz Butler, were objected to by Cipriani, illustrating the disconnect between workers and union brass. This also solidified the political decline of the latter. Butler would leave the political party to co-found the Trinidad Citizens League and head the mass disturbances of 1937.
[375] Basdeo, *supra* note 350 at 127-128.
[376] *Ibid*. at 122-123.

Following the 1936 registration of the Amalgamated Building and Wood-workers Union, the All Trinidad Sugar Estates and Factory Workers' Trade Union (ATSEFWU), headquartered in San Fernando, registered in late 1937. The ATSEFWU ranked amongst the first registered trade unions under Trinidad's 1932 ordinance. Unlike many of its predecessors, however, the ATSEFWU failed to enlist the great majority of workers in the sector. Early on, membership in the ATSEFWU totaled two thousand dues-paying members -- a mere six percent of the labour force in sugar.[377] The ATSEFWU owed much of its earliest organizing troubles to a number of factors including the industry's wide geographic distribution; the diversity of experiences between factory, field, skilled, and unskilled workers; and dismal literacy levels amongst workers.[378]

Organizational prospects improved only moderately when leadership of the trade union passed from oilfields mechanic Macdonald Moses to Adrian Cola Rienzi (formerly Krishna Deonarine) the widely popular Dublin-trained lawyer who, having served as an activist with the TWA and later the TLP, became disillusioned with Cipriani's reformist politics and departed to form the Citizens Welfare League (then the Trinidad Citizens League) in 1935. Internal leadership struggles constrained the development of the ATSEFWU. A remarkably destructive battle between competing factions ensued with Rienzi eventually founding the All Trinidad Sugar and General Workers' Trade Union (All Trinidad).

[377] Haraksingh, All Trinidad, *supra* note 341 at 5.
[378] *Ibid*. at 4.

The General Strike of 1937

Despite the relatively strong profitability and stability of companies in Trinidad's sugar and oil sectors,[379] workers suffered considerable economic difficulties. Working conditions persisted in a deplorable state throughout this period and in the latter stages of 1936. In agriculture, workers were subjected to long, grueling work on sugar estates with little prospect for wage increases or general improvement. Yet, companies in both sectors paid dividends to shareholders, at particularly high rates in oil. Sugar corporations received the added benefit of British and colonial subsidies. A great and growing disparity existed between owners and those who toiled. Workers began calling for action to press their demands. On several occasions labour leader Uriah Butler wrote to oil employers appealing for wage increases. When these appeals went unanswered, oil workers turned to direct action. Under the direction of Butler, workers at the Forest Reserve OilField initiated a sit-down strike on June 19th. The labour disruption turned violent and deadly when police intervened to arrest Butler on the trumped up charges of using violent language at worker meetings. Two police officers were killed during the altercation. Butler eluded his captors and remained "on the lam" for some three months. The oil belt soon became the epicentre of labour disruptions that, over the course of a couple of days, swept across the island country. The general strike knocked out sugar and cocoa production, as well as work at the docks, on the railway, and in retail stores.

[379] For a discussion see Basdeo, *supra* note 350 at 173-174.

The mass disruptions persisted for several days before a state of emergency was imposed. An imperial force of over two thousand, including police officers and soldiers from two imperial war ships, were called upon to restore order. That restoration came at great price: fourteen workers were shot dead, fifty-nine wounded and hundreds arrested.[380] But Trinidad's general strike triggered direct action throughout the British Caribbean. Over the course of a year, workers from British Guiana, Barbados, Jamaica, St Kitts, St Vincent and St Lucia laid down their tools.

The State Re-Asserts Itself

The character of state intervention in labour relations had shifted; state mediation turned on violent confrontation and the threat of it, through the mobilization of military and police forces. The open willingness to use physical violence and intimidation against workers demonstrated the depth of the late colonial state's commitment to disrupt the rising solidarity of rural and urban workers. This marked the beginning of a period of state-driven escalation which, as we will see, extended well into the historic moment of national independence. Later on in the mid-1960s, the post-colonial state under the direction of Eric Williams would again intervene in an explicit and decisive way to disrupt broad-based solidarity. What becomes evident is that the Trinidad state's investment in fostering ethnic division to overcome class solidarity is a persistent feature of social relations over the course of its pre and post-colonial history. Just as consciousness about class struggle and solidarity emerges broadly amongst workers, so too does the state's

[380] Basdeo, *supra* note 350 at 176.

commitment to perpetuating ethnic distinctions along racialized lines to undermine and fragment the mounting momentum of the working class.

The prevalence and persistence of direct action by workers defined the decade of the 1930s. Organized workers experienced heavy-handed intervention from the state to put down disturbances in 1934 and 1935 and again during the general strike of 1937. In this period the state also interjected with the appointment of Commissions of Inquiry. Stacked almost entirely in favour of corporate sugar interests, the Commissions promised a less confrontational and thus more palatable means to defuse disaffection.[381] All the while, the Commissions were intended to "smooth over" existing hierarchical work relations.[382]

[381] *Ibid*. at 129. One such Commission of Inquiry, the Forster Commission was established in the aftermath of the general strike to identify the causes of the unrest. Rather than reinforcing the status quo as expected, the Forster Commission's report actually represented a marked shift in the outlook of the ruling elite. The 1937 disturbances led certain segments of the ruling elite within the state and some employers to acquiesce to the calls for state-mediated settlement of industrial disputes. The Forster report, then, reflected the growing segmentation of the governing elite which occurred as a consequence of the real and ongoing protestations of organized workers. Worker agitation imposed enormous pressures on colonial state officials and a segment of that elite pushed to become more conciliatory, if not concessionary, towards organized labour. However, conciliation (even in the highly legalistic parameters in which it was defined) was not a tactic singularly embraced throughout the entire governing elite. The nation-wide unrest may have softened the ruling class at the margins, but it hardened it at the core. Split into two competing camps, the colonial state's official response reflected not merely conciliation but even more forcefully the sentiments and orthodoxy of the more dominant oil and sugar interests. Oil and sugar capitalists enjoyed the political benefits of the marriage of imperialist pursuits, past and present. They carried great clout at Downing Street because of, in the case of the former, the mounting importance of oil to Allied wartime efforts and, for the latter, because of the historical -- albeit declining -- importance of sugar to the economic vitality of and consumption patterns within the British metropole. Oil and sugar interests fostered strategic political ties to bind together the imperialist projects proving that shifts in work organization notwithstanding, the spectres of the plantation system continued to haunt labour relations well into the twentieth century. See Trinidad and Tobago Disturbances, 1937, Report of the Commission (Forster Report) CMD. 5641, (London: H.M.S.O., 1938).

[382] Cipriani represented the lone voice of the working class on the first Commission. Of course by this time, as the direction of the 1934 disturbances revealed, his was a voice of declining relevance to disaffected workers.

The legacy of the plantation system persisted in at least two respects. First, the rigid hierarchies of class interests remained largely intact albeit with "new oil" joining "old sugar" at the pinnacle. Second, the physical violence and intimidation which underwrote systemic plantation relations morphed into a less ignominious but still very much real and present form. Acting through their sectoral associations, and with the support of the local chamber of commerce, oil and sugar representatives exerted their own pressure on political officials to remedy labour unrest with repressive and confrontational measures.[383] They forced the strategic deployment of imperial troops throughout Trinidad which, by the middle of November of 1937, became a fixture in the state's attempts to crush labour militancy.

In the aftermath of the Forster report, the state's approach gradually shifted to incorporate the securing of workplace peace and order through responsible governance. Organized worker activity continued to harden the institutional structure of trade unions with direct interventions from British trade unionists such as Walter Citrine in support of a "more responsible" organized labour. Direct action remained a tactic within organized labour's agenda.[384] Increasingly,

[383] These segments ultimately felt trade union organization provided a better guarantee for industrial peace and order (Basdeo, *supra* note 350 at 186-187). When the governor (Fletcher) called on sugar and oil interests to "place the satisfactory wage and working and living conditions of their employees ... before big dividends" (cited in *ibid*. at 192), he was recalled to London and subsequently relieved of his duties. This occurred in the face of two notable facts: the appearance that the recall was the result of the decision to introduce imperial troops; and the Forster commission report vindicating much of his perspective on the general strike.

[384] For instance, a strike of all factory workers and many field workers occurred early in 1938. W. Arthur Lewis, Labour in the West Indies: The Birth of A Worker's Movement (London: New Beacon Books, 1977) at 31.

however, the more militant worker activists faced marginalization within the ranks of the labour movement.

The war period proved uneventful in terms of industrial conflict. The lull achieved within labour relations during the first-half of the 1940s derived from the imperatives of the war effort. Two factors provide a partial explanation for the relative calm within work relations. First, Trinidad's oilfields became deeply integrated into the allied war agenda. The conversion of British war ships from coal to oil powered occurred with the expectation that oil from Trinidad would fuel Britain's naval fleet. This growing dependence on oil meant the imperial state would not tolerate mass labour resistance in the oilfields. Second, the strong rhetoric of the importance of wartime production, fuelled by colonial officials and labour leaders such as Adrian Cola Rienzi, drove workers to "fight fascism", not bosses. Workers thus tempered their demands to avoid interfering with production.

But the predominant narrative that it was wartime production demands that consumed workers and capitalists alike during this period, actually gives way to a more robust explanation for the industrial calm of the early 1940s. In fact, the employment effects of the construction of American military bases in Trinidad between 1941 and 1944 is a more likely cause. At their peak, the military bases employed 30 000 workers.[385] Despite wartime guaranteed prices and large quotas with Britain, the sugar industry suffered a disastrous decline in production as

[385] Brereton, *supra* note 59 at 212.

thousands of sugar workers and farmers deserted the industry to seek jobs at the military installations. The depletion of agricultural labour with the mass exodus to the American bases drove down the profile of sugar workers.

At the same time, the centrality of oil production in the allied war agenda elevated the importance and profile of oil workers within organized labour. These shifts profoundly impacted the direction of trade unionism in the aftermath of the war. In particular, the types of claims advanced by organized labour changed. This becomes important as political leadership emerges from the black elite to govern. As the demands of workers increasingly were translated into legalistic demands for recognition, the political and labour elite adopted notions of responsible unionism. By the mid-1940s, the labour movement momentum of 1937 had all but dissipated.

A 1946 waterfront strike shattered the relative industrial peace that had settled during wartime. The strike action of dock workers appeared to fan the flames of a broader worker unease. The fire of labour militancy re-ignited in the smouldering oilfields of the south in December and within a month had also engulfed urban public works. The Perseverance Estate of Caroni Ltd caught fire in early May 1947 as fourteen hundred field labourers collectively withdrew their labour power for several weeks.[386]

[386] Ramdin, *supra* note 344 at 156.

Workers continued to express discontent with working and living conditions, but increasingly their grievances became framed by the idea of, and demand for, employer recognition of a given trade union as the legitimate bargaining representative of workers. Union recognition constituted a key front in the battle waged by workers against employers and represented a crucial demand of trade union officials in the post-war period. In the battles fought over recognition, employers often advanced claims about the irresponsibility of rank and file workers. The lack of union recognition also destabilized internal union leadership and thus an offshoot of these recognition battles was found in both intra- and inter- union contestation and animus. This was most evident in the sugar sector, which simmered throughout this period and boiled over at particular moments, all fuelled through the stubborn refusal of employers to legitimize union representation. In the course of these struggles, worker collective worker action became diluted by more formal efforts to achieve recognition.

The Sugar Manufacturers Federation (SMF) emerged in 1944 to co-ordinate the agenda of five sugar estate owners, and to lead the charge against trade union organization and recognition.[387] Even when unions did manage to break through the barriers to recognition, the SMF coordinated bargaining on behalf of employers. Faced with mounting pressure to establish a formal grievance

[387] *Ibid*. at 177. Notably absent in this Federation was Caroni Ltd, which points to the intra-class conflicts which existed not only in labour but in capital as well.

procedure that included a role for a trade union officer,[388] the SMF made overtures as though they were considering the option, but continued to disregard the appeals of the unions for either limited recognition or bargaining status. The SMF attacked the sugar unions as irresponsible in their willingness to use the strike weapon, as illegitimate by virtue of having won only limited acceptance from workers, and as unnecessary since the industry already included institutional supports such as a Wages Council.[389]

Despite SMF attempts to undermine trade union influence, the All Trinidad union achieved important victories within the sugar sector in the mid 1940s. Strategically, trade unionists in sugar capitalized on the strong demand for rural labour brought on by the draining off of labour to the American naval base construction project. For at least three successive years at war's end, the Federation granted recognition to the All Trinidad union. Consecutive agreements were reached in January 1945, April 1946 and March 1947 each for twelve-month terms renewable or revisable upon completion. Workers achieved favourable outcomes under the first and subsequent agreements securing a fifteen-percent wage improvement, an eight-hour day with set overtime rates, seven paid annual holiday leave days (subject to certain conditions), a weekly rest day (Sundays) and public holidays, and a wartime productivity bonus of fifteen cents

[388] *Ibid*. at 157 (noting that after a "reasonable" period had elapsed with continued evidence of "responsibility", then full recognition should be granted with a succeeding collective contract built around it).
[389] *Ibid*. at 157-158. The existence of Wages Council in operation in the sugar sector rationalized for employers the lack of a need for trade unions. Employers argued that there was full and free access for workers to approach management on an individual basis.

per task or twenty cents per diem.[390] The Federation also instituted the Joint Consultative Committee to resolve employment disputes between employers and factory or field workers.

Internal Union Disputes

Despite these relative gains, the period from the late 1930s to the early 1960s was marred by inter-union disputes and conflict.[391] The disputes reached a climax in the 1950s. In the sugar industry, inter-union animus represented a significant obstacle to trade union growth and worker solidarity. Notwithstanding the difficulties with organizing sugar workers, unions were hierarchically organized with leaders unwilling to yield any authority.[392] In an attempt to capitalize on the relative successes of the All Trinidad union, political and trade union officials swarmed the sugar fields. Animosity between competing factions escalated.[393]

In 1952 a total of six trade unions claimed representation over the country's sugar workers. That said, "the great majority" of these workers, perhaps as many as twenty-one thousand, did not claim formal membership in any union.[394] By the

[390] *Ibid*. at 154; Haraksingh, All Trinidad, *supra* note 341.
[391] Ramdin, *ibid*. at 167.
[392] *Ibid*. at 155.
[393] Haraksingh, All Trinidad, *supra* note 341 at 7. See also William H. Knowles, Trade Union Development and Industrial Relations in the British West Indies (Berkeley: University of California Press, 1959) at 84; Robert J. Alexander, A History of Organized Labor in the English-Speaking West Indies (Westport: Greenwood, 2004) at 312-313; Ramdin, *supra* note 344 at 167-168. In addition to the All Trinidad union, the Federated Workers Union and the British Colonial Citizens' Taxpayers and All-Workers Union each claimed to have organized specific sugar estates. These rivalries stabilized eventually and, when the dust had settled in 1953, the All Trinidad union formed a federation with a third union and the following year both the Federated Workers Union and the British Colonial Citizens' Taxpayers and All-Workers Union agreed to bow out of organizing sugar estates.
[394] Alexander, *ibid*. at 312-313.

end of 1954 only two sugar sector trade unions remained, the All Trinidad union representing workers in the South and the Sugar Industry Labour Union (SILU), which held sway in the North. The contentious co-existence of the two unions lasted until April 1956 when a merger occurred.[395]

Looking across all industries more broadly, at the height of labour agitation in 1937 five registered trade unions existed in Trinidad.[396] Two decades later sixty seven trade unions with a total membership of fifty thousand workers existed.[397] Although the number of registered unions fell to thirty six in 1960, the total number of members rose by three thousand. Organized labour had made considerable inroads in membership recruitment since the late 1930s. Trade unionists capitalized on a sustained period of corporate profits stretching from wartime and extending through the 1950s with the introduction of guaranteed prices and quotas through the Commonwealth Sugar Agreement. The intensification of industrialized production also stimulated union membership gains.

Yet, as demonstrated, trade unions were plagued with internal conflicts and rivalries which ultimately stifled membership potential and cohesion of the movement as a whole. On sugar estates much of the growth in union affiliation

[395] Haraksingh, All Trinidad, *supra* note 341 at 7.
[396] Ramdin, *supra* note 344 at 184.
[397] In October 1955, there was a total of 72 unions in T&T with a total membership of 42000 -- the membership of 21 unions were not available. The total membership of the 60 workers' unions was 41,118 while the 12 employers' unions had a membership of 882. In 1958, the number of registered workers unions and associations was 64 a reduction of 3 from the previous year.

occurred only after the internal conflicts had subsided. In this respect, intervention from the British Trades Union Congress (TUC) in the mid-1950s provided considerable financial assistance and expertise which enabled the All Trinidad union to, by 1957, reach four thousand members.[398] The presence of British trade union representative Martin Pounder in Trinidad injected greater confidence into the activities of local trade unionists who, having secured recognition from sugar estate owners in February 1957, gained much-needed financial security through a check-off of union dues.

Pounder's mandate fit within the wider British TUC effort aimed at leading the All Trinidad union down the path of "responsibility",[399] which sugar manufacturers did their best to encourage.[400] Notwithstanding the specific successes of February 1957, the All Trinidad union assumed a defensive posture in its dealings with the SMF for several years. But defensiveness aside, organized labour collectively had made important strides since the mass disturbances of 1937. Throughout the ensuing twenty or so year period trade union officials became increasingly more assertive in negotiations with employers. Although that assertiveness led to a complex assortment of victories and failures both minor and major, the trade union brass tended to discourage spontaneous acts of

[398] Haraksingh, All Trinidad, *supra* note 341 at 7-8. In addition to the stated involvement, the TUC provided consultancy services when the union presented its case before the Jack (1955) and Goldenberg (1960) Commissions of Inquiry.
[399] Haraksingh, All Trinidad, *supra* note 341 at 7-8.
[400] *Ibid*. The General Manager of Usine Ste. Madeleine even lent his overcoat to a union official who travelled to Geneva for a trade union conference.

resistance instead opting for controlled collective action, including the curtailment of strike activities.

Trade Unionism and the Politics of Decolonization

Bolstered by the support of segments of the rank and file, key trade union officials transferred the added confidence gleaned from collective worker struggle into support for the political agitation toward Independence which had, in the fifties, gained considerable traction. The victory of the Eric Williams-led People's National Movement in the national election of 1956 solidified the political emergence of the predominantly black elite of the working class. Williams himself did not emerge from the ranks of organized labour, however he solicited political support from black workers by appealing (and counter-appealing) to racialized politics. But in the immediate aftermath of Independence, the shaky ground on which radical trade union leaders lent support to the PNM's nationalist independence agenda shattered with Williams' failure to support strike activity in the oilfields.

Other political leaders and parties had stronger ties to the trade union movement. The PNM's principal opponent, the Democratic Labour Party, led briefly by All Trinidad president general Bhadase Sagan Maraj, matched the PNM's racialized politics by claiming the All Trinidad union membership and the wider East Indian population as its base. Maraj was elected to Parliament in the 1960s as a DLP

candidate and later as an independent. Others, such as Adrian Cola Rienzi and Basdeo Panday, emerged as sugar union and political leaders.

Thus, the national independence agitation was grounded securely in the struggle of organized workers and the unemployed dating back to the early twentieth century. Although trade union leaders emphasized gains in the workplace increasingly by way of the negotiating table and not direct action, trade unions were very much politically connected institutions with officials from Captain Cipriani onwards holding political office at various levels.

In the face of stubbornly persistent strike activity throughout the 1950s, employers called upon colonial officials to intervene to restore the skewed relationship in the work sphere. Having intervened in the thirties and forties with repressive and heavy-handed police and military force, the colonial state now legitimated its response with a series of royal commissions to investigate the most extraordinary labour disruptions. From the 1950s and onwards repression continued, but the state turned to the appointment of Boards of Inquiry to sort out labour disputes. The practice of appointing Boards, which continued into the next decade, did not bring much in terms of real gains for workers and it did even less for the unemployed.[401] Overall, the appointment of Boards of Inquiry functioned to mask

[401] That is not to suggest that appointed Boards failed to side with the perceived interests of workers. For instance, a Board of Inquiry chaired by Professor DT Jack recommended in its report of April 1955 very modest wage increases to be applied retroactively to the start of the year (Ramdin, *supra* note 344 at 177-178). A Board in the early 1960s found that, in light of the Commonwealth Sugar Agreement (CSA) of 1950, the sugar sector as a whole could afford to raise both wages and benefits of workers. Preferential trade agreements such as the CSA, to a large

the ongoing prominence of state intervention in the resolution of labour disputes. The nuances of Boards allowed for the state to intervene in a less overtly one-sided manner. Trade unions gained small victories in individual disputes however organized labour ultimately functioned at a marked disadvantage. Although trade unionism was normalizing, trade union recognition generally remained contested and provisional.

Trinidad and Tobago achieved political Independence from Britain on 31 August 1962. The victory failed to translate into a calm over labour relations however. In fact, the ensuing decade represented a tumultuous time for labour relations marked by the introduction of pivotal labour law statutes. Although the dissertation deals primarily with colonial developments, it devotes some attention to the early post-colonial history. This serves as a way of tracing the trajectory and continuity in the legal regulation of labour.

Following Independence, the All Trinidad union enjoyed a rapid increase in membership. In 1965, the All Trinidad union was credited with 14,810 members and the rival Agricultural and General Workers' Union was said to have 2,910. These two unions subsequently merged in 1968.[402] Sugar workers expressed their

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extent had insulated Trinidadian sugar producers from the worst effects of fluctuations in world supply and demand (*Ibid*. at 180).

[402] Meanwhile, internal wranglings grew more prominent within the All Trinidad union. Further, in the early 1960s the Amalgamated Workers Union emerged as a competitor to the All Trinidad union. In 1962 the Amalgamated Workers Union managed to secure a considerable following among factory workers at Brechin Castle, playing on the sustained divergence of interests between field and factory workers. By September 1963, despite resistance by Amalgamated, the federation of sugar producers granted exclusive recognition to the All Trinidad union. The union reached a high-water mark during contract negotiations of 1963. The final agreement provided a 10% wage

discontent with existing union leadership and with the employer by taking direct action "at the height of the harvest" in 1965.[403] Encouraged by Geoffrey, now head of the Sugar Workers Union, a walkout of factory workers occurred on 21 February at the Usine Ste. Madeline Sugar Factory on the Caroni estate to protest the failure to resolve worker concerns. By 8 March, the entire sector was shutdown by direct action. With considerable anger directed at union leadership, union head Maharaj opposed the strike and even recruited workers to break it. Caroni, which by this time had acquired and controlled ninety percent of the local sugar industry, responded by temporarily closing its four existing factories.

The strike action received crucial backing from George Weekes, the head of the Oilfield Workers. Weekes succeeded in securing support for the sugar workers from the Executive of the National Trade Union Congress of which he was the president. When Weekes intervened on behalf of Caroni workers by writing to the Williams government and Caroni plantation managers suggesting that he meet with them on behalf of those workers involved to seek a solution to the situation, Williams instead declared a state of emergency. Williams saw the strike as subversive, and an attempt to depose his regime -- and feared Weekes' ability to

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increase in 1963 and a further 6 cents per hour or its equivalent for 1964 (Haraksingh, All Trinidad *supra* note 341 at 8-9). Organized sugar workers also won the standardization of wage rates, the consolidation of bonuses, increased annual holidays with pay, maternity leave with pay, improved overtime conditions, the introduction of a non-contributory $1000 life insurance policy for all workers with triple indemnity in case of accidental death, and an agreement to implement a pension plan. Further, it won an additional crop bonus which was first agreed to be paid only to All Trinidad members, but after the Prime Minister's intervention, all workers became eligible.

[403] Baptiste, *supra* note 339 at 119.

consolidate organized labour through unification of sugar and oil workers.[404] The state of emergency was a repressive move which amounted to a "witch hunt" to weed out so-called communist subversion of the state.[405]

In the face of the mounting industrial unrest, Williams introduced new labour relations legislation in the House of Representatives where it was quickly enacted absent meaningful political debate. Reactionary forces within and without organized labour turned out to celebrate the new legislation, the Industrial Stabilization Act, which is discussed next chapter. Essentially, the effect of this new legislation was to legalize capital-labour struggles by pushing them into the quasi-judicial arena of the Industrial Court.[406]

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[404] The short-lived United Labour Front represented an explicitly socialist attempt in the 1970s to establish an economic and political liaison between sugar and oil unions, among others.

[405] The Mbanefo Commission of Inquiry, established two years earlier to investigate trade union-directed subversion reflecting the paranoia of the ruling elite, reported its findings to the House of Representatives on the 18th of March. Surprisingly, the Mbanefo report downplayed allegations of trade union subversive activities. However, it did report on allegations that Marxist trade unionists, namely CLR James, plotted to incite a revolution within Trinidad. This triggered the establishment of several state committees investigate the allegations, although apparently little evidence was uncovered. Report of the Commission of Enquiry into Subversive Activities in Trindad (Mbanefo Report), House Paper No. 2 of 1965, Trinidad and Tobago House of Representatives, Government Printery, Port of Spain, 1965).

[406] The following year All Trinidad union officials engaged Tate & Lyle in dispute arbitration before the newly minted Industrial Court. The union successfully secured improved working conditions but Tate & Lyle won permission to implement large-scale mechanization. To fulfill its wage and pension obligations the Court permitted Tate & Lyle to increase the price of domestic sugar, which had not occurred for over a decade and a half, and to claim a share of publicly allocated funds. The reduction of its workforce could occur, according to the Industrial Court, "by attrition rather than by direct retrenchment". While consistent with the government's aims, the Court's decision generated disdain from militant trade unionists for its legitimation of the status quo in the sugar industry. As a result, impoverishment of sugar workers persisted as Tate & Lyle hid evidence of its financial viability. the sugar companies were accused of hiding profits, padding operating costs and paying low wages to local workers -- despite increases in productivity of 40% between 1956-63, while paying 'astronomical' salaries to expatriate staff and making the maximum profit (Ramdin, *supra* note 344 at 194-195). The Vanguard newspaper claimed: in 1966 the accounts under senior staff and general administration amounted to a startling figure of 25%, one-quarter of the costs went to 400 men of whom 98% were foreigners, while the other 75% went to 12,0000 labourers -- the issuing of bonus shares concealed the fact that the company was paying 22.2% of capital invested in 1952 (*Ibid*. at 195).

The Sugar Sector Nationalizes

The consolidation of capital in the sugar sector had reached its apex in the 1950s and 1960s. In the 1970s, Tate & Lyle pursued a regional strategy of divestment in sugar cane harvesting designed to rid itself of financial risk and loss. In Belize, having owned all of the country's sugar producers, Tate & Lyle used the threat of capital flight to pressure the local government into purchasing three-quarters equity in the industry. In Guyana, Jamaica and Trinidad, Tate & Lyle employed the strategy of divestment not only to shed its financial obligations in the sugar industry, but also to transform its role through lucrative managerial consulting agreements.[407]

The response of the Trinidadian state was to nationalize its raw sugar producers. But it was not capitalist divestment alone which drove the ultimate decision to nationalize. Specifically, the discontent of locals, which simmered below the surface, boiled over in 1969 after disaffected Caribbean students at Sir George Williams University in Montreal occupied the campus computer centre and were arrested. The mobilization spread throughout Trinidad where demonstrations occurred. Sugar workers took action in early April. The dominance of foreign capital became a primary target of the "black power" agitations. Prime Minister Eric Williams responded by declaring a state of emergency. Nationalization of

[407] Belal Ahmed & Sultana Afroz, The Political Economy of Food and Agriculture in the Caribbean (Kingston, Jamaica: Ian Randle, 1996) at 75. Booker-Tate, a joint 50-50 company formed by Booker PLC and Tate & Lyle became a major player in providing external managerial and consultancy services on contract (Thomas, Inversion of Meaning, *supra* note [5] at 180). Tate & Lyle also retained authority to market Trinidad's sugar abroad.

the industry ensued. On 20 July 1970, using a portion of the proceeds from a World Bank loan, the Trinidad government purchased fifty-one percent ownership in the Tate & Lyle subsidiary Caroni Limited.[408] Five years later, in the face of more sugar worker agitation, the Trinidad state would assume an additional thirty-six percent ownership stake in Caroni Limited.

In just over a decade, Trinidad had experienced two defining events: national Independence and the nationalization of its sugar industry. Both events imposed or solidified profound obligations on the Trinidadian state -- the most burdensome of which the governing elite attempted to download onto workers. Nationalization, in particular, meant the state now bore the full financial burdens and risks associated with late twentieth century raw sugar production.

The sugar industry remained under the influence of foreign capitalists through managerial arrangements which provided periodic rents to consultants, shielded the remaining British capital investment and offloaded financial risks and losses onto the accounting books of the Trinidad government. Nationalization saddled the state with sole responsibility over employment in sugar.[409] The future of raw sugar production, which had always been affected by the price of exported sugar

[408] Baptiste, *supra* note 339 at 119.
[409] The Trinidad & Tobago government assumed partial or complete ownership in over fifty corporations. See Scott B MacDonald, Trinidad & Tobago: Democracy and Development in the Caribbean (New York: Greenwood,1986); Beatrice & Berle Meyerson, Daniel J Seyler & John Hornbeck, "Trinidad & Tobago" in Sandra W Meditz and Dennis M Hanratty eds., The Islands of the Commonwealth Caribbean: A Regional Study (Washington, D.C. : U.S. G.P.O, 1989).

and domestic labour relations, now explicitly hinged on the nature of the industrial peace imposed by the Williams-led government.

State ownership imposed a heavy weight on the backs of sugar union members.[410] Whereas prior to nationalization workers had been "constantly reminded that the fruits of their labour did not fetch high prices", under state ownership the refrain became one of the highly subsidized nature of raw sugar production at Caroni Limited. A calculation of the amount of public subsidies flowing to Caroni was used to moderate wage demands. All of a sudden the fact that Caroni received public subsidies, closely guarded information when company control rested in private hands, became the explicit and back-handed basis upon which workers' demands were refused. When pressed for improved wages and working conditions the company pointed to its heavy reliance on public money. In this way, the shift from private to public ownership did not interfere with the employer's "familiar refrain of inability to pay".[411]

[410] In 1974 a major change in leadership occurred as Basdeo Panday ascended to the head of the All Trinidad union. Almost immediately under his leadership the unon achieved important victories with respect to wage demands, including doubling the wages of workers. Panday also won a guarantee of employment in the wet season, streamlined the union, resurrected long defunct branches and sorted out finances (Haraksingh, *supra* note 341 at 11). These victories were secured under favourable conditions in the international sugar market and the oil boom of the period which, notwithstanding the negative impact of increased oil revenues on the exchange rate, what economists term "dutch disease", left room for the expansion of sugar worker wages. Yet the victories under Panday came on a piecemeal basis dependent on the ebb and flow of periodic economic crisis as opposed to political momentum derived from collective mobilization. Union leadership opted to downplay strike activity and even went as far as to provide assurances that its members would not attempt to turn narrowly constructed industrial claims into wider political gains (*Ibid*. at 13).

[411] The refrain became deafening as economic crisis gripped Trinidad in the middle of the 1980s. The bottom of the crude oil market fell out which led to massive shortages of foreign exchange. As oil prices plummeted to new lows, the state announced its intention to seek loan assistance from the International Monetary Fund. The stringent conditionalities imposed by the IMF included "the removal of cost-of-living allowance, public sector wage freezes and cuts, retrenchment both with and without severance pay, lockouts and the replacement of collective

The state's introduction of measures designed to bring about austerity targeted sugar workers. When Caroni chairman Vishnu Ramlogan called on all to sacrifice for the greater good of the company, many workers obliged by providing two days free labour per month until the end of the 1989 crop. Workers also intensified their output with productivity improvements. In 1988, workers surpassed company sugar crop targets of 90000 tons by almost 2000 tons. In 1989, production reached its highest level since 1980 with 97000 tons. Despite this, workers could not overcome the devastating effects wrought in the name of austerity. The virtual end of large-scale sugar production was in sight.[412] As a sugar union official noted: "This performance is all the more remarkable since the company owes the workers more than TT $151 million in backpay. In the

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agreements by individual contracts", rise in cost of basic necessities, currency devaluation, and privatization of publicly-owned firms. This "generated an unprecedented degree of hostility and confrontation between employers and labour" and organized labour stood together to mount opposition to the structural adjustment, organizing a "Day of Resistance" which included eighty percent of the workforce and a "March Against Hunger". On the "wranglings between capital and labour see Zin Henry, "Industrial Relations and the Development Process" in Selwyn D. Ryan & Gloria Gordon eds., Trinidad and Tobago: The Independence Experience, 1962-1987 (St. Augustine, Trinidad: Institute of Social and Economic Research University of the West Indies, 1988) 47 at 49-50. Despite these prominent acts of collective resistance, organized workers failed to derail the deep restructuring. Massive unemployment already had weakened the base of unions and the IMF austerity deepened unemployment. A US Labour Department document summed up the weakness of the union movement at the time: "Despite its opposition, T&T's labour movement has been unsuccessful in derailing any of the government's privatization or restructuring programs. Unions have come to define as their successes wage and benefit freezes, and the best possible severance packages (in place of the traditional increases and job security)". US Department of Labour, Bureau of International Labour Affairs, Foreign Labour Trends: Trinidad and Tobago, 1994-1995 (Washington DC, 1995).

[412] Sugar World (Dec 1989) at 3. By late 1988 reorganization and reduction of the sugar sector appeared as the centerpiece of the state's agenda. In October 1988 the All Trinidad union learned the government had plans to drastically restructure and reduce the island's sugar industry -- loss of 7000 jobs in Caroni, and a refusal to grant workers land as severance. Following a massive mobilization of sugar workers, the government backed off from immediate implementation of the plan. The establishment of the Caroni Diversified Products Limited marked the "beginning of the end of the Sugar Industry in Trinidad and Tobago"

circumstances part of their labour has to be seen as free".[413] Reflecting on the oppressive and dehumanizing effects of enslavement, apprenticeship and indentureship, sugar workers could not have expected that "labour freedom" would occur in this way.

Conclusion

This chapter examined the state-capital-labour nexus of relations in the twentieth century. Specifically, it aimed to demonstrate the roots of those relations in the nineteenth century development of political authority described in chapter 3. The colonial political authority structures which enmeshed the plantation system were transformed through the massive restructuring of capital, and through labour's mobilization and direct action.

An unprecedented consolidation of capital occurred in the sugar sector from the middle of the 1930s onwards. Tate & Lyle came to dominate the sector (and world sugar production) swallowing its competition until it monopolized sugarcane production (including agricultural lands) in the island. The apparent irony is that this massive corporate capital (and land) consolidation strengthened the economic ties to the metropole just as the political ties were formally unravelling from the mounting pressure of the independence movement.

[413] At the end of the 1970s, 170,000 workers out of a total national labour force of 450,000 were said directly or indirectly to depend, upon the sugar sector for their livelihood (Sam Maharaj, "Diversification of the Sugar Industry and Cooperatives Farmlots for Sugar Workers" Sugar World, Special Publication (April 1987) 62 at 65).

Tate & Lyle's show of economic clout, which translated into considerable political authority in the colonial and metropolitan governance structures, also seemed to further energize worker organizing efforts. That said, formal worker organization emerged several decades before Tate & Lyle even set its sights on the Caribbean region. Trade unionism presented disaffected workers with an institution through which to coordinate working-class claims. Yet, unions were entrenched within the authoritarian, hierarchical and racialized political landscape of late colonial Trinidad. And so, the promise of coordinated labour struggle developed hand-in-hand with the curse (and vices) of colonial capitalism.

The exclusion of Indian indentured workers and unemployed workers presented two monumental weaknesses of early trade unionism in Trinidad. These exclusions point to the self-imposed "racial" and intra-class obstacles which impeded labour struggle throughout the century. Workers did, however, transcend these limits at decisive moments and the flash points of direct action -- in 1919, 1934 and 1935 -- made way for the major uprising of 1937. Through these collective struggles, workers in sugar and other sectors gained an unparalleled level of self-confidence which altered the forms of labour control by opening space for trade unionism.

The attempts at hardening worker organization were met with two responses by the ruling elite: physical coercion (or the threat of it); and responsible unionism. Much like last century, the state used its physical might to repel the surges of

organized labour. As labour elites gained political momentum through organized struggle, the state imposed obligations and expectations on them to wield their newfound authority modestly. Responsible unionism, then, demanded that labour officials moderate the tactics and demands of workers. The introduction of the Industrial Court, although portrayed as a mutually beneficial means to industrial peace, in fact fit the logic of responsibility. The existence of the Court gradually undermined the resort to collective action through the withdrawal of labour power, the underlying basis of labour's strength in capitalist relations.

Not all workers accepted the authority of, and rationale behind, the Industrial Court. Indeed, the early post-colonial period is defined by the collective unwillingness of workers to acquiesce to the dispute resolution procedure of the Court, whether under the Industrial Stabilisation Act or the Industrial Relations Act. That collective resistance was met with police and military force during successive "states of emergencies", only serves to illustrate the real commonalities in the exercise of political authority post-Independence and in the nineteenth century.

The nationalization of Trinidadian sugar production occurred in the charged climate of the 1970s. Tate & Lyle secured its pullout from the island, minimizing its financial losses yet preserving continued earnings through managerial and consultancy agreements with state-owned Caroni Ltd.. It would not be misguided to see a striking similarity in the state's indemnification of Tate & Lyle and the

indemnification of slave owners after Emancipation. The argument is not one of equivalence between the nationalized assets (land, machinery, plants) and enslaved people. Rather, again, it is to illustrate the real commonalities in the preservation of private property in early colonial and late post-colonial Trinidad. Thus, in terms of the exercise of political authority and the sanctity of private property, striking lines of continuity extend between the nineteenth and twentieth centuries.

CHAPTER 5

The Legal Regulation of Labour in Trinidad

Introduction

The following chapter traces the legal regulation of labour within Trinidad from the late eighteenth until the early twentieth century -- spanning the period of slavery to apprenticeship to indentureship to responsible unionism. In the context of the role of law and the state in capitalist relations of production, the chapter seeks to appreciate specifically how the Trinidadian state utilized labour law to constitute conditions and relations of unfreedom for the exaction of labour power; and, simultaneously, for the suppression of certain collectivist forms of worker resistance. In emphasizing the shifts within, and the transitions between, unfree labour regimes, the analysis targets the role of law in constraining the ways for workers to make change to working conditions or to leave undesirable conditions behind altogether. I refer to this as "the processes of exit".

The Processes of Exit

What does an emphasis on exit reveal? In the early twenty-first century moment, exit policies and processes assume a particular understanding cast in the positive light of freedom of movement. They are linked to the idea of labour mobility as a human right where, in the context of mainstream interpretations of managed migration, they represent the forward or linear progression toward the fulfillment of human rights in the post-World War II period. On this account, the regulation

of exit illustrates the widespread proliferation of human rights norms. These understandings downplay the conflictual, indeed contradictory, nature of foreign labour incorporation.

In situating the resistance of social actors within the broader understanding of the pathways to challenging and exiting unfree labour regimes, I am documenting what one scholar terms the "processes of deliverance" from dependency.[414] Specifically, I employ a typology of processes of exit to facilitate the interrogation of how law seeks to influence worker interaction and engagement with owners. This typology strives to transcend both "the attributes of individuals",[415] as well as individual situations, to construct general conceptions or patterns of existing relationships. The state uses law to organize opposition into more manageable or palatable processes of exit. In this respect, law establishes parameters of legitimate behaviours and expectations. Thus, the rationale for an emphasis on exit relates to the ways those processes are employed to structure working conditions and manage dissent.

The analysis draws on three pathways to exit for enslaved peoples in Trinidad: "systemic exits", worker-derived forms of resistance, and "enforced exits".[416]

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[414] Olivier Pétré-Grenouilleau, "Processes of Exiting the Slave Systems: A Typology"in Enrico Dal Lago ed., Slave Systems: Ancient and Modern (Cambridge: Cambridge University, 2008) 233. Although the translation of this piece is slightly confusing, Pétré-Grenouilleau's provides a useful typology of exits from slavery which I loosely employ as a framework in this analysis.

[415] Bolland On the March, *supra* note 209 at 124.

[416] Within the context of migration theory, managed migration and its associated exit policies and processes have taken on particular meanings. Broadly defined, the concept of exit policies refers to the imposition of legal controls or regulation on citizens by their home states to curtail or deny cross-border movement. Historically, exit policies were understood in pejorative terms. In

Throughout the analysis each of these pathways are addressed under the given regimes of labour regulation.

I. Slave Laws & Opposition

During much of the eighteenth century Trinidad was a society in which slaves were utilized on a piecemeal basis in small-scale production. With its transformation from a "society of slaves" to a "slave society" following the introduction of the Cedula of Population in 1783, Trinidad experienced a marked shift in the degree of labour unfreedom sought by planters and enforced through the state. The massive influx of enslaved peoples activated official goals of tighter labour controls and an enhanced authoritative capacity for planters, although contestation occurred. The in-migration of enslaved peoples and their owners posed more acute challenges for planter authority within productive relations -- although planter dominance over those relations remained in tact and largely unchallenged.[417]

Legal regulatory controls designed specifically to rationalize and effect the enslavement of mostly African peoples existed in the form of Spanish colonial

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nineteenth-century Europe, for instance, hardline exit policies were utilized to counteract the loss of labour power due to emigration. These policies imposed stringent conditions on movement beyond a given geographic territory enforced through penal sanctions and even death. See e.g. Aristide Zolberg, "Matters of State: Theorizing Immigration Policy" in C. Hirschman, P. Kasinitz & J. DeWind eds., The Handbook of International Migration: The American Experience (New York: Russell Sage, 1999) 71. In contemporary developed capitalist societies, exit policies have taken on more positive connotations. Here, the use of the concept aligns with the negative understanding, although it is meant to capture constraints not always included in earlier articulations.

[417] Before 1783, the number of enslaved Africans proved too insignificant to warrant specialized slave laws. Claudius Fergus, "The Siete Partidas: A Framework for Philanthropy and Coercion During the Amelioration Experiment in Trinidad, 1823-34" (2008) 36:1 Caribbean Studies 79 at 81.

slave laws. Absent explicit metropolitan slave statutes, English imperialists followed Spanish colonial legal authority with respect to the regulation and treatment of enslaved people. Initially the English adopted in its colonies Las Siete Partidas, the thirteenth-century Spanish colonial code.[418] In 1680, Spain consolidated colonial slave laws into La Recopilación de las Leyes de los Reynos de las Indias, comprising over six thousand laws broken down into nine books, then subdivided into chapters and ultimately into statutes.[419] Replete with contradictions, the Recopilación (as the English referred to it) never truly displaced the supreme authority of the Siete Partidas on issues of slavery.

Revamped slave laws arrived in the form of the Code Noir or the Instruccion sobre Educacion, Trato y Ocupacion de los Esclavos of 1789.[420] Although officials in Puerto Rico and Cuba patterned slave regulations after the 1789 Code Noir, and it shaped the development of Spanish legality well into the 1800s,[421] historians debate whether the 1789 Code Noir actually constituted good law in Trinidad.[422] At any rate, in 1794 the Spanish Crown suspended the Code Noir as slave proprietors voiced their objections to it and claimed it would promote slave revolts.

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[418] This occurred in 1285. It is the extent to which colonists applied this legal code is not clear. Individual Spanish administrations made their own laws for their respective territories. (Sue Peabody & Keila Grinberg, Slavery, Freedom and the Law in the Atlantic World: A Brief History With Documents (Basingstoke: Palgrave Macmillan, 2007) at 16. Certain provisions regulated the existence of slaves as well as their descendants.

[419] Fergus, *supra* note 417 at 80.

[420] Reproduced in A. Meredith John, The Plantation Slaves of Trinidad, 1783-1816: A Mathematical and Demographic Enquiry (Cambridge: University of Cambridge, 1988) at 206-211. See also Peabody & Grinberg, *supra* note 418 at 18 & Document 24.

[421] Fergus, *supra* note 417 at 82.

[422] *Ibid*.

As Spanish colonialism gave way to British colonial rule in Trinidad, and Governor Jose Maria Chacón stepped aside for Picton, Britain's first governor of Trinidad introduced legal regulation specifically designed to regulate slavery on the island.[423] Prior to Picton's legal experimentation, the English political elite demonstrated far less interest in enacting slave codes than the Spanish government.[424] Instead of displacing Spanish slave laws, however, the Slave Code of 1800 failed to gain Royal Assent and, within a couple of years, fell into a state of neglect.[425]

At the turn of the century, then, Spanish slave laws continued to inform the English slave regimes of the West Indies. British-ruled Trinidad inherited Spanish colonial legacies of productive relations and formalized legal codes governing those relations, not to mention the supporting ideologies. That is to say, the enslavement of peoples for large-scale agricultural production was not an English colonial invention -- although, with little reluctance, they willingly embraced it as their own. The new English rulers of Trinidad, just as the old Spanish imperialists learned to do in the late stages of Spain's rule over the island, innovated and adjusted formal law to suit their particular but shifting circumstances and conditions. Indeed, law was the mechanism through which

[423] The Code Noir of 1789 came into force during the period of Spanish colonial rule of Trinidad.
[424] See Elsa V. Goveia, The West Indian Slave Laws of the 18th Century (Barbados: Caribbean Universities Press, 1970).
[425] Fergus, *supra* note 417 at 84.

slavery found rationalization and justification. But to say that slavery in Trinidad was a Spanish colonial creation too would be incorrect.

Master-Slave Relations

"Every aspect of the slave law of the British islands", according to Goveia, "reveals the fundamental political concern with the subordination and control of slaves".[426] This fundamental concern proved no less true in the new British territory of Trinidad. Slaves constituted not subjects within law but rather chattel property their very existence tied and subordinated to that of masters. To a large extent, this designation was not unlike the association a master would claim to their tools, livestock or other factors of production. Sales and purchases of slaves occurred, and the loss of chattel property -- for any variety of reasons including ultimately Emancipation -- invoked an expectation of indemnification or compensation.[427] Whether promulgated by slave proprietors or political elites (with the overlap of the two of course quite evident) or perhaps even by some of the enslaved themselves, and whether it translated into real payouts for proprietors or not, the expectation demonstrates that slaves were considered the chattel property of masters.

The master-slave relationship constituted a particular pattern of work and social life. The master and slave designations correspond not to "particular kinds of people, but social roles" in which the former asserts a particularly acute kind of

[426] Goveia, *supra* note 424 at 35.
[427] John, *supra* note 420 at 106; Goveia, *ibid*. at 22 (owners whose slaves suffered the judicial penalty of death were usually compensated for the loss of their property).

claim against the latter.[428] Essentially, the master claims authority over the slave and terms of the entire master-slave relationship. Obedience to one's master forms the obligatory contribution of the slave.[429] Although originating within the productive realm, understood from the particular standpoint of especially intensive large-scale colonial agricultural production, otherwise known as the plantation system, the contribution of the slave engulfed wider social relations. That slave-master relations emerged from productive relations seemingly to colonize all facets of social life does not explain how in fact this occurred.

The dominant authority of masters turned on strict discipline enforced on enslaved people through the coercive use of psychological and physical force mediated through processes of racialization and racism. Even though free blacks existed within the slave society, the process of racialization designated African people and their descendants as a labouring class subject to violent disciplining by masters through the state. Racism served to naturalize and legitimize the brutality. Law reinforced and upheld the racial distinctions forged between propertied and unpropertied classes.

As if the harshness of ongoing psychological coercion were not enough, slave workers were disciplined and punished on a sliding scale of physicality with the

[428] Bolland, Politics of Labour, *supra* note 10 at 124.
[429] As the 1789 Code Noir makes clear, slaves are obligated to obey masters, to perform assigned work and to hold family heads in esteem. (John, *supra* note 420427 at 207).

master's domination enforced by, on one side, lashes of the whip[430] and, on the other side, mutilation and death. The harsh and oppressive disciplinary enforcement of master-slave social roles occurred under the legally-sanctioned prerogative of owners' authority.[431] Slave law codes, the idealized self-representations of elites'/masters' authority, institutionalized the resort to physical force to the point of deeply entrenching and thus normalizing its use. Slave codes explicitly referenced disciplinary mechanisms such as the whip leaving open not whether they ought to be deployed but to what extent. Slave law articulated how many whip lashes a master could dole out, the acceptable range of toleration contingent upon the nature of the offense committed by the slave.

Even when efforts were made to re-calibrate or "scale back" the physical coercive force of owners, typically through struggles between different segments of the ruling class, slave laws did so in remarkably disproportionate ways. The narrowing of the acceptable range of toleration meant that lashes of the whip would continue, but could not surpass a legally prescribed number. In contrast, at most owners faced fines for failure to comply with the toleration provisions within the Code.[432]

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[430] Mary Turner, "The British Caribbean, 1823-1838: The Transition from Slave to Free Legal Status" in Hay, & Craven eds., Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955 (Chapel Hill: University of North Carolina Press, 2004) 303 at 307 ["British Caribbean"] ("The whip -- a focus of slave grievances and of antislavery propaganda -- symbolized the personal power owners exercised at the workplace and the archaic nature of the slave labor system". Existing slave laws all regulated workplace punishments - the number of lashes to be administered in any one day (from 1 to 39), the interval to elapse between the offense and the lashing, the need for the worker to recover between punishments).

[431] For instance, justices and magistrates were permitted to appoint people to enforce the Code on estates (John, *supra* note 420 at 210).

[432] *Ibid*. at 209.

Despite their extreme and oppressive nature, slave law codes obligated owners to afford slaves a baseline of entitlements. Legal obligations were imposed on masters to provide certain basic necessities to enslaved people such as clothing, food and religious education. By no means a protective enclosure for enslaved workers, the entitlements defined the patterns of socially acceptable behaviour and development to secure conformity and to uphold the rigid hierarchies of the existing social order.[433] The entitlements forced a subordinative assimilation to dominant cultural practices including clothing and feeding norms, and an indoctrination to Christianity.[434]

The existence of these formal entitlements complicated the idea of slaves as commodities -- and the supporting ideologies. However, the entitlements did not interfere with the actual processes of commodification through which enslavement occurred. Enslaved people in Trinidad remained subject to the logic of capitalist commerce and exchange: they were bought, sold and traded within the market as owners saw fit and were valued -- or more aptly de-valued -- through market forces of supply and demand. Nor did the existence of marginal legal entitlements disrupt the coercive authority of owners. Owners' subordination and domination over people designated as slaves, a commitment

[433] *Ibid*. at 207.
[434] The Slave Code of 1800 obligated owners "to lodge, clothe, and maintain [slaves] sufficiently, as well as in health, while able to work, as in time of sickness, age and infirmity" (John, *supra* note 420 at 212). Slave owners were also obliged to educate slaves in Christianity (*ibid*.). In addition, the Code provided explicit instructions for the feeding of slaves, establishing the acreage for provision grounds to feed slaves.

entrenched within slave law codes and enforced through resorts to violence, remained crucial to the day-to-day functioning of Trinidadian productive and social life.

Channeling Opposition

The overwhelming dominance of masters and the harshness of physical coercive force notwithstanding, the subjugation of enslaved peoples was not uncontested. The regime of slave labour unfreedom met with antagonism, negotiation, contestation, engagement, agitation, struggle, resistance: opposition.[435] The idea of opposition incorporates modes of resistance of the oppressed. In this respect, slave law codes opened the possibility of a modicum of control for slave labourers within -- but certainly not over -- work relations. Quite modest to be sure, the minor legal entitlements were extended and enlarged, if only marginally, through varying forms of worker opposition. Beyond the narrow confines of formal legal entitlements, slave workers contested subordination and domination in the activities of their daily work and social life.

Characterizing worker opposition poses a special challenge. Within late twentieth century historiography on New World slavery, "the myth of the docile slave"-- dominant within historical accounts until around mid-century, prominent until the late 1960s and still implicitly holding sway early in the current century -- gave way "to the cliché of the always rebellious slave described as the sole actor of

[435] Although I use the more common term resistance earlier in the dissertation, here I use opposition because, as we will see, a specific category termed "resistance" is employed within this schema. Opposition, therefore, represents a general catch-all phrase.

his/her liberation".[436] Although this dissertation advances a claim of the centrality of resistance in the lives of enslaved workers, important distinctions must be drawn with respect to the efficacy of that resistance. A crucial aspect of a determination of efficacy is, as we will see, the level or intensity of the threat or fear of success.

The importance of slave worker opposition notwithstanding, the enslaved did not act alone. Opposition therefore also incorporates agitation mounted on behalf of the enslaved particularly by allies in the anti-slavery abolitionist movement. Whereas the critical challenge of contextualizing worker mounted opposition is to avoid idealization, here it is to reject portrayals of abolitionism as the linear march toward the fulfillment of, to employ Rudyard Kipling's telling phrase, the "White Man's Burden". A relatively wide range of ideological perspectives existed within abolitionism, and so nothing should turn on the idea of a homogenous or unified oppositional force. Taken together, the forms of opposition mounted by workers and their allies contained counter-claims, however subjugated or efficacious, against domination.

The task of addressing and containing opposition to labour unfreedom primarily fell on ruling elites within the state who, through the imposition of legal controls on labour, channeled that opposition into legally-defined processes of deliverance or exit. These exit processes functioned to mediate the demands and claims of workers and their allies.

[436] Pétré-Grenouilleau, *supra* note 414 at 246; 245-246.

Three pathways to exit existed for enslaved peoples in Trinidad. The first, "systemic exits", captures various means of conferring release from enslavement of which manumission figures most prominently.[437] Manumission -- or coartación -- represented the release of an enslaved person from slavery through either an act of "good will" of the owner or self-purchase.[438] Prevalent during the late 1700s and onwards, coartación represented a special mechanism of Spanish slave law which permitted slaves to make a "self-purchase" by installments or lump sum payment.[439] The legal process typically established certain conditions and correlative duties on owner and enslaved.[440] It imposed an obligation on an owner to, once paid for the cost of the slave, produce formal documentation confirming manumission. Once established, the self-purchase price was not open to modification by the seller. The right tended not to transfer from one individual to another even along familial lines.

[437] In addition, "enfranchisement" was an authorized exit particularly under French slave law. In formal legal terms, enfranchisement refers to "authorized exits" or "an immediate liberation unilaterally decided by the master, or a gift by him to his slave" (Pétré-Grenouilleau, *supra* note 414 at 235; 234). In practice, however, it fails to offer "a total and definite rupture ... with slavery [and] with relations of dependence" (*ibid*. at 239).

[438] In Trinidad, compulsory manumission occurred under the amelioration plans in 1824. This permitted slaves to petition to be freed for an agreed-upon price. Within five years, manumission would be imposed in the colonies. (Stanley Engerman "Pricing Freedom: Evaluating the Costs of Emancipation and of Freedom" in V Shepherd ed., Working Slavery, Pricing Freedom: Perspectives from the Caribbean, Africa and the African Diaspora (Kingston, 2002) 273); W.A. Green, British Slave Emancipation: The Sugar Colonies and the Great Experiment, 1830-1865 (Oxford: Clarendon, 1976) at 104-132). The most radical form of manumission occurred through the bestowment of "citizenship", which is glaringly absent from Pétré-Grenouilleau's analysis. Citizenship represented the outcome secured by "free blacks". Free blacks lived in Trinidad prior to the cessation of Spanish colonial rule, and the Cedula of Population, as mentioned, provided explicit guarantees and protections for non-enslaved blacks, including permitting the ownership of property.

[439] Although the Code Noir 1789 included a provision for self-purchase, the Code which Picton sought to introduce did not include such a provision.

[440] Peabody & Grinberg, *supra* note 418 at 16.

Legal codes governing enslavement in Spanish and Portuguese colonies privileged manumission in individual forms over collective ones.[441] The individualistic nature of manumission, although beneficial to those able to secure it, served to reinforce and legitimize the wider regime of collective enslavement.[442] Both manumission and coartación may have lessened the degree of unfreedom for certain individuals while perpetuating the wider framework of slave relations. That said, the perception of systemic exits as "unilateral" and top-down actions of masters alone disregards general evidence of "constant negotiations", and as we will see specifically other modes of opposition, within master-slave relations.[443]

The second path of exit from enslavement is slave worker resistance. In the face of perpetual coercive punishment,[444] for instance with penalties for flight,[445] slave agitation and resistance occurred through diverse forms.[446] Resistance is typically categorized as passive (said to comprise individual acts and deeds within the minutiae of daily productive relations) or active (consisting of collective struggle

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[441] *Ibid*. at 24-28.
[442] As Pétré-Grenouilleau asserts, "systemic exits refer to specific individuals and do not call into question the very nature of a slave system" (*supra* note 414 at 233).
[443] *Ibid*. at 235.
[444] Turner, British Caribbean, *supra* note 430at 304 ("Action always risked and often earned punishment for both leaders and their followers. But workers who 'took flog' as part of everyday work as well as for infractions of work discipline also put their bodies on the line to force changes in the terms on which they worked").
[445] For instance, the punishment prescribed by the Recopilación for workers who attempted to run away ranged from fifty strokes for a period of four days' absence to two hundred strokes for four months' absence and the death penalty if over six months (see Fergus, *supra* note 417 at 80).
[446] Mary Turner, "Modernizing Slavery: Investigating the Legal Dimension" (1999) 73:3&4 New West Indian Guide 5 at 6 ["Modernizing"] (Slave workers used their labour power as a bargaining tool to contest and shape their terms of work. Verbal protests, covert withdrawal of labor, outright absenteeism, sabotage and, most importantly, collective withdrawal of labor - strike action - were used...").

targeting institutional or structural sites of authority). Forms of resistance deemed passive include flight[447], work slowdowns, poisoning, aiming to seek revenge, verbal protests, gain personal satisfaction or generally disrupt the daily course of relations within the plantation workplace by stealing estate property or destroying it, sabotage, stealing, lying, shirking, infanticide, murder and arson. Active forms of resistance include marronage or the "definitive escape", the collective flight or withdrawal of slaves from plantation work and life,[448] collective bargaining,[449] and slave revolts.[450] Whereas maroons may engage in armed confrontation to defend their withdrawal from slave life, revolting slaves tend to embrace guerilla warfare and other forcible means to secure exit.

The passive-active distinction is, to a certain extent, too rigidly defined.[451] Passive forms of resistance sometimes possessed the capacity to threaten the conditions of enslavement from within.[452] Both passive and active forms of resistance contain a counter-claim against "the ideological fetters imposed by"

[447] Runaway slave and pass laws regulated flight. According to Goveia, "[e]very island passed laws for the pursuit, capture, suppression and punishment of runaway slaves, and these laws were usually severe" (Goveia, *supra* note 424 at 23). Slaves could not wander about without written passes. Nor could slaves assemble together. Even when not enforced, "the laws remained in force, and they were used when necessary to prevent or control public emergencies" (*Ibid*.).

[448] Maroon settlements developed in Trinidad, especially around Diego Martin, isolated sections of the eastern coast.

[449] The claim that slaves throughout the Americas participated in bargaining collectively is addressed in the important work of Mary Turner among others. See Mary Turner ed., From Chattel Slaves to Wage Slaves: The Dynamics of Labour Bargaining in the America (Bloomington, Indiana: Indiana University, 1995) ["From Chattel Slaves"]; Turner, British Caribbean, *supra* note 430. However, the extent to which statutory law afforded slaves any form of legal redress for their grievances varied considerably.

[450] See e.g. Michael Craton, Testing the Chains: Resistance to Slavery In the British West Indies (Ithaca, N.Y: Cornell University, 1982) at 236 (discussing the declaration of marshal law by Governor Hislop out of fear of an imminent slave revolt; which led to the execution of four slaves, floggings and the deportation of five following the chopping off of their ears).

[451] Pétré-Grenouilleau, *supra* note 414 at 246-247.

[452] *Ibid*. at 247.

enslavement and perhaps, at their most sophisticated, a "total rejection" of slavery itself.[453] That said, "many forms of resistance depicted as 'passive' never led directly to exits from the system, either individual or collective".[454]

The efficacy of slave resistance varied considerably. However, the overall impact of resistance proved a real threat from the standpoint of slave proprietors. The state imposed legal controls to organize slave worker opposition out of fear of mass rebellion of the kind witnessed in Saint-Domingue (present-day Haiti). As that resistance intensified so too did slave laws, particularly in their institutionalized forms. Like its Crown colonial counterparts, Trinidad possessed a sophisticated colonial slave law apparatus which included the Procurador Fiscal, the state official charged with administering slave laws.[455] At its most effective, slave agitation carved out customary practices which, in mostly modest ways, eroded the coercive operation of slave codes. These customary practices added flexibility to the otherwise rigid legality governing slave work relations.[456] Slave laws therefore not only colonized certain forms of resistance of the enslaved, but also were altered on an ongoing basis through opposition.

The processes of "enforced exits" formed the third exit path from slavery. The rise of anti-slavery abolitionism is, within certain strands of scholarly and popular discourse, credited with initiating the conditions necessary for slave Emancipation

[453] *Ibid*.
[454] *Ibid*.
[455] Turner, British Caribbean, *supra* note 430 at 305.
[456] *Ibid*. at 303.

and the cessation of the regime of unfree slave labour.[457] On this account, enforced exit occurred through "the evolution of global society" led by abolitionist agitation and enforced through apparatuses of the colonial state.[458]

The abolitionist movement represented undoubtedly a radical departure in world historical terms.[459] That said, abolitionist perspectives ranged the gamut but included the radicalism of James Stephens and John Gorrie.[460] Considered in its entirety, anti-slavery abolitionism within the metropole and the colonies promulgated reformist interventionist measures grounded, as it were, within problematic commitments to freedom from coercion or free labour ideology.[461]

The process of Emancipation did ultimately unfold on a protracted basis. The Emancipation Act formed the centre-piece of abolitionist efforts. The imperial statute promised an enforced exit for all enslaved peoples within the British colonies. Between the reformist commitments of certain abolitionists and the political agitation of well-situated plantation owners, however, gradual emancipation from above was chosen over more radical alternatives. Ultimately,

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[457] Pétré-Grenouilleau, *supra* note 414 at 259-264.
[458] *Ibid*.
[459] "In antiquity, slavery had been objects of debates and its legitimacy questioned" but, he argues, "nobody ever thought of abolishing it or of abrogating it through a substantive law". (*ibid*).
[460] Bridget Brereton, "Law, Justice, and Empire: The Colonial Career of John Gorrie, 1829-189" (Barbados: Press University of the West Indies, 1997); Russell Smandych, "To Soften the Extreme Rigour of their Bondage: James Stephen's Attempt to Reform the Criminal Slave Laws of the West Indies, 1813-1833" (2005) Law & History Review.

[461] See e.g Stanley Engerman, "Emancipation Schemes: Different Ways of Ending Slavery" in Enrico Dal Lago & Constantina Katsari eds., Slave Systems: Ancient and Modern (Cambridge & New York: Cambridge University, 2008) 265 at 280 ["Emancipation"] (arguing that "[f]undamental to the process of abolition were two sets of beliefs ... One was the desire to end slavery to provide freedom to all members of the population. ... But also, there was a great belief in the importance of maintaining property rights, including those of slaveowners").

slave owners secured financial compensation for loss of chattel property,[462] as well as the period of apprenticeship, both guaranteed through the same imperial legislative intervention which granted Emancipation to the enslaved. Entrenched within Emancipation, these two crucial elements, especially the labour time guarantees of apprenticeship, set tight parameters for alternative labour formations to emerge.

The identified shortcomings of emancipatory gradualism aside, the processes of enforced exit from slavery were steeped in the insinuation that peoples' capacities to exit that regime originated from beyond -- as opposed to within -- it. As enforced exit, Emancipation functioned within the upper echelons of imperial and colonial administration altering productive relations largely in an elitist fashion. Emancipation flowed "top-down" through legislative imposition from the sites of imperial and local colonial political authority and, through privileging of acceptable avenues and venues of counter authority, particularly with respect to abolitionist opposition, from "outside-in".

Yes, the oppositional forces of abolitionism proved significant to the dismantling of slavery. But to discard the role and impact of the opposition of the oppressed, is to adhere to the trajectory established by formal Emancipation. Just as coercion bolstered the claims and authority of the ruling classes, worker-mounted opposition underwrote the counter-claims within and against enslavement. A lack of attention to the implications of elitist configurations of exit thus erases the

[462] *Ibid*. at 271.

concerted and ongoing struggle of the enslaved masses. It undermines or denies the sometimes flawed but important modes of resistance utilized by the enslaved. Resistance demonstrates the capacities of enslaved people to express their humanity in fundamental ways even under the deplorable conditions of slavery.

The Trinidadian state assumed an active role in the enforcement of the parameters or boundaries of slave labour unfreedom. The state deployed law to shape actual daily work relations, targeting the varying forms of opposition to enslavement. By channelling that opposition into acceptable pathways or processes of exit, law assumed a crucial mediative function. The processes of exit constituted mediations intended to, in reconciling oppositional claims and demands, dull those claims and demands and fragment the oppositional actions and behaviour of workers and their allies.

Slave laws mediated worker demands -- and in so doing reproduced slavery -- by setting certain expectations for exit and parameters of acceptable behaviour defined by the social role of slave, and by shifting dissent into more manageable or palpable forms. A slave is expected only to act in ways designated or set out by law. This was evident in the context of the processes of exit where legal constraints were imposed to encourage certain ways of exiting slavery over others. The expectations which the exit processes lay out included an emphasis on individual exit over collective forms, gradual reformation over radical

transformation, maintenance of owners' prerogative and overall authority and curtailment of worker daily resistance strategies.

The extent to which people internalized these constraints imposed on them through law, and started to believe in only the behaviours which law deemed acceptable, is a more complex issue which cannot be fully resolved here. But it should be noted that, in contrast with individualistic explanations which, implicitly or explicitly, tend to shift blame from oppressors to oppressed, law imposed crucial structural impediments which aimed to disrupt the exercise of unmitigated human agency of the latter.

Through the processes of exit, the state apparatus ultimately diverted any possibility of radical opposition and Emancipation, but it could not altogether contain either. Resistance activities occurred on an ongoing basis and, to the extent that it is known, rebellion emerged at key moments.[463] Gradual emancipation emerged from the ongoing agitation of abolitionists, likely more a reflection of the contradictions within slave societies and the reformist abolitionist agenda than an expression of the willingness of state officials to compromise. Yet, when exit by Emancipation finally did occur the state-enforced process left little space for the enslaved, the people who directly confronted the ongoing tensions and contradictions within productive relations of unfreedom.

[463] See e.g. Craton, *supra* note 450.

Gradual emancipation provided important reprieve for the enslaved as the legal de-legitimation of physical coercive force constituted the removal of a crucial aspect of unfreedom under slavery. This is true to the extent that disciplinary actions actually became unbound from the use of physical force following Emancipation even though there is some evidence that, from time to time, former masters continued to resort to the whip. Although it fundamentally altered the form which coercion assumed, and perhaps dulled the intensity of coercion in its immediate aftermath, Emancipation did not interfere with the necessity of coercion within Trinidadian plantation production. Coercion continued to underwrite productive relations in subsequent labour formations of apprenticeship and then indentureship.

II. Apprenticeship

The political momentum of gradual emancipation materialized during the 1820s and again in the early 1830s. A two-staged process of restructuring colonial slave laws with the aim of enforced exit began. Initially, between 1823 and 1833, laws devised and in part imposed by the imperial government modernized the slave labour regime replacing slave codes. Commencing with the implementation of model amelioration policies in Trinidad, the British parliament utilized the top-down authoritarian structure of crown colonialism to force through then broaden and roll out Britain's first imperial slave code to gain Royal Assent.

Following the initial period, the second stage of reforms occurred between 1833 to 1838. The culmination of this second period, the Abolition Act passed by the British Parliament in June 1833, initiated a six-year period of apprenticeship -- later truncated -- and provided compensation to the former slave owners for the loss of chattel property. The Abolition Act facilitated the formal transition of slave proprietors to employers or "masters" by rewarding them with financial and labour time privileges derived in the slave-era production relationship. Monetary payment to the tune of some twenty million pounds both solidified and extended the economic dominance of planter capitalists over productive relations. The introduction of apprenticeship not only deepened the already slanted economic disparity but also extended capital's disciplinary control over workers into the foreseeable future.

The British imperial state's decisive legislative intervention in Caribbean labour laws defined the scope of labour exaction[464] and unfreedom more specifically. Despite its short duration, the apprenticeship scheme ensured that the conditions and relations of unfreedom during slavery would form the basis of the "new" work relationship. Yet in important respects the regime of apprenticeship constituted not simply the renewal of the status quo, but in fact an intensification of it.

The regime granted employers the capacity to rollback the narrow but important gains secured by slaves during pre-Emancipation labour relations, particularly in

[464] Turner, British Caribbean, *supra* note 430 at 319.

relation to customary practices such as collective bargaining. The labour time commitments secured by former slave owners also functioned to intensify productive relations. Apprenticeship initially was established for a six-year period in which all formerly enslaved peoples over the age of six would labour as apprentices. Those commitments also broke down into weekly time allotments.[465] For the remainder of the week apprenticed labourers were permitted to seek work for wages.

The labour time commitments developed as a way to halt the momentum behind enforced exit to slavery. The ruling elite denied this, preferring instead to stress the need for an extended period of adjustment to labour market conditions of wage and contract. Apprenticeship would educate workers in the logic of free waged labour relations[466] as well as deter unacceptable forms of exit from slavery. Its educative and preventive dimensions formed a concrete rationale not only for apprenticeship but more fundamentally for the intensified -- and, in certain respects, no less violent[467] -- intervention of both imperial and colonial authorities.

As a mechanism of adjustment to market relations, apprenticeship turned on the behavioural-inducing combination of continued enslavement and free labour

[465] This constituted three-quarters of the defined working week. James Millette, "The Wage Problem in Trinidad and Tobago, 1838-1938" in Bridget Brereton and Kevin A. Yelvington eds., The Colonial Caribbean in Transition: Essays on Postemancipation Social and Cultural History (Kingston, Jamaica: UWI Press, 1999) ["Wage Problem"].
[466] Hay & Craven, *supra* note 3 at 29.
[467] Turner, British Caribbean, *supra* note 430 at 317.

ideology. If the labour time commitments constituted the "stick", the regime also dangled the "carrot" of eventual labour freedom as the reasonable object of desire for apprenticed workers. Plantation capitalists were no less committed to the preservation of their dominance over productive relations even if the rhetoric of slave worker protectionism emerged under Emancipation. Nevertheless, as a reflection of how effective opposition to slavery had become, the terms of exit had shifted.

The state-enforced exit of Emancipation gave rise to the unfree labour regime of apprenticeship. That regime was not merely the product or outcome of the processes of exit from enslavement, but was itself a constituent component of that process. In this respect, the continuity between slavery and apprenticeship is evident. Unlike slavery, however, the processes of exit from apprenticeship were, to a considerable extent, built into that regime. Apprenticeship possessed fixed start and end dates. It foreclosed the possibility of systemic or authorized ways of exit. Aside from the initial exclusion of children under six years of age, the possibilities for systemic exits under apprenticeship were non-existent. But in structuring the exits in this way, the apprenticeship regime, having sought a formal break from pre-Emancipation labour relations, in fact achieved an escalation in the degree of labour unfreedom even though the regime no longer turned on the officially sanctioned use of the whip and other forms of physical force perpetrated by planters during slavery.

Workers refused to acquiesce to the expectations of the regime of apprenticeship. On the very day that Emancipation was formally achieved, 1 August 1834, Trinidad's newly designated apprentices turned out by the hundreds in Woodford Square to protest the new labour arrangement. Vowing to strike, protestors were beaten back with the force of the militia called in to restore social order. This inauspicious occasion -- which foreshadowed the early development of the policing capacities within the Trinidad state apparatus, and which reiterated the commitment of the state to mobilize in the name of upholding planter domination -- was followed up with periodic agitation of apprenticed labourers throughout the British Caribbean colonies. Alongside the collective resistance of apprentice workers, anti-slavery abolitionist critics continued to voice displeasure over the continued enslavement of labour. Again, therefore, opposition eroded the potency of the regime of unfree labour. The efficacy of that opposition could be found at once in the decision to reduce the period of apprentice service from six to four years, and, as the next section contends, in the wide search for alternative sources of more readily dependent labour.

The Social Role of Apprenticed Labourer

The deeply contradictory nature of labour unfreedom exemplified by slave-master social roles during the period of enslavement extended into the brief but tumultuous apprenticeship period. Apprenticeship preserved the abstraction of actual productive relations by, according to one commentator, encouraging "a kind of dual persona" for people labouring within Trinidadian plantation society

in the immediate aftermath of Emancipation.[468] On one hand, the social roles of apprentices and masters mirrored the slave-master roles of the previous era. The chattel property designation more or less persisted with the guaranteed labour time commitments. On the other hand, duality emerged from the labour apprentice designation which conveyed, with respect to the use of hours of work beyond those committed to, an element of bargaining within the plantation work relationship. Apprenticeship represented an assertion of the "free will" (in capitalist terms) of labourers to enter into and exit out of contractual arrangements with their bosses. The regime marked a period in which we can identify the rising prominence of contractual relations, even if workers rejected the use of written contracts.[469]

While the regime of apprenticeship formally institutionalized the bargaining capacity of workers, evidence exists of longstanding bargaining and contractual relations. For instance, certain slaves were paid wages in specific instances.[470] The exchange -- sale, transfer, importation -- of slaves occurred with slave traders bargaining over the particularities of slaves' contributions. A slave labour market therefore existed albeit in an obscured and disjointed fashion reflecting the private property authority of owners-planters and the slave labour market. Enslaved labourers exercised, at best, marginal control in terms of contractual relations but never over their "end of the bargain" within the market.

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[468] Millette, Wage Problem, *supra* note 465 at 56.
[469] *Ibid*. at 58. But the educative dimension of apprenticeship meant workers were being disciplined more explicitly by the logic of private contract, an essential legal relation which reinforced the sanctity of private property.
[470] See generally Bolland, On the March, *supra* note 209.

Mastering the Servant

The two-stage reformation in labour laws which required virtually all island colonies to formally do away with slave labour,[471] provided the context for shifting formations of labour in the period. The full complexity of the post-Emancipation nineteenth century period cannot be appreciated without accounting for the (near) simultaneous existence of these dominant and differing legal types of labour. The legislated reform of the long-standing regime of slavery produced a category of formerly enslaved or apprenticed labour. At the cessation of apprenticeship workers still associated with estate work assumed the form of servant labour. Those so categorized who worked on estates were ultimately displaced by indentured labour. The contingent of servant labour not employed in estate settings remained as "servants" well into the twentieth century. The indentured labour category was, through contractual arrangements and means, as discussed below, further sub-divided. The category of "time-expired indentured labour" emerged. If that were not enough, a category of "habitual idlers" too emerged to encompass those forms of independent labour not captured by the above designations.[472] As a catch-all category, habitual idler fastened pejorative connotations to unemployed workers and imposed penal sanctions as a measure of state enforcement of labour exaction.

[471] Turner, British Caribbean, *supra* note 430 at 305.
[472] David Vincent Trotman, Crime in Trinidad: Conflict and Control in a Plantation Society, 1838-1900 (Knoxville, TN: University of Tennessee Press, 1986) at 205.

The legal roots of these differing labour formations, and of the work arrangements to which they belonged, sprang up from the foundations of slave law and (eighteenth and nineteenth century) English common and statutory law. The latter, termed master and servant law, exhibited a fundamental coherence and consistency with the former.[473] But master and servant law in the colonies was utilized for different aims than its English progenitor.[474] Trinidad enacted a specific master and servant ordinance in 1846 but, generally speaking, the immigration ordinances which governed indentureship were a subset of master and servant relations.[475]

Constructed around the English common law idea of freedom of contract, master and servant law turned on the agency and capacity of masters and servants to individually bargain for modifications to work relations. Rather than displacing the essential legal relation of property, and constituting new relations, contract relations overlay existing productive relations. The relationship was a matter of private contract for work in exchange for wages. It was on this basis that employers secured the obedience of the worker.[476] But as private bargaining assumed a more prominent role in the organization of productive life, the Trinidadian state remained deeply engaged in supervising adherence to the specific bargain. The removal of corporal punishment from the disciplinary

[473] Hay & Craven, *supra* note 3 at 28-29.
[474] Stanley Engerman, "Economic Change and Contract Labour in the British Caribbean" (1984) Explorations in Economic History 21 at 133.
[475] So-called free workers were governed by the Masters and Servants Ordinance 1846 and, as discussed below, indentured workers by various immigration ordinances that were consolidated in 1899.
[476] Hay & Craven, *supra* note 3 at 1.

apparatus of the state during the transition to Emancipation still left opportunity for highly coercive forms of punishment including fines and imprisonment for workers breaching their contractual obligations, disobeying, or wilfully committing misconduct at work.[477] In fact, remedies available for breach of contract included: not strictly "damages" but punishment of the uncooperative worker; not damages to remedy the breach of contract but whipping, imprisonment, forced labour, fines, and the forfeit of all wages earned.[478] Magistrates, not high courts, dealt with the summary enforcement of private master-servant contracts.[479]

Under master and servant law, workers were attributed with legal agency and owners, who were availed of the most heinous forms of punishment through which to assert their dominance, were expected to engage in private bargaining with individual workers. Following from this, the state drew on earlier claims about the educative dimension of apprenticeship to now claim master and servant law possessed a similar "civilizing influence".[480] The immigration ordinances governing indentureship, much like the Master and Servant Ordinance of 1846, were said to contain certain protective clauses that recalled the so-called beneficent provisions of earlier slave codes, and that, in theory at least, provided

[477] Bolland, Politics of Labour, *supra* note 10 at 35; 56. See Trotman's important work examining crime statistics to explore state control of labour. Trotman argues forcefully that criminalization of all facets of life not conducive to the plantation system of production (Trotman, *supra* note 472).
[478] Hay & Craven, *supra* note 3 at 1-2..
[479] *Ibid*.
[480] Hay & Craven, *supra* note 3 at 37.

some safeguard for workers' interests.[481] Similarly, the legal framework of indentureship operated under the official rationale that responsibility for the health of imported workers rested with planters which fed claims to the "paternalistic and caring" nature of masters.

The appearance of worker legal protections opened space for Trinidad's ruling elites to advance broad claims to both the neutrality of the colonial state and the freedom or independence of labour following Emancipation. The inadequacies of the worker protections, however, rendered both of these claims deeply flawed. Taking these claims of state neutrality and labour independence together, we see the prevailing scheme of indentureship "assumed, on the one hand, freely contracting parties and, on the other, that one of those parties was dependent".[482] Instead of "civilizing" productive relations, "[t]he protective provisions underscored the inequality of the bargain and so the subordination of the worker".[483] Immigration ordinances in particular functioned to discipline the servant labour force. But of course the key point is that the entire master and servant law framework turned on the use of penal sanctions on workers for even the most venial of infractions.[484]

[481] Haraksingh 1995, *supra* note at 133.
[482] Mohapatra, *supra* note 3 at 462.
[483] Hay & Craven, *supra* note 3 at 37.
[484] High mortality on plantations, to mention just one of the myriad pernicious health consequences of this period, was used against indentured workers to justify their immobilization (See Mohapatra, *supra* note 3 at 459).

III. Indentureship

The enforced exit of apprenticeship presented planters with the particularly acute challenge of maintaining a steady supply of labour. The task of addressing these shortages occurred in the form of inducements including through the assignment of task work and the provision of increased wage rates.[485] Inducements were offered to ex-slaves to guarantee or regularize their service on plantation estates as well as to ensure indebtedness to planters.

At the same time, estate owners and their representatives imposed considerable political pressure on the colonial state to secure steady, persistent and cheap supplies of labour. The colonial state set about to satisfy planters' calls. Indentureship became an accepted and integral means through which planters in the "labour-hungry colonies of Trinidad and Guyana"[486] satisfied their cravings. The growing demands of labour recruitment were satisfied with the introduction into Trinidad of labourers from India who first arrived in May 1845 and continued to do so consistently, save for a brief period of interruption, until 1917.[487]

[485] Labour shortages marked the immediate post-Apprenticeship period. Planters in Trinidad offered field labourers a wage rate substantially greater than other British Caribbean colonies at the time. In 1841 the rate surpassed any rate paid in the past one hundred years (Brereton, History, *supra* note 59 at 78).
[486] Bolland, Politics of Labour, *supra* note 10 at 59.
[487] Indian indentured labour occurred in Mauritius, Guyana, Trinidad, Jamaica, Surinam, Fiji, South Africa and the French colonies; small numbers were also imported into the British colonies of Grenada, St Lucia, St Kitts, and St Vincent and the Danish colony of St Croix (Mangru 1993, ix).

With the infusion of indentured labourers the plantation labour force ballooned just as the territorial expansion of sugar plantations had all but halted.[488] Indentureship augmented the supply of plantation labour which, despite planters' claims to the contrary, enabled the revival of sugar plantations.[489] The regime allowed sugar production in Trinidad to continue and in fact thrive following Emancipation.[490] The existence of indentured workers secured the preservation of British capital investment in Trinidad's burgeoning sugar industry.

The labour supply challenge played out through the monumental task of re-making unfree labour. Indentureship facilitated the engagement of migrant labour by, according to Mohapatra, "operat[ing] to immobilize labour after it had been mobilized over long distances".[491] The "mobilize to immobilize" dynamic captures the deft juggling of the labour demands of plantation owners with their desire for tight restrictions on the mobility of workers.[492]

Upon securing the importation of migrant labourers from India, the Trinidadian state then assumed the task of incorporating workers into plantation work and life. That incorporation occurred through the contractual terms and conditions of

[488] Brereton 1989, *supra* note 59 at 106.
[489] Bolland, Politics of Labour, *supra* note 10 at 62.
[490] See David Northup, Indentured Labour in the Age of Imperialism, 1834-1922, (Cambridge; New York: Cambridge University Press, 1995) (arguing indentureship allowed for major expansion in sugar production on plantations).
[491] Mohapatra, *supra* note 3 at 456; See also Dennison Moore, Origins & Development of Racial Ideology in Trinidad: The Black View of the East Indian (Orleans, Ont.: Nycan, 1995). In the comparative context of India and British Guiana; Mohapatra's analysis examines the labour regimes in the East India Company's first experimental tea plantation in Assam in northeast India (incorporated as the Assam Tea Company) and British Guiana (now Guyana) where Indian labourers were first recruited privately for the sugar plantations of John Gladstone in Demerara (*Ibid*. at 455).
[492] *Ibid*. at 460-461.

indentureship. The state implemented indentured contracts "in order to guarantee that workers were not only present in sufficient numbers but also were 'reliable' in that they did not 'wander about' testing the market".[493] The new limits on worker mobility occurred through an elaborate legal framework of labour law and immigration legislation. Designed to "barricade" or "fence in" migrant labourers on the sugar estates, immobilization of workers occurred through the imposition of strict controls on worker mobility.[494] Grounded in the provision of penal sanctions for breaches of contract, the law of indentureship dictated fines, imprisonment, or both, as mechanisms for enforcement of various forms of misconduct including absenteeism.[495]

The master-servant contractual arrangement became the explicit organizing relationship, although coercion remained at the core of productive relations. The processes of exit were adjusted to reinforce indentured relations which were backed by penal enforcement of worker specific performance. Workers who managed to satisfy the temporal and other contractual obligations of indentureship achieved systemic exit. The expiration of time created a new category of labour, time-expired indentured labour, which presented planters and the state with new challenges and released masters and indentured servants from additional obligations to one another. The indentureship contract provided for free return

[493] *Ibid*. at 458.
[494] Moore, *supra* note 491 at 80; 78.
[495] Haraksingh 1995, *supra* note at 133-134; Bolland, Politics of Labour, *supra* note 10 at 35.

passage to India -- which sometimes took up to five months[496] -- upon fulfillment of established requirements.[497] The responsibility for providing return passage fell on the colonial state, and amounted to "an executive responsibility directly subject to imperial control".[498]

Initially, free return passage was regarded "as an inducement without which the West Indies would probably be unable to induce enough Indians to emigrate".[499] But return passage was rare from the outset. The offer of reindenture lured Indian labourers to remain within Trinidad. With the termination of the first set of indentured labourers in 1851,[500] planters were committed to maintaining the flow of migrant labour, so they offered re-indenture as a measure to keep workers. This altered the available exit options.

As planters agitated to minimize or avoid obligations associated with the provision of free return passage, the colonial state began to view the offer of a return passage as an unnecessary expense. The Indian government, however, insisted on the need for return passage and was supported, at least in the early

[496] The first returning ships encountered shocking rates of illness and disease (scurvy); later mortality and sickness reached about 3%, fairing far better than emigrant ships (K.O. Laurence, A Question of Labour: Indentured Immigration into Trinidad and British Guiana 1875-1917 (Kingston, Jamaica: Ian Randle, 1994) at 362).
[497] The Ordinance of 1870 provided free return passages for time-expired indentured immigrants and their family only.
[498] Laurence, *supra* note 496 at 362.
[499] *Ibid*. at 372.
[500] Moore, *supra* note 491 at 70.

decades of the scheme, by the Colonial Office. Trinidad began to offer to commute return passages in 1869.[501]

With "the unpalatable prospect" of sending home experienced estate workers at term's end,[502] planters sought ways to encourage time-expired labourers to re-indenture.[503] New legislative provisions in the early 1850s permitted planters to provide financial incentives. These provisions also preserved the right to a return passage for re-indentured workers who agreed to an additional five-year term. In 1851, nearly eighty percent of immigrants scheduled to return to India accepted.[504] The high rate of success of these re-indenture initiatives led to further legislative intervention in 1855, which scaled back the term of renewal (to a twelve-month period) and the level of financial incentives. Having peaked in the 1880s, the practice of re-indenture lost its utility by the end of the nineteenth century.[505] Rather than broadening opportunities, the pathways to exit narrowed considerably.

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[501] Laurence, *supra* note 496 at 373.
[502] Moore, *supra* note 491 at 70.
[503] Ordinance No 11 of 1851 permitted the state to offer Indians a financial incentive if they would consent to a further industrial residence of five years. Every immigrant who so contracted was regarded a 'New Immigrant' and he reserved to himself the right to a return passage at the end of the five-year period. Of the 1392 immigrants due to return that year, 1100 or 79% accepted the offer. The offer proved so successful that Ordinance No 7 of 1855 'To Encourage Immigrants to Enter into Contracts for Further Terms of Industiral Residence, and to Confirm Certain Agreements of Service Already Entered into By Immigrants' was passed. It limited reindenture to 12 months at a time, and fixed the bounty (the premium of reindenture), while for future contracts the premium was left option between the contracting parties. As immigration laws became harsher after 1884 (the beginning of the period of depression in the sugar industry), reindenture became less attractive and as reduced to a trickle by the end of the century (Moore, *ibid*. at 70-71).]
[504] *Ibid*. at 70.
[505] Haraksingh, Control and Resistane, *supra* note 208 at 8-9.

In terms of systemic exit, the right to redemption proved similarly contested, again largely due to the political clout of planters. In the earliest period of indentureship, workers enjoyed the legal authority to buy back their service. Although re-purchase could never surpass more than two out of five years of the contractual term, and although contingent on the typically fleeting capacity of workers to accumulate savings, redemption offered modest opportunity for worker self-protection. Planters vigorously contested this right and, in 1876, it was replaced with a requirement for the consent of the plantation owner and often financial compensation for lost labour time.[506]

The parameters of systemic exit also were set by the "pass system": immigrants seeking non-contractual employment were required to produce a Certificate of Industrial Residence to prove that they were not deserters.[507] This was created to address desertions and to ensure the continuous supply of labour power. The pass system served as a predecessor to habitual idleness ordinances of the twentieth century.

The heavy intervention of the local courts bolstered critical "immobilization" functions of legally-sanctioned indentureship.[508] Most importantly, indentured

[506] *Ibid*.
[507] Laurence, *supra* note 496 at 131-132.
[508] Mohapatra, *supra* note 3 at 464-465. The legislative functions were facilitated by a shift in the contractual term from short (one-month, renewable) to long (half a decade with statutory wage compensation).
legislation functioned to drive down wages and to immobilize "by fencing in the Indian labourers on the estates". In this latter respect, the aim was to regulate competitiveness among planters, taking away opportunities for them to lure indentured labourers away from estates where they had secured work (*Ibid*.).

law functioned to immobilize through the imposition of disciplinary action: workers learned the importance of providing service to plantation estates.

Indentured workers, like those before them, had "seldom been in a position of strength to exercise any form of reciprocity; that is, to exchange a blow for a blow or a slap for a slap or a humiliation for a humiliation".[509] They, therefore, had to utilize varying forms of resistance[510] including arson, theft and boycotts. There is evidence of "self-inflicted injury" such as suicide through drinking, hanging or drowning[511], "linguistic metonymy" such as "code-switching", gossip, "character assassinations, rumours and nicknames" aimed at disparaging the reputation of planters.[512] Workers also were known to start work late, embrace absenteeism, malinger while under indenture; they also engaged in property destruction on the estate like burning canes and mistreating draught animals".[513] Strikes and riots also occurred -- although perhaps more so in British Guiana than in Trinidad.[514]

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[509] Lomarsh Roopnarine, Indo-Caribbean Indenture: Resistance and Accommodation, 1838-1920 (Kingston, JA: UWI Press, 2007) at 45.

[510] *Ibid*. at 49. Distinguishing between primary and symbolic resistance, Roopnarine takes the former as "direct defiance such as riots, strikes, rebellion, desertion and acts of revenge" which "occurs when subordinate groups have little other recourse for improving their status, diverting suppression and stopping carnage" (*ibid*.). As Roopnarine asserts: "Primary resistance did not change the fundamental basis of domination. [It] certainly threatened the system and forced the dominant classes to renegotiate relationships, but the substance of the power structure remained virtually unchanged" (*ibid*. at 52). Symbolic resistance, according to Roopnarine, relates to "indirect but subversive confrontational struggle against power, including tactics such as foot-dragging, slander, gossip, mimicry, false compliance, feigned ignorance and sabotage. These acts are everyday forms of resistance, which are not obvious" (*ibid*).

[511] *Ibid*. 50 ("Killing one's self was seen as an act or blow against the plantocracy, against the planter's property and profit").

[512] *Ibid*. at 58.

[513] Laurence, *supra* note 496 at 491.

[514] Strike action presented the threat of reduced crops and destruction of property. The occurrence of strikes was not a strange phenomenon. Indeed, some fifty strikes occurred in the two decades following 1882, while in 1916 there were eight alone.

Desertion, the most definitive form of resistance, rejected the tight constraints imposed on labourers. As Laurence asserts: there was an explicit relationship between desertion and "the prevalence of distasteful conditions of life and work, a low level of earnings and unsympathetic management; and another between absence from work, seeming idleness and the chronic ill-health at a level not requiring hospitalization".[515]

In fact, a dialectic developed between strategies of opposition and state responses. At no point in the nineteenth century was there a "satisfactory method of enforcing performance of the full 280 days work, which the law required each year". Thus the colonial government was under constant pressure from the growers to improve "an always deficient system". They turned to "fine[s], imprisonment and extension of indenture and back again". As Laurence notes, each change was welcomed with optimism, but each proved with experience to fail at quashing worker resistance.[516]

These acts of resistance demonstrated a level of engagement with the oppressive forces of indentureship. Indeed, the large number of prosecutions for labour offences, even if a significant proportion were unjustified, suggests a pattern of

[515] Laurence, *supra* note 496 at 148-149; 148 ("It was a context in which the employers were always pressing for more rigorous measures, the governments always seeking to placate them while yet preserving a distinction between indenture and slavery" in line with a free labour ideology).
[516] *Ibid*. at 148. Indeed, indentured labourers served 200 out of the required 280 days a year (*ibid*. at 140).

protest.[517] Penal enforcement of work contracts proved paradoxical at times as labourers convicted for violent acts "were nonetheless stereotyped by the planters as a 'docile' labour force".[518]

Ultimately, indentureship ended through enforced exit. The source or sending states -- most notably India in 1917 -- assumed key roles in pushing for the end of the regime, although the challenge of containing worker resistance is understated. Further, enforced exit occurred differently under indentured servitude than under slavery. Absent from the cessation of indentured servitude was the provision of compensation for lost chattel property and labour time, which characterized the formal end of slavery.[519] If free labour ideology was the carrot during the brief period of apprenticeship, it now had become the stick which plantation capitalists wielded to subject workers to the logic of contractual market relations.

IV. Twentieth Century Labour Relations

This section of the chapter emphasizes twentieth century developments in the legal regulation of labour relations in Trinidad's sugar industry. It continues the

[517] *Ibid*. at 491. Whereas British Guiana immigration ordinances distinguished desertion from absence from work, Trinidad ordinances made no such distinction in offences until the 1899 Ordinance -- all cases were treated as absence from work (maximum penalty was up to seven days imprisonment or one month for subsequent offences, and prolongation of the indenture) (*ibid*. at 149). Thus, as Laurence concludes, "the periodic juggling of fines, imprisonment and extension of indenture in the search for an effective method of compelling work was really a fruitless exercise" (*ibid*. at 148).

[518] *Ibid*. at 491. "The concept of the 'docile coolie' was however extremely useful to the planters. Harping on it helped to achieve the continuance of indentured immigration and at a certain level the planters deluded themselves into believing it. It became 'a psychological technique of self-justification' with which to support the system of total social control which they sought" (*Ibid*. at 491-492).

[519] See *ibid*. at chapter 13.

examination of the role of law in the facilitation and supervision of labour unfreedom. Law continues its meditative role through its diversion of the most prominent and typically militant claims and demands of workers. The processes of exit, crucial to the regulation of labour and opposition under capitalism, shift to the introduction of, superficially at least, a consensual approach. By the outset of the post-Independence period, the processes of exit had morphed into processes of voice (with "habitual idlers" and other unorganized segments of the working class having no access to those processes) -- whereby trade unions became legitimate institutions within the legal structural framework. Gaining the right to strike -- which must be distinguished from the capacity to collectively withdraw labour power -- became the object of desire of most trade union officials and segments of the rank-and-file. Taking collective action in a "responsible" manner occupied the attention of conservative and reactionary forces within and without organized labour.

Classifying Labour Law

In his important and critical review of the twentieth-century development of labour law in Trinidad & Tobago, labour scholar Roy Thomas employs an analytical framework for legal analysis.[520] Applying a classification schema initially developed by British labour law doyen Otto Kahn-Freund, Thomas identifies three dimensions or functions of labour law: protective, restrictive and auxiliary.

[520] The Development of Labour Law in Trinidad and Tobago (Wellesley: Calaloux, 1989).

Labour laws assume regulatory or protective functions by "governing the terms and conditions of employment of individual workers".[521] These laws are "designed to contribute to the removal or amelioration of the more untenable features" of working conditions.[522] Labour laws also take on restrictive functions which address "the rules for the conduct of industrial conflict".[523] That is to say "the main purpose of labour law as seen by the colonial authorities was primarily to lay down procedures for the regulation of employer-worker relations which would minimize the scope for workers' collective assertiveness in determining their terms and conditions of work".[524] Auxiliary functions of labour legislation relate to the institutionalization of procedures for collective bargaining.[525]

The typology or schema, although generally helpful, conveys a discordant relationship between specific provisions of labour law statutes. In this way, the schema too readily compartmentalizes the functioning of legal initiatives. It suggests that specific labour law provisions function separate and apart from each other and not, even in the face of apparent internal conflicts, as a unified whole. This encourages an analytical approach which is static and sterile, and it promotes an overly optimistic or idealized evaluation especially of the impact of the protective aspects of certain labour law statutes. How specific laws function together forms a crucial role in a critical explanatory account. The application of the schema downplays this interaction which stems from the hierarchy of legal

[521] *Ibid*. at 2.
[522] *Ibid*. at 9.
[523] *Ibid*. at 2.
[524] *Ibid*. at 8.
[525] *Ibid*. at 2.

rules -- and by extension the coordinating role of the state of which the essential legal relation of property is central.

A more coherent account problematizes the inference of sterility. The auxiliary classification tends to reinforce the fictive notion of state neutrality rejected earlier. The relationship of auxiliary provisions to restrictive and protective ones requires deeper analysis. It is agreed that a question of fundamental importance is whether a given law (or provision) supplements, bolsters or undermines existing productive relations. That said, the questioning must not stop there. There is a further need to assess the impact of specific laws on the relations of production. And in that respect, situating the questioning within the structure of relations, along with the state's coordinating role in the maintenance of that structure, is essential.

The static and compartmentalized approach of the schema also fails to deeply integrate labour law into historical analysis. Nineteenth-century relations of production in Trinidad, as a previous chapter maintained, developed around the idea and relations of labour unfreedom. Notwithstanding myriad insights, the schema employed by Thomas, which stresses twentieth century developments, leaves one to ponder: what ever happened to labour unfreedom? Labour unfreedom does not merely dissipate or wither away with the end of indentureship. There is a need to appreciate not only the role of working-class opposition, as Thomas does in his forceful but curt articulation of "pressure from

below",[526] but also the ongoing and conflictual processes of grinding down and defending labour unfreedom. Protective provisions must be taken in wider historical context. The containment of worker collective action -- which, according to the schema, is attributed to restrictive provisions alone -- colours the entire functioning of the labour law regulatory framework. Not only do the specified protective provisions work to temper or undermine radical worker demands, their limitations underscore the ongoing structural contradictions in capitalist labour relations.[527]

The analysis here strives to examine the impact of specific labour law statutes not apart from but within the long history of relations of production within sugar. Labour unfreedom is seldom a term used to characterize middle to late twentieth century sugar labour relations. In the structure of those relations, however, I argue that we continue to find the essential elements of labour unfreedom, state-enforced dependency -- or more aptly hyper-exploitation -- of labour through politico-legal constraints or coercion. The obstacles and remnants of unfreedom persist throughout the twentieth century period under study and a retrieval of these help to explain the ongoing structural burdens faced by Trinidadian sugar workers.

Two organizing ideas explain the continued existence of core elements of labour unfreedom: responsible unionism and habitual idleness. Responsible unionism

[526] *Ibid*. at 64-65.
[527] See Hay & Craven, *supra* note 3 at 37 (arguing that "[t]he protective provisions underscored the inequality of the bargain and so the subordination of the worker").

refers to the imposition of tight legal constraints on collective worker organization and action -- with the widening of formal political authority to incorporate union elites, but not rank and filers, into official disciplinary roles. Habitual idleness captures the widening of the scope of regulation over labour to ensure unemployed workers remain under capitalist logic.

Responsible Unionism

Labour unfreedom -- and the accompanying ideology of free labour -- remain an important rationale for the regulation of productive life during the 1900s. That said, free labour ideology undergoes a shift in meaning to account for the emerging potency of worker collective mobilization and action. It finds renewed expression through the concept and practice of responsible unionism.[528] Constructed on respect for the rule of law and the sanctity of private property and contract, and a rejection of all but a tightly constrained form of worker collective action, the promotion of responsible unionism marks an attempt to forge productive stability and peace through legality.

With respect to the legal containment of collective worker action, the imposition of obligations of fairness and responsibility on the right to collectively associate meant that law would continue to set the parameters in which class struggle occurs. Law's preservation of the essential legal relations of property and contract, which turned on the reciprocal nature of legal rights, infused the meaning of both responsibility and fairness. To that end, the meaning of union

[528] Nurse, Trade Unionism, *supra* note 52 at 48.

responsibility was grounded in "common sense" assumptions of compromise or accommodation and gradual improvement over working conditions. That understanding was embraced by trade union officials and certain segments of the rank-and-file -- and with, it is pivotal to note, strong endorsement from British elites within organized labour and, because of the political rule of the British Labour Party, the wider imperial state apparatus.

Responsible unionism formed the basis of a regime of labour regulation in which union officials derive authority not from workers but from legality, which, despite claims to the contrary, promoted unmitigated acceptance of labour's "innate" subordination to capital. In exchange for recognition of their legitimate place within capitalist relations, unions and union leaders were expected to "take the edge off" of capitalism by re-inscribing the privilege of capitalist property ownership.

Under the regime, organized workers were expected to forgo most forms of collective action and instead opt for a circumscribed form of representative democracy within workplaces. The accepted strategy for bringing about desired social change, or for exit, were established and as time went on, hardened if not further narrowed. As Trinidad's most prominent labour leader "Captain" Cipriani asserted, change would occur through "constitutional channels", not through coordinated workplace struggle. Labour elites like Cipriani assume the disciplinary role of working-class whip, ensuring the rank and file falls in line

with the expectations imposed on it through law. In this way, the imposition of controls on organized labour which, although undemocratic, had the appearance of fairness due to the consensual, opt-in nature of late colonial labour regulation.[529]

No Idling

The end of indentureship in early twentieth century Trinidad presented sugar estate owners with an acute challenge: how best to retain the services of plantation labourers. The colonial state responded with a series of legislative initiatives designed to secure considerable labour time commitments from formerly indentured workers. Under the Habitual Idlers Ordinance of 1918, any male labourer not able to show a minimum four-hour work commitment over the prior three-day period could face internment at a state agricultural labour camp. There, the "habitual idler" would be indoctrinated, then re-deployed on the cheap within private industry. Although it received only partial implementation after its eventual enactment in 1920,[530] the significance of the ordinance stems from the wider strategy. This is demonstrated in three overlapping respects.

First, it was designed to discourage indentured labourers whose terms had expired from withdrawing their labour power from plantations.[531] The ruling elite took to heart the old adage that "idle hands are the devil's workshop", fearing not only the

[529] This included the formal requirement for trade unions to register under the official ordinance which, in creating an "opt-in" component, structured labour control on the idea of consent.
[530] Kiely, Politics of Labour, *supra* note 46 at 66; Haraksingh 1995, *supra* note at 134.
[531] Hart, *supra* note 360 at 74.

loss of a reliable pool of labour but the creation and proliferation of more hardened forms of collective worker opposition. The classification of this ordinance in leading accounts as not labour legislation but as legislation which formed "part of the strategy of controlling the 'labour problem'",[532] appears to forge an unsustainable distinction. It overlooks law's crucial role not only in setting the parameters of acceptable behaviour but also in the boundary-setting classification of labour. The category of habitual idler imposed real constraints on worker mobility. The processes of exit -- and thus the scope of labour unfreedom -- were characterized by the classification of habitual idlers.

Second, the legislation, which actually refrained from defining "habitual idler", placed interpretation largely at the discretion of the magistrate.[533] In maintaining emphasis on legal administration, it conformed to master and servant legal framework. And finally, the ordinance bred contempt amongst workers who perceived it as at best a marginal revision of indentureship and at worst an unwanted reproduction of it.[534] The 1919 labour disruptions resulted.

In a similar vein to the Habitual Idlers law, the Truck Ordinance of 1920 eroded the exit options for sugar workers. It prohibited the payment of wages in all forms save for cash, which, although providing a measure of monetary protection against non-payment of wages, undoubtedly reduced the capacity of small

[532] Roy Thomas, The Development of Labour Law in Trinidad and Tobago (Wellesley: Calaloux, 1989) at 52.
[533] Trotman, *supra* note 472 at 211.
[534] Kiely, Politics of Labour, *supra* note 46 at 66.

employers to compete with large and well-established plantation owners for labour.[535] The anti-competitive nature of the measure therefore confined the development of small scale planters as well as workers. In the same year, a Sedition Ordinance also passed which became the basis for reactionary political assaults against working class agitation in 1919 and 1937. This ordinance would be followed by two additional pieces of legislation, both in response to the mass unrest of 1937 and directed at further suppressing dissent from the working masses. A proclamation by the governor asserted his authority to censor publication materials and detain suspected dissenters,[536] and an ordinance prohibited mass assemblages greater than ten people. These legal interventions targeted radical dissent and privileged individualistic as opposed to collective mobilization and struggle.

Additional labour ordinances were enacted from the mid-1920s onwards that, in unique ways, further tightened legal regulatory controls on workers.[537] Workers had exited from the coercive confines of indentured servitude only to find that any real prospect of independence had been delimited by their continued legal repression. True, sugar workers were no longer contained within an explicit framework of labour unfreedom. However, workers could still not do with their labour power as they saw fit. Indeed, the onus lay on them to demonstrate

[535] Haraksingh 1995, *supra* note at 135.
[536] A particularly repressive statute, the Seditious Acts and Publications Ordinance (No 10 of 1920) banned a number of publications perceived as seditious and created the criminal offense of "disaffection" against the government of Trinidad & Tobago or any other British possession. Offenders could face imprisonment (for up to two years) and fines (up to 1000 pounds).
[537] See e.g. the Workmen's Compensation Ordinance of 1926, which compensated injured workers only upon disablement greater than ten days and which virtually excluded agricultural workers.

constant productive worth, defined of course in terms advantageous to the maintenance of status quo work relations. Thus, far from the cessation of the conditions of unfreedom characteristic of master and servant law, labour ordinances of the period solidified productive relations of subordination and domination.

The Institutionalization of Responsible Unions

In the face of legal repression of collectivist forms of action, workers still managed to engage in unified opposition. Collective worker agitation of the late nineteenth century and onwards did not lead immediately to formal acceptance of trade unionism, however. The growing willingness of workers to organize and exert their will, through cultural and then worker associations, with the latter more openly embracing direct action specifically as workers, gradually ground down the hardened anti-trade union resolve of capitalist owners and the political brass. The agitation eventually pushed the ruling classes to pursue a different tact, in its outward appearance more concessionary to worker collective organization and mobilization -- but it did not rupture their pursuit of profit and devotion to property rule. Concessions notwithstanding, class antagonisms persisted. As mentioned, the colonial state's eventual legal endorsement of trade union activities contained stringent qualifications which largely imposed specific processes of exit.

Throughout the British Caribbean, colonial law outlawed nearly all forms of worker collective organization and action. Dating back to Emancipation, local ordinances criminalized mass public assemblies of workers on fears of sedition and unwanted interference in commerce and exchange.[538] Colonial trade union activities were subject to the English common law doctrine of "restraint of trade". The 1871 statutory exemption of British trade unions did not extend to the island colonies and as such, in accordance with English common law, trade union activities continued to be curtailed.[539]

Despite the enactment of legislation legitimizing trade unions in Jamaica in 1919 and two years later in Guyana, the colonial state in Trinidad did not legalize trade union activity until 1932. Indeed, over that period the Trinidad state instituted a series of repressive legal measures which, by suppressing militant and collective worker opposition, intensified the individualized exaction of labour power. Alongside the legislation on idleness, sedition and wages discussed above, the Strikes and Lockouts Ordinance of 1920, also enacted in direct response to the disturbances of late 1919, altogether outlawed the use of strike action and instituted arbitration to resolve work disputes. Designed as a temporary response to operate during the first half of the year, the Disputes Settlement and the

[538] For instance, legislation preventing combinations in restraint of trade, which were employed to undermine trade unionism in the late nineteenth century onwards, were used to curtail collective organization among freed slaves in the 1830s (Hart, *supra* note 360 at 72-73).
[539] *Ibid* at 72.

Industrial Court Ordinances replaced it with the intent of entrenching these measures.[540]

By 1930, however, things had changed. The shift in the imperial elite response to formal collective organization corresponded to the change in ruling parties in England during 1929. The British Labour Party's assumption of power signaled a different approach to the regulation of worker organization in the colonies. In September 1930 a directive issued to all colonial governors recommended the formation of trade unions. The Passfield Circular, named after its author the Secretary of State for the Colonies Lord Passfield (none other than Sidney Webb, the Fabian socialist and early writer on industrial relations) moved to legitimize trade unions as institutions within colonial capitalist society. Just as it ruptured longstanding imperial opposition to trade unionism, the Passfield Circular espoused mitigation, constraint and, above all else, responsible unionism:

> I recognize that there is a danger that, without sympathetic supervision and guidance, organizations of labourers without experience of combination for any social or economic purposes may fall under the domination of disaffected persons, by who their activities may be diverted to improper and mischievous ends. ... [I]t is the duty of Colonial Governments to take such steps as may be possible to smooth the passage of such organizations, as they emerge, into constitutional channels.[541]

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[540] The ordinances were enacted under the pretext of committee review of local wage conditions. Although the Wages Committee recommended minimum wage laws, none were forthcoming until 1935. The "no strike" measure was imposed to allay fears that workers would take direct action to force the state's hand (Basdeo, *supra* note 350 at 23). Although proposed, and although supported by the TWA leadership, the ordinance did not follow through on the creation of an Industrial Court (See Basdeo, *supra* note 350 at 133).

[541] Cited in Bolland, Politics of Labour, *supra* note 10 at 152. The Passfield Circular or Memorandum led to the enactment of the Trade Union Ordinance of 1932 in Trinidad -- although not all island colonies followed suit right away (*ibid*. at 153; 195). The fallout from the 1930s disturbances drove the colonies, on the recommendations of the Orde Browne and Moyne commissions, to enact a series of labour controls.

The desire to indoctrinate workers provided important justification for legal intervention in productive life.

Trade Unionism, Hallowed or Hollowed Out?

Trinidad's trade union ordinance followed Jamaican trade union law in re-fashioning formal worker organization. The Trade Union Ordinance of 1932 imposed compulsory registration of trade unions as the initial threshold through which the state conferred legitimacy. Registered trade unions were deemed legal and as such gained formal access to the rights and, as would become quite evident to workers, the obligations of the ordinance. British trade union legislation provided the model for the approach. Unlike British law however, the Trinidadian -- and Jamaican -- ordinance was missing fundamental elements: the legality of "peaceful" picketing[542] and protections against civil liability for damages arising out of strike actions, to mention a couple.[543] Later, it would become evident that trade union law also fell short in securing true recognition of unions by masters or owners.

The Trade Union Ordinance sought to incorporate unions into the state apparatus, but from its inception it faced resistance. On the advice of prominent British trade unionists, the Cipriani-led Trinidad Workingmen's Association refused to register under the ordinance. More generally, the ordinance failed to appease large swaths

[542] Cipriani appealed on this point to the Secretary of State for the Colonies, but the decision was against variation of the legislation.
[543] Basdeo, *supra* note 350 at 118-119.

of the working class. Instead of stemming the tide of worker militancy, the trade union ordinance energized the collective struggles of workers leading to the massive unrest of 1937. Labour historian Basdeo suggests that the explanation relates to the central role of legal institutions in social reform of labour relations. According to Basdeo, "the almost total absence of institutional arrangements for the articulation of the grievances of the working class"[544] led to its unpopularity.[545] And yet, the removal of common law, criminal conspiracy and civil restrictions on worker assembly brought trade unionism out of the darkness of illegality. Yet the unwillingness to authorize peaceful picketing, to grant immunity from tortious liability, and to force union recognition on employers, meant the legal protection of trade unionism occurred in a hollowed out, if not utterly deficient, form.[546] These measures would go too far in interfering with capital accumulation, just as the pace of corporate consolidation was quickening within the sugar sector.

In addition to the trade union ordinance of 1933, additional labour law legislation following from the 1937 unrest deepened the institutionalization of dispute resolution machinery. The Trades Disputes (Arbitration and Inquiry) Ordinance, enacted in early February 1938 and amended in late May of the same year, instituted investigative and dispute settlement mechanisms within labour relations. The governor and the colonial state generally enjoyed a more prominent and pre-emptive role in dispute resolution. The Trade Disputes ordinance granted

[544] *Ibid*. at 194.
[545] *Ibid*. at 195.
[546] Haraksingh 1995, *supra* note at 132.

authority to the governor to intervene in work disputes and disruptions to effect a resolution.[547]

Trade unions formally were regarded as legitimate institutions within the prevailing hierarchies of the social order. In practice, however, a lengthy period of union recognition battles occurred, coupled with continued disputes over wages, working conditions and unemployment. Trade union legitimation came at great price: the imposition of obligations of "responsibility". In particular, legislative machinery imposed an expectation of compromise -- and in the context of capitalist societies where capital typically dictates the agenda on which negotiation occurs -- compromise and negotiation tended to set workers back. Even with the introduction of protections for peaceful picketing and immunity from civil actions for unions, which finally occurred with the enactment of the Trade Disputes and Protection of Property Ordinance in 1943, organized labour operated under heavy constraints. Even this new legislation, which reduced these two significant barriers to the operation of trade unions, did not remove them altogether. Nor did it apply broadly, excluding public service (and quasi-public

[547] The governor wielded the authority to establish an arbitration panel or tribunal consisting of a lone arbitrator, or an arbitrator and an equal number of assessors representing workers and owners, whose decisions were binding. The governor could also appoint Boards of Inquiry to supervise the investigation of specific disputes or general conditions. More generally, the ordinance was drafted with direct input from Adrian Cola Rienzi, the sugar union official, lawyer and newly-elected Legislative Council member (Basdeo, *supra* note 350 at 211-212). Real and symbolically, this demonstrated both the decline in working-class leadership from Captain Cipriani as well as the colonial state's shifting, more conciliatory stance towards elites within organized labour. This ordinance, which became the model for the entire colonies, encouraged a narrow and conciliatory form of collective bargaining over work terms and conditions. It produced some favourable results for workers, early on and within the oil sector in particular (*Ibid*. at 213). A series of interventions by Boards of Inquiry transpired from the late 1940s onwards. Between 1948 and 1963, fourteen such inquiries occurred, five of which dealt with labour relations within the sugar industry (Thomas, Development of Labour Law, *supra* note 532 at 36-39).

service) workers. In the end, responsible unionism shaped the social role imposed on organized sugar workers. This meant that only individualistic and very modest collective activity was permissible. Trade union officials, distinct from ordinary workers, wielded authority to engage employers over disputes or to seek redress through legally proscribed channels.

Trinidad went into the historic Independence juncture with a regime of labour regulation in which trade unions were, formally at least, an accepted and institutionalized feature of labour relations. Again, although the main crux of this dissertation rests with historical developments during colonialism, a review of early post-colonial developments in labour regulation is useful for an understanding of the trajectory of the role of law and the state in unfree labour. In particular, the introduction of two key labour statutes, the Industrial Stabilization Act and the Industrial Relations Act, illustrate the enduring nature of labour unfreedom.

Early Post-Independence Labour Law

Almost immediately following Independence, intense labour agitation led Prime Minister Eric Williams to invoke a national state of emergency.[548] It is in this highly charged and polarized atmosphere that the Trinidadian state moved to pass sweeping labour law reforms. Citing "lost work time" statistics, the Williams

[548] Ongoing struggles for union recognition in Trinidad led to challenges in court. See Beetham v Trinidad Cement Ltd [1960] AC 132, [1960] 1 All ER 274, [1960] 2 WLR 77 (where the Privy Council held that the refusal of an employer to grant recognition to a union constituted a trade dispute).

government pressed for labour law reform in the form of the Industrial Stabilization Act (ISA).[549]

A wide range of expert opinion exists on the (in)efficacy of the ISA, with some ranking it amongst "the most controverted" of statutes in Trinidadian social history.[550] "Probably no other piece of legislation", insists Thomas, "divided national opinion as sharply as did the ISA".[551] All agreed that the ISA "transformed the corpus of labour relations in Trinidad and Tobago".[552] But as to whether it "succeeded in improving and enhancing the effectiveness of collective bargaining" in Trinidad, as Henry asserted,[553] was fiercely contested. At the time of its passing in March of 1965, the popular debate surrounding the ISA proved no less divisive. Worker factions representing competing perspectives on the utility of the specific reforms congregated outside of the House of Representatives.[554] In fact, the debate outside the House proved far more bitter and contentious than that occurring within it.[555]

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[549] Act No. 8 of 1965. "An act to provide for the compulsory recognition by employers of trade unions and organizations representative of a majority of workers, for the establishment of an expeditious system for the settlement of trade disputes, for the regulation of the prices of commodities, for the constitution of a court to regulate matters related to the foregoing and incidental thereto"

[550] Chuks Okpaluba Freedom of Association in West Indian Labour Law (St. Augustine, Trinidad: University of the West Indies, 1974) at 80 ["Freedom of Association"]. at 80.

[551] Thomas, Development of Labour Law, *supra* note 532 at 43.

[552] Chuks Okpaluba, Statutory Regulation of Collective Bargaining: With Special Reference to the Industrial Relations Act of Trinidad and Tobago (Mona, Jamaica : Institute of Social and Economic Research, University of the West Indies, 1975); Okpaluba, Essays on Law and Trade Unionism in the Caribbean (Port of Spain, Trinidad: Key Caribbean Publications, 1975) at 297.

[553] cited in Okpaluba, Freedom of Association, *supra* note 530 at 81.

[554] Thomas, Development of Labour Law, *supra* note 532 at 43.

[555] In astonishing fashion, the Act was pushed through in a day.

In repealing the Trade Disputes (Arbitration and Inquiry) Ordinance, the ISA initiated the first meaningful review of post-Independence labour relations. In fundamental ways the Act mimicked labour law legislation enacted in late colonial Trinidad. Specifically, quite obvious lines of continuity exist with both the Strike and Lockouts and Industrial Court Ordinances.[556] That said, the ISA adopted a far more sophisticated approach than earlier colonial legislation. To fully appreciate the nuance with which the Trinidad state proceeded it is necessary to reflect on the specifics of the ISA. Thomas categorizes the statute as both auxiliary and restrictive in its formative nature.[557] Most significantly, the Act set out procedures for compulsory trade union recognition by employers.[558] The tumultuous decades-long struggle for union recognition -- saying nothing of the centuries-long fight for collective action -- finally appeared to produce a highly favourable result for organized workers. With apparent ease, startling to be sure for certain trade unionists who had engaged in the unfolding saga, the post-Independence state acquiesced to a central demand of labour leaders. Similarly, the statute quite readily accepted the need for written collective agreements setting out the negotiated terms and conditions of the impugned parties. There now was express acknowledgement of the centrality of collective bargaining

[556] Like earlier statutes, the ISA attempted to bring stability to labour relations by encouraging responsible behaviour of trade unionists and co-opting worker grievances (C. D. Parris, Capital or Labour? The Decision to Introduce the Industrial Stabilisation Act in Trinidad & Tobago Institute of Social and Economic Research, UWI, 1976) at 4-5).
[557] Thomas, Development of Labour Law, *supra* note 532.
[558] S. 3(1). The recognition provisions proved quite important, particularly from the standpoint of trade unions. Between 1965 and 1971, no fewer than forty-six claims were received by the Ministry of Labour, with an average of seventy-six claims advanced each year and peak of 103 in 1970. Of these claims received, the Ministry resolved in the range of ninety percent each year. (See Okpaluba 1975, *supra* note 530 at 63).

processes in productive affairs. Although prior labour law legislation made similar if more covert overtures, the ISA did so quite explicitly and unequivocally.

Collective agreements, which would be registered with the appropriate administrative body (Industrial Court), became legally enforceable through the courts.[559] It was the "unequivocal commitment to the setting up of grievance machinery", no less the establishment of worker protections against employer backlashes to trade union activity,[560] in terms akin to the "unfair labour practices" of the momentous Wagner Act in the United States, that proved most intriguing.[561]

Protective provisions notwithstanding, the ISA contained heavily restrictive functions foremost among these the establishment of a permanent Industrial Court. The Court was tasked with the registration of collective agreements.[562] More fundamentally, it held primary responsibility for the resolution of complaints and disputes including over the prices of goods and commodities -- although the price control provisions were never utilized. The introduction of compulsory arbitration under the ISA shifted considerable emphasis away from direct action, outlawing it in virtually all circumstances, and onto Court-mediated settlements of industrial disputes.

[559] s. 26.
[560] s. 4.
[561] Thomas, Development of Labour Law, *supra* note 532 at 45.
[562] The jurisdiction of the Industrial Court was set out in s. 5(2).

Upon the referral of a dispute to the Court,[563] a power granted to the Minister of Labour, workers and employers could not engage in strikes and lockouts. As such, disputes before the Court invoked no strike or lockout expectations on labour and capital alike -- a prohibition which the former challenged unsuccessfully both in Trinidad's High Court and then the Privy Council.[564] In disputes not referred to the Industrial Court, workers and employers could undertake direct action after clearing a series of temporal and reporting thresholds.[565] Following a twenty-eight day cooling-off period, the acting party would be required to produce, within forty-eight days of the decision to strike or lockout, a written notice of intention to the Minister. The decision then would be subject to an additional fourteen day cooling-off period. Only after meeting these stringent stipulations could the party engage in direct action against the other.

In the final assessment, the ISA was, as Thomas concludes, "essentially restrictive in thrust".[566] What this conclusion leaves undeveloped, however, is the state's commitment to the achievement of a complex balance of concessions and constrictions -- analogous to the mobilize to immobilize dynamic. In the face of concessionary enticements, the state imposed rigid constraints on the use of collective action by workers through a number of means. The statute treated strikes and lockouts as equivalent even though the tactical actions available to workers and owners, not to mention their economic power, are wildly

[563] Part IV of the Act.
[564] Collymore and Abraham v. Attorney-General, (1967) 12 WIR 5 (CA).
[565] Part III of the Act.
[566] Thomas, Development of Labour Law, *supra* note 532 at 54.

disproportionate. It utilized the Industrial Court as a demobilizing force whose intervention legitimized the imposition of strict limitations on direct action through strikes.

The statute also set expectations for the exercise of the right to strike. In effect, disputes between formally equal parties with equal rights would be decided by a neutral arbiter, the Industrial Court. The continuation of the social role for workers was embedded within responsible unionism. Organized workers were granted the collective right to exercise voice (in a largely constrained manner) -- but little else.

The ISA illustrates that the Williams-led government largely acted out of deep concern for the detrimental impact of militant unionization on capitalist development.[567] Williams especially feared the militant potential of George Weekes. As the newly minted oil union leader, Weekes' attempts to join his constituents with sugar workers in united struggle, threatened to transcend the racialized antagonisms that increasingly dominated national politics, and that Williams (among countless others) fostered and benefited from. From this wider perspective, as Parris astutely pointed out, the decision to break the power of organized labour through the ISA extended from the state's specific and polarizing approach to development. In encouraging class antagonisms, that

[567] For a useful supporting argument see Parris 1976, *supra* note 556.

approach attempted to generate new opportunities for the country's emergent ruling class and for existing imperial capitalists.[568]

Key trends pointed not only to the continuation of existing relations, but in fact to an intensification of capitalist rule. In terms of industrial stability, the statute brought very little quiet. If the cessation of work stoppages truly was the rationale behind labour law reform, the ISA failed miserably.[569] Dispute resolution through the Industrial Court assumed growing prominence. From the enactment of the ISA in March 1965 until the end of the decade, the Industrial Court received and disposed of a considerable amount of disputes.[570] Not all of these decisions favoured employers. Indeed, of the thirty-six rulings or conciliations made during the first year, only three were in favour of employers with another three evenly split.[571] The anti-ISA campaign was initially affected by the performance of the Industrial Court which clearly demonstrated that it was not partial to employers.[572]

But evidence existed to the contrary. In 1966, for instance, the Industrial Court permitted the sugar industry to mechanize to reduce its workforce "by attrition

[568] Because the ISA "set the pattern for other governments in the region" (Nurse, Trade Unionism, *supra* note 52 at 100), this argument can be broadened to cover the agenda of the ruling classes in the wider British Caribbean.
[569] For instance, in the period 1970 to 1972 alone there were 167 work stoppages with a loss of one quarter million man.
[570] In 1965, 147 disputes were reported to the Ministry by 1967 that number had reached 558, and within two years it would rise to 698. (See Zin Henry, Industrial Relations and Industrial Conflict in Commonwealth Caribbean Countries (Trinidad: Columbus Publishers, 1972) at 260, table 14).
[571] Ramdin, *supra* note 344 at 206. The ISA underwent key amendments in 1967, to increase the number of judges on the Court, and to expressly confer the Court with the power of reinstatement. The reinstatement power followed the Trinidad Bakeries decision. Trinidad Bakeries Ltd. v. National Union of Foods, Hotels, Beverages and Allied Workers and Attorney-General, (1967) 12 WIR 320 (upholding an appeal challenging the Court's power to reinstate in dismissal).
[572] Ramdin, *supra* note 344 at 206. For instance, the Vanguard (the oilworkers' weekly) conceded the "Court has done a fine job and has replaced the conference table as a place for negotiations".

rather than by direct retrenchment".[573] In effect, the Court refused to shift the claims of workers onto Tate & Lyle, allowing instead for workers to bear the onus of their demands. Even if certain segments of organized labour felt the allure of the Industrial Court, the resolution of labour disputes failed to occur at a rate satisfactory to most. "[B]y every yardstick", noted Thomas, "the industrial relations situation was steadily deteriorating [and] [b]y the end of 1969, in a climate of deepening social and political turmoil, the court was having little, if any, impact on the industrial relations situation. The ISA as an instrument of industrial stabilization had become a dead letter".[574] Social forces demonstrated their disapproval by engaging in mass political protestation, as discussed below.

Under the ISA, then, the constraining dynamics of colonial relations of production persisted. Rather than undermining or breaking from responsible unionism, the ISA sought to enlarge it. Organized workers in sugar and elsewhere were subjected to the ebb and flow of judicial reasoning, indebted at times to enlightened adjudicators, but always subject to the top-down, disempowering and anti-democratic characteristics of the legal institutional order. As the judicial arm of the state assumed more explicit and prominent intervention within production relations, however, the mediation function of the state remained intact. The Industrial Court felt the pull of law's claims to formal equality and fairness, but it could not escape the fundamental devotion to private property and contract.

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[573] Ramdin, *ibid*. at 194. The company was permitted to finance the wage increase and improved pension benefits ordered by the Court by raising the price of domestic sugar (which had not changed for 16 years) and by drawing on the employer's share of the Price Stabilization and Sugar Rehabilitation Funds.

[574] Thomas, Development of Labour Law, *supra* note 532 at 47.

From Stabilization to Relations?

The spontaneous emergence of popular protests, under the "black power" rubric, led the Williams administration to declare a state of emergency on 21 April 1970. No doubt the firestorm of rebellious activity which swept through the Americas played an important factor in the state's response. But the more pressing concern of Prime Minister Williams, to crush ongoing industrial unrest, better explains the heavy-handedness.[575] In the face of several significant challenges, Williams managed to retain political power in the national election of September, if only by a thread. Protests subsided and with the state of emergency lifted in November 1970, imprisoned black power leaders were released.

Within fewer than twelve months of the national vote, and a year and a half after the state of emergency, the state declared a second state of emergency. Triggered by labour disruptions related to the construction of a desulphurization plant at a Texaco refinery, and by poaching allegations leveled by the Labour Congress at Weekes and the oil field workers union,[576] this second declaration pushed the government to seek out a more lasting form of stability. The newly re-elected

[575] Outside of the involvement of George Weekes and a few others, organized labour leaders did not assume a prominent role in the protests. Nor did the majority of the rank-and-file within the disjointed labour movement participate actively in the protests. A minority contingent however did participate providing a "strategic significance" particularly from the standpoint of a political administration bent on crushing labour militancy. (Kiely, Politics of Labour, *supra* note 46 at 119). Several supporting developments elevated the revolutionary potential of the protests. The army broke ranks with the ruling class refusing to enforce the state of emergency. Led by junior officers, and complaining of their own conditions of work, the army mutiny posed a more direct threat to state power than the civilian dissent (*Ibid*. at 126). Without the backing of physical force, the entire structure of relations of production would collapse. Thus, the Williams government quickly secured a truce with the politically inexperienced mutineers.

[576] *Ibid*. at 128-129.

administration immediately turned to revision of the labour regime. Having failed to secure the stated objectives, the ISA took the brunt of the criticisms and seven years after its enactment, the Trinidad government found it necessary to draft new legislation to govern workplace relations.

Soon after the declaration of the second state of emergency, the governing party introduced the Industrial Relations Act of 1972 (IRA) and it received Royal Assent in mid June.[577] Striking similarities existed between the new and old legislation. The IRA, in Thomas' words, represented more or less "a reconstructed Industrial Stabilization Act".[578] It contained a similar mixture of auxiliary and restrictive provisions. The reporting powers of the Minister of Labour were carried over and in some instances extended. More notably, the new statute retained the Industrial Court but expanded both its size, adding additional judges with more robust pay and tenure conditions for all, and its scope to include the inherent powers of a "superior court".[579] Like the ISA, the IRA more or less outlawed all strike activities (and lockouts) with trade disputes subject to binding determination of the Industrial Court.[580] Only where an unresolved dispute

[577] Chap. 88:01 of the Laws of Trinidad and Tobago (1980 ed.), "An act to repeal and replace the Industrial Stabilisation Act of 1965, and to make better provision for the stabilization improvement and promotion of industrial relations". Act 23 of 1972.
[578] *supra* note 532 at 48.
[579] S 4(1). The Court held jurisdiction over trade disputes, the registration of collective agreements, industrial action, and proceedings for industrial relations offences, among others.
[580] S 60. Antigua, Bahamas and Jamaica, all after 1975, adopted variants of this approach. In those countries binding arbitration rather than resort to strike/lockout was the established method for resolving industrial disputes. That said, strike activity remained prominent.

persisted could an employer or recognized majority union take action by way of a lockout or strike.[581]

The IRA set out protective measures for workers attempting to unionize and for the recognition of unions themselves. For instance, the Act included formal protection of workers who exercised their right to join a union.[582] Further, the IRA modeled union recognition procedures on the approach popularized in North America.[583] Accordingly, a Board would oversee disputes over recognition and certify unions with majority worker support.[584]

The protective measures included in the IRA were undermined by provisions which narrowed its scope. Alongside oil, gas and petrochemical, to mention a few, the sugar industry was designated an "essential industry".[585] This designation sought to curtail union activity and to prevent workers from building solidarity across sectors.[586] The bargaining positions of unions operating in the prohibitive areas of industrial action were considerably weakened. More generally, early evidence pointed to very little noticeable change in outcomes.

[581] S 62. The Act barred workers in "essential services", public service, teaching, emergency and Central Bank workers, from engaging in direct action through strikes.
[582] S 71.
[583] Roy J. Adams, Noel M. Cowell & Gangaram Singh, "The Making of Industrial Relations in the Commonwealth Caribbean" in Sarosh Kuruvilla & Bryan Mundell eds., Colonialism, Nationalism and the Institutionalization of Industrial Relations in the Third World (Samford: JAI, 1999) 155 at 158.
[584] S 38. Bahamas, Dominca and Jamaica would later adopt this approach.
[585] First schedule to the Act. 9. Sugar (Cultivation, Manufacture, Refining).
[586] S 38(4). A union already operating within a given essential industry could not gain recognition in another category of essential industries, a provision specifically designed to thwart the power of the oil workers union.

The IRA produced results similar to those under the ISA with respect to fueling -- as opposed to minimizing -- work stoppages.[587]

Taken together, the introduction of the Industrial Stabilization Act and later the Industrial Relations Act in the early post-colonial moment illustrates historical continuity and intensification. These statutes solidified the continuation of heavy regulatory constraints on workers, which defined labour control in Trinidad throughout the colonial period. These statutory interventions claimed to seek stability and peace which had long since evaded work relations in the island. Despite the shifting of political authority almost exclusively into the hands of local elites, the post-colonial Trinidadian state remained indebted to law as a means to constrain worker organization, action and ultimately opposition.

Conclusion

A linear march toward unconditional freedom did not occur in the historical development of Trinidadian sugar relations. Labour unfreedom is not anathema to colonial capitalist nor post-colonial formations. In fact, the physical or politico-legal constraints which defined unfreedom at a given juncture proved necessary from the standpoint of capitalists. In tracing the legal regulation of labour within Trinidad from the late eighteenth into the twentieth century, a striking continuity emerges, even as the period spans slavery, apprenticeship, indentureship and responsible unionism. The role and impact of law and the state in setting the

[587] Between 1973 and 1979 there were some 390 work stoppages involving over one and a half million personal workdays lost -- the oil price revolution did not subside the turbulence. Henry 1988, *supra* note at 49.

parameters of legitimate expectations and behaviour of unfree labourers within Trinidad becomes evident. The processes of exit, which developed to institutionalize opposition within labour regulatory regimes, and in so doing which facilitated the reproduction of capitalism, represented processes of transition from one form of unfree labour to another.

Far from ruining capital, Emancipation strengthened the foundation upon which labour power exaction occurred. But this did not occur overnight. Following a designated period of apprenticeship, sugar planters floundered under the strain of diminished access to state-organized recruitment measures. The real but limited success of the enforced exit of Emancipation was that plantation capitalists could not go about extracting labour power with such utter brutality. Absent the whip, and absent a regime of unfree labour recruitment, capital needed both labour and the state now more than ever.

Indentureship satisfied capital's needs. It incorporated penal sanctions and mechanisms of enforcement for worker performance. Although the regime included a systemic exit upon completion of established contractual obligations, the offer of reindenture -- reliant upon economic coercion to be sure -- reduced the impact of that exit. Self-purchase also represented a process of exit but one typically out of financial reach of workers. Ultimately, indentureship ended with the resistance of workers and by virtue of political pressure, most notably originating within India.

The growth of trade union representation provided more of the same in terms of the imposition of legal controls on labour. The institutionalization of trade unions, within a framework characterized by responsible unionism, meant that the emergent labour elite would assume a disciplinary function. In exchange for institutional legitimacy, labour officials were tasked with containing spontaneous forms of direct action within the working class. The opt-in requirement for trade unions under early ordinances framed systemic participation in terms of consent. In this respect, the capacity to exit the system rested with the supposed collective will of organized workers. Of course, as discussed, consent proved elusive as trade unions initially refused to opt-in, electing to pursue gains through political channels.

The post-colonial developments in labour law shifted the exit processes to provide avenues for dispute resolution, in particular through the Industrial Court. This shift amounted to the elevation of processes for union officials, as representatives of workers, to voice worker demands in a legal forum. In addition to functioning outside of the reach of rank and file workers, the process of voice serves to replace the resort to direct collective action. With the establishment of a dispute resolution procedure, exit is perceived as redundant when, in fact, labourers are legally denied the capacity to exit undesirable conditions of work.

The imposition of strict legal controls on labour, sometimes coupled with employer incentives or inducements, and always enforced through the coercive apparatus of the state, was done to alter the exit paths or options available to workers. This alteration purported to open up options and possibilities for workers but, by design, tended to foreclose them. This was evident not only in the pathways to exiting a given regime of labour unfreedom but also in those pathways not deemed legitimate, such as forced exit, the absence of which demonstrates not only the labour power needs of owners, but the absence of worker self-determination. Any potentially advantageous pathway to exit which did exist, tended to be undermined, short-lived, financially out of reach, or piecemeal. Thus, rather than arguing that "freedom" lay at the end of the legal reforms workers encountered, it is more apt to claim that "new" regimes of labour unfreedom reconfigured and, in more subtle ways, hardened labour controls.

CHAPTER 6

Constituting Unfree Labour: Theorizing the Role of Law and the State

Introduction

This final chapter draws on the key findings of the previous historical chapters to articulate a theoretical understanding of the role of law and the state in constituting and sustaining labour unfreedom. A chief objective of this theorization is to gain a deeper and more nuanced appreciation of the legal impediments to transformative change within post-colonial productive relations. In this vein, this chapter marks an engagement with the necessary but wider conversation on mounting concerted resistance against unfree labour regimes.

The analysis is composed of two parts. The first part explores the findings of the historical chapters. Three key observations emerge: the mobilize to immobilize dynamic, the legal pathways to exit and the interlocking demands for recruitment and retention. Taken together, these observations demonstrate how law and the state interact to constitute labour unfreedoms. The second part situates these observations in the context of assertions of collective resistance.

I. The Constitution of Labour Unfreedom

The historical analysis conveys how the Trinidadian state employed labour law to mediate capitalist relations of protection, to narrow the pathways of exit available to workers, and to suppress collectivist forms of worker resistance. The central

findings of the historical chapters relate to the way in which law and the state constitute labour unfreedom. Three key observations emerge. The first observation relates to the 'mobilize to immobilize' dynamic, which describes how legal regimes tightly structured the movement of sugar workers from slavery, through indentureship and beyond. It becomes clear that this dynamic represents a broad and generalizable phenomenon. The second observation relates to how the "pathways to exit" illustrate the ways that law channels opposition and shapes expectations in the critical shifts within and transitions between unfree labour regimes. Finally, the third observation relates to the recurring demands of "recruitment" and "retention" made by planters throughout the historical account and across regimes. This demonstrates how aggregated capital's need for labour power extraction is internalized within and facilitated by the state. In this section, I reflect on each observation in turn.

The "Mobilize to Immobilize" Dynamic

In taking as its point of departure the regulatory dynamic captured by the phrase "mobilize to immobilize", the dissertation problematizes the explanatory utility of freedom of movement. The idea of free movement falls short on two critical fronts. In regarding spatial mobility as an indispensable aspect of capitalist labour markets, it fails to contemplate both labour control and historical struggle. Conceptually, emphasis on spatial mobility ignores the intricate use of permissions and denials as mechanisms of control through which foreign labour incorporation occurs. Nor does it engage with the impact of collective worker

resistance on the type and intensity of controls imposed on workers. The dialectical dynamism that characterizes foreign labour incorporation under colonial capitalism, coupled with the intricacies of sugar workers' lived experience and resistance from the eighteenth century onwards, are not properly captured and situated within analytical frameworks reliant upon freedom of movement. At best, then, freedom of movement retains analytical utility only when framed as a normative claim, ideal or aspiration.

The dissertation is instead situated in the context of labour unfreedom, understood as the imposition of physical and/or politico-legal constraints on workers. In this context, it employs the phrase "mobilize to immobilize" to capture a nuanced conceptualization of these legal regulatory processes of control. The historical analysis sought to take the mobilize to immobilize dynamic, which elsewhere has been identified as a phenomenon specific to indentureship, and demonstrate its wider and more general applicability across the varying schemes of unfree labour incorporation utilized in colonial and early post-colonial Trinidad.

The regulatory regimes governing sugar workers in Trinidad functioned through the interplay of legal modes of mobilization and immobilization. After 'mobilizing' workers over lengthy distances to cross national territorial borders, workers are then 'immobilized', spatially and within the labour market, especially in terms of their capacity to assert themselves collectively. The phrase captures the ongoing and overlapping processes of giving and then withdrawing mobility

which occurred through legal channels, sometimes with great subtlety but always backed by abject force.

Throughout the period of study, workers crossed territorial borders for the purposes of harvesting sugar cane. During slavery, mobilization occurred as workers were forcibly brought to Trinidad, an act of relocation facilitated by owners' authority to sell or exchange labour in its bodily form. Immobilization occurred through the extreme physical coercion sanctioned by slave laws. Workers were tied to Trinidad and specific plantation owners and estates. Indian workers were mobilized through the regime of indentureship and immobilized through the use of ordinances to re-indenture.

With respect to labour market circulation, immobilization occurred on two fronts. As discussed, enslaved workers were tightly restricted in their capacity to sell their labour power beyond defined owners and estates. Indentured workers also were bound to specific planters, although the centrality of a contractual component shifted the formal rationale to one of formal equality. Further, labour market immobilization also occurred through the formal denial of the capacity to assert themselves collectively.

The emergence of free waged labour as the dominant form of regulation merely masked the immobilization of workers. Further, the legal institutionalization of trade unions imposed real and apparent limits on the capacities of workers to

collectively assert themselves. At no time did employers experience corresponding or analogous immobilization constraints. Indeed, the mobilize to immobilize dynamic functioned to facilitate capital accumulation.

These seemingly divergent labour regulatory regimes functioned remarkably similarly in important respects. That is not to suggest uniformity in regulatory approaches across the regimes of slavery and indentureship and so-called free wage labour, as important shifts occurred in how the legal regulatory schemes functioned to immobilize workers over the period of study. Certainly, distinct forms of regulation were employed. Whereas under slavery physical coercion proved the norm, under indentureship immobilization turned on the use of penal sanctions, which, accompanied by court intervention and enforcement, figured prominently within that scheme. Breaches of contract triggered sanctions in the form of imprisonment and fines, which were bolstered by strategies either to encourage the indebtedness of workers to planters or induce worker compliance with planters' demands.

Under the regime of free wage labour, attempts at solidifying worker organization were met with physical coercion or the threat of it via the police and military arm of the state, and with the imposition of internal expectations of responsibility and constraint. With the breakthroughs of trade unionism, immobilization remained a distinct feature of the state's approach to labour control. Responsible unionism imposed legal requirements and associated expectations on labour leaders to

suppress all forms of labour militancy. Increasingly, the Industrial Court assumed a crucial role in enforcing these requirements and expectations as well. In providing an exclusive venue for the resolution of industrial disputes, the Court provided elites with an incentive to demonstrate "political maturity", "constraint" and, above all, "responsibility". Even as outcomes occurred decidedly in favour of unions, the process reinforced the confining and anti-democratic sentiments of responsible unionism and masked capitalism's fundamental contradictions. But even as the judicial arm of the state was reconstituted to provide a more equitable dispute resolution role, the role of the police and military remained integral to the preservation of the hierarchical social order. The successive state of emergencies to put down direct action and large-scale protestation meant the post-colonial state, notwithstanding the marked shift in political authority, maintained a commitment to the criminalization of dissent.

Mobilization and immobilization exist together to serve specific purposes. Through the dynamic of mobilize to immobilize, law imposes contradictions through the flawed logic of the essential legal relation of private property, which it then is called upon to resolve; and which it seeks to do through the same faulty logic. But capitalist law's authority also depends on, indeed is infused in, processes of racialization and racism. A key feature of these unfree labour regimes is that people are slotted into particularly acute categories of labour exploitation based on perceived "racial" or "ethnic" personal attributes. The

categorization serves to legitimate differential treatment in law and thus helps to rationalize away the mobilize to immobilize dynamic of labour control.

The Processes of Exit: Shifts and Transitions in Unfree Labour Regimes

A second key observation that emerged from the historical analysis relates to the processes or pathways of exit. These are the processes that mark the shifts within and transition between labour regulatory regimes. The historical chapters demonstrate that, during these shifts and transitions, when social struggle or conflict disrupts the status quo resulting in explicit questioning or attempts at removal of an oppressive and constraining legal regulatory control, it is replaced with another sometimes equally restrictive control. Within the differing labour regimes of unfreedom, the processes of exit structure social change and conflict. In mediating the shifts within and between regimes, these processes shape both the forms of resistance mounted by workers and their allies and, in turn, the exit processes themselves.

Pathways to exit mediated shifts within and between regimes of unfree labour. As an example, the regime of apprenticeship acted as an "enforced exit" whereby formerly enslaved workers were promised a defined pathway out of slavery. The defined duration of the apprenticeship period managed the expectations of workers by attempting to mollify or divert worker disaffection. As another example, the processes of exit mediated intra-class conflict around ethnicity both

in the nineteenth century transition between enslavement and indentureship and the mid-twentieth century struggle for formal union recognition.

From this perspective, the analysis yields important insights about the functioning of law in capitalist societies. First, through the processes of exit, law shapes the parameters in which unfree production relations occur. Through the processes of exit, law also shapes intra-class conflict, especially with respect to how disputes within labour play out. And because the essential legal relation of property underlies the capitalist social order, law also ensures that disputes between capitalist factions occur typically without threatening the essence of that order.

In all of these ways law shapes the expectations of the parties, impacting social relations well beyond when the structural features of a given regime have changed. The state employs law to organize opposition into more manageable or palpable "exits". In this respect, law establishes parameters of legitimate behaviours and expectations, which facilitate labour exploitation and narrow, undermine or displace the possibilities of collective forms of opposition. Capitalist law therefore sets expectations through processes of exit.

Through the processes of exit the categorization of slaves and masters gained legitimacy and became naturalized. The slave represented a social role in which those so categorized faced contradictory expectations. Slaves were expected to satisfy the strenuous fieldwork of sugarcane harvesting while acting in subservient

and docile ways. Yet, the whip and other forms of physical coercion were constructed as necessary because of the "inherent" incivility of enslaved workers. The very fact that the regime lacked systemic exit processes and contained very few designated exits of other kinds, bolstered an expectation of enslavement. Therefore, the absence of exit possibilities reinforced racial and class subjugation as the basis of enslavement.

The contradictory expectations undoubtedly shaped the forms of opposition to enslavement pursued by workers and abolitionists. Further, those engagements under the regime of slavery shaped future engagements in important ways. As Bolland asserts: "Former slaves, like their masters, brought a whole complex of attitudes, values, self-images, and notions of rights and entitlements out of slavery".[588] Just as the processes of exit were structured by law then, in turn, engagement with these processes not only informed future engagements but also restructured exit processes and law itself.

Workers and their allies managed to break free from legally-imposed expectations, when they asserted themselves in ways that confronted the existing social order. Despite the limitations of the oppositional struggles mounted, largely reformist in terms of allied abolitionist engagement, typically de-centred for workers reflecting the realities of daily field work, the regime of enslavement eroded. Planters' "saving grace" came in the form of indemnification for lost property and the systemic exit of apprenticeship.

[588] Bolland, On the March, *supra* note 209 at 144.

Under apprenticeship, a regime with fixed start and end dates which worker and supportive resistance managed to grind down, the social role of the apprentice turned on the purported ignorance of freed slaves to the logic of capitalist markets. Whereas the slave lacked civility, the apprentice lacked free market know-how. The stated objective of this regime was to discipline apprenticed workers to the expectations of naked economic coercion -- a sort of capitalist finishing school for the formerly enslaved. Although workers engaged in important resistance, most notably the early demonstration at Woodford Square, apprenticeship as systemic exit contained the moderating factor of a fixed end date. For once, in this specific respect, time was on the side of workers.[589]

The end of apprenticeship led eventually to the emergence of indentureship. Under that regime, expectations and behaviours were enforced through shifting processes of racialization, and through contractual arrangements backed by magistrates, fines and imprisonment. In terms of racialization, the process of categorization of unfree labour was drawn along lines of ethnicity as workers primarily from India assumed the role of indentured servant. In that role, workers engaged in sugar production for contracually defined periods of time which, as a rule, were extended by virtue of the dull compulsion of economic necessity. The expectations imposed on workers through the regime reflected deep contradictions in the assumption of formally equal parties freely engaging through contract and,

[589] But in more profound ways, time disciplined workers. In terms of the emphasis on labour time commitments under apprenticeship, time served to buttress the capitalist notion that only property owners possess authority over labour power deployment.

as illustrated by the existence of (inadequate) labour protections, the dependence of labour. In the face of these contradictions, workers still managed to behave in defiant ways.

With the cessation of indentureship, sugar workers found themselves working under a legal regulatory regime of free waged labour. By this time, rumblings for formal worker organization in the form of trade unions were growing louder. What trade unionism promised in terms of coordinated class struggle as a process of exit, it undermined in its racially exclusionary and elitist articulations. Responsible unionism only deepened the contradictions. It meant that class struggle would occur in narrow and increasingly legalistic ways. The expectations of responsible unionism, as discussed, rested with commitments to move struggle from workplaces, squares and streets, to bargaining tables and courtrooms.

Notwithstanding the considerable importance of decolonization struggles, Independence represented the shifting of political authority into the exclusive domain of local elites. With that political shift, however, workers experienced an intensification of the expectations to act "responsibly". They resisted in concerted ways. The processes of exit in early post-colonial Trinidad could equally describe the British metropolitan efforts to rid itself of its formal colonial administrative obligation while renewing its commitments to the hierarchical global state system, as it could the withdrawal of British corporate interests in sugar. That said,

responsible unionism did constitute a form of exit process. It served foremost as a process of exit designed to temper, if not altogether obliterate, collective worker interference with the processes of capital accumulation. And in this respect, it laid a legalized pathway away from workers' capacities to collectively withdrawal their labour power.

Labour Recruitment & Retention

A third observation from the historical analysis is that the aggregated demands of capital, which relate to the need to "recruit" and "retain" unfree labour, were imposed on and expressed through the Trinidadian state during the period of study.[590] The analysis argues that these interlocking demands of "recruitment" and "retention" informed the modes of legal regulation imposed on sugar workers -- and facilitated the aim of labour exploitation. Further, these demands make explicit how and on what basis law is called upon to insert or incorporate workers perceived as different -- that is "foreign" -- into existing productive relations. This speaks to the persistence of unfree labour relations in terms of the structural needs of an aggregated capital and of capitalism itself.

Within the context of nineteenth-century Trinidad, a largely agriculturally untapped society burgeoning on the proliferation of sugar production, the

[590] In popular discourse recruitment and retention typically refer quite narrowly to the idiosyncratic policies of individual capitalist owners seeking to attract and maintain workers. Here, the point is to deploy these concepts to convey not the interests of any given owner but more broadly the aggregated demands that capital imposes on and through the apparatuses of the state. The intention is to account for historical shifts in productive and wider social relations, and thus recruitment and retention encapsulate the centrality of labour exploitation, labour power commodification, all aspects of the never-ending quest within capitalist relations to extract surplus from those whose efforts produce sugarcane.

allocation of the responsibilities and other costs associated with labour recruitment and retention assumed a heightened or more prominent role. These shifting allocations represented a crucial political question central to capitalist production. Trinidad needed labour power to produce labour-intensive agriculture, especially sugar, and to generate profits not only to fund that production but to expand it. The early development of the state in Trinidad occurred to fulfill or facilitate the labour recruitment and retention demands of capital.

Recruitment and retention represented the specific claims to labour power advanced through the state on behalf of capital as a whole. The state's response to those demands turned on the use of law to regulate worker mobility. Labour regulation, therefore, assumed a crucial role in the historical development of colonial capitalism in Trinidad.

Labour Law and the State

The state deploys law for two analytically distinct but practically related and recurring purposes: to create market conditions and relations of labour unfreedom, and then to supervise those relations. The analytical characterizations do not fully capture or convey the transitory and fluid nature of historical developments, however. Market conditions and relations do not simply appear "out of thin air". They emerge from conflict and antagonism endemic to capitalist relations. Because past class struggle provide the basis for existing configurations of

relations, and because those relations are supervised or shaped by the state through formal legal means, law assumes a crucial explanatory role.

The state's deployment of law facilitates the reproduction of capitalist relations. As the primary means of response to social antagonism, law becomes the basis by which that antagonism is addressed and institutionalized. In so doing, law shapes ordinary working peoples' actions and expectations. But law both shapes actions, expectations and relations and is itself shaped by social developments. This dynamic and dialectical process helps to explain generally how capitalism continues and is in fact reproduced. Further, it poses a critical challenge to approaches which emphasize the legal culture of governing elites. What is revealed then is the impact of law in institutionalizing resistance to bolster and extend forms of unfree labour relations within capitalism.

II. Confronting the Persistence of Labour Unfreedom

The real challenge of appreciating what constitutes labour unfreedom is to harness social forces to work towards its removal.[591] A fundamental claim made here is that, rather than facilitating the removal of unfreedoms, colonial and early post-colonial labour law largely facilitated, extended and bolstered unfreedom itself. Indeed, the legal modes of mobilization and immobilization drove capital accumulation and the suppression of collective worker resistance and solidarity.

[591] I am referencing Amartya Sen's idea of the removal of unfreedoms but rejecting the explicitly anti-worker sentiments in his analysis, including his strategic misreading of Marx. In future work I intend to engage more explicitly with the labour law-development relationship, but for now I must do so only modestly. For a quite useful critique of Sen see Stanley Engerman, "Slavery, Freedom and Sen" (2003) 9:2-3 Feminist Economics 185.

The pathways to exit mediated the shifts and transition within and between labour control regimes, ensuring that change occurred in ways consistent with the logic of capitalist rule.

How have workers bound by the constraints of unfreedom sought to make their lives fulfilling? How, if at all, might labour law be harnessed to remove unfreedoms? Interdependence and solidarity represent the collective point of departure both for posing meaningful challenges to labour unfreedom and for pursuing the possibilities of a humane existence. As once famously put, "We are caught in an inescapable network of mutuality".[592] This network functions in complex ways to encompass inter-personal relations as well as the interdependence of nation-states.

Yet, in capitalistic terms, mutuality embodies the contradictory nature of that system, appearing as much as an expression or even defense of private property as a response to it. This explains how, for instance, responsible unionism functions. Capital consolidation experienced in late colonial Trinidad is constructed as acceptable and legitimate whereas only narrow and restrictive forms of worker collective organization are legally proscribed. More broadly, the politico-legal constraints which define "immobilization" work to advance the promotion of economic freedom for owners while simultaneously inhibiting the promotion of freedom from all forms of coercion for workers.

[592] These are the words of Martin Luther King Jr. and form the basis of his famous dictum: "Injustice anywhere is a threat to justice everywhere" (cited in Robert Miles & Malcolm Brown. Racism (2nd ed.) (London: Routledge, 2003) at 12).

Law is deployed to disrupt or interfere with our inescapable mutuality insofar as it denounces or opposes collective engagement and resistance of workers in forms decided upon by workers themselves; and insofar as it forecloses possibilities for workers to band together to re-fashion material conditions in transformative ways. The critical task in affirming mutuality as a fundamental requirement of existence in the human world is to sort through competing understandings. What is needed is a radical reorientation of popular constructions of mutuality for explicitly oppositional ends.[593]

A central point of focus is the institution of the trade union. The issue is not whether organized labour can become a genuine part of a truly emancipatory movement to transform productive and social life. Rather, the question is what radical forms of worker organization can -- and will -- emerge. After all, the trade union -- especially in the guise of responsible unionism -- is not the only form in which formal labour organization can occur. Indeed, as a prominent institution it enjoys a relatively brief historical existence. And for most of the world's unfree labour, trade unionism remains elusive. Worker collective struggle, however, is crucial and in this vein there is a pressing need to reclaim the collective capacity to take direct action, including through coordinated withdrawals of labour power.

[593] In this way, the point is not to advance claims to the existence of some magical sort of consensus among workers. Nor is it to claim that a common good, defined crudely as the sum total of worker interests, exists innately. Consensus and common good are not naturally occurring features of politics within working classes anymore than they are within wider capitalist production relations. Indeed, capitalist relations are rife with disagreement, conflict and struggle because of their very skewed nature upon which they rest, the exploitation of labour for the profit motive. Rather, the aim is to align the analysis with transformative struggles cast in a truly emancipatory politics.

Through direct action, which forms the basis of worker collective power, which will define radical mutuality, and which holds the potential to pose radical challenges to prevailing relations of production, workers can set about to remove the coercive elements of unfreedom.

The point then is that mutuality, while necessary for the pursuit of emancipatory politics, is not sufficient on its own. Taking as a given our interconnectedness and inter-dependence, workers must struggle together to devise strategies which confront head-on the hierarchical and de-humanizing nature of the capitalist order. If this requires a devotion to activism, it too demands a commitment to radical democracy within worker organization. The lasting authoritarianism must be ground down through internal commitments to fostering the creative capacities of people. It is in this way that self-governing movements can articulate oppositional agendas and claims. In the context of the dissertation's analysis, the capacity to withdraw or exit, including the right to say no, constitutes one such claim which workers must pose. But it is a claim rendered ineffective without vigilant enforcement through radical mutuality.

What of the role for law and legal strategies in transformative change? The historical analysis teaches us that the removal of unfreedoms requires a commitment to direct and explicit confrontation with capital and the state. If unfreedom constitutes politico-legal constraints imposed on workers, and these constraints amount to the legal modes of mobilization and immobilization, then

the removal of unfreedom requires contestation of these integrated legal modes -- and of immobilization in particular. That said, it would be far too simplistic to argue that, to promote freedom and agency, all that is needed is the removal of the legal modes of immobilization. This is too simplistic a formulation precisely because law is deployed to curtail, redirect and undermine worker-mounted resistance. Moreover, law functions to solidify racialized distinctions such as "foreign" labour which, in turn, justify and legitimize the mistreatment of those so categorized.[594] But just as law functions in this way, the processes of racialization and racism operate to bolster and naturalize legal controls.[595] Therefore, a commitment to the removal of unfreedoms must fundamentally oppose the interplay between law, racialization and racism.

A keen awareness of the mutually reinforcing nature of law and racialization suggests law-centric strategies have quite limited utility. As a focus on exit reveals, the state employs those processes to set the parameters for social change, including the appropriate venues for struggle, the acceptable behaviours and expectations of social forces. In emphasizing exit processes, it becomes clear how narrowly the parameters for action and resistance are set in regimes of unfree

[594] What seems hidden is that law impacts how we as researchers have come to appreciate foreign labour incorporation and labour unfreedom more broadly. In the same way that law functions to normalize foreign-indigenous labour distinctions, foreclosing consideration of the legitimacy of those distinctions, it too functions to preclude close analytical reflection. In that way, we leave untouched questions about the anti-solidaristic tendencies of legal processes and dynamics. And because of this, we too frequently leave unscathed the idea that capitalist exploitation proves less wretched for the labouring "wretched of the earth" than the open-ended possibilities of another world.

[595] Miles & Brown, *supra* note 592 at 124 ("[R]acism was not simply a legitimation of class exploitation. It represented the social world in a way that identified a specific population as a labouring class. The remaining problem was to organize the social world in such a way that forced that population into its 'natural' class position: in other words, reality had to be created in accordance with that representation in order to ensure the material objective of production").

labour. The critical issue is the extent to which law is open not only to alternative interpretation,[596] but fundamentally to oppositional claims. Within unfree labour regimes especially -- precisely because of the acceptance of legalized racial distinctions such as foreign, foreigner, migrant and immigrant -- space for oppositional claims are all but foreclosed. It is in both the foreclosing of space to these claims, such as posed on the basis of radical mutuality, and in the legalized and racialized spaces made available, that unfree labour endures even in national states that have long claimed to have rid itself of the scourge of extra-economic coercion.

In another respect as well, strict legal strategies demonstrate real limitations. Efforts to remove labour unfreedoms demand attention to the impact of law on shaping worker expectations and behaviours. The challenge of overcoming these expectations and altering behaviours is to do so through a political agenda committed to opening up possibilities as well as rejecting dependency and subordination. The deplorable nature of unfree labour cannot be resolved by resorting to the same criteria upon which it is exploited and extended. Thus, an appeal to the state and law is, while a strategic aspect of fostering transformative change, ultimately short-sighted.

[596] Marc W. Steinberg, "Capitalist Development, the Labour Process, and the Law (2003) 109 American Journal of Sociology 445 at 455.

Conclusion

In theorizing the role of law and the state in unfree labour, this final chapter explores ways to confront it. The chapter initially reflects on the central findings of the dissertation's historical analysis. The generalizable phenomenon of mobilization and immobilization functions in intricate ways to extract the productive capacities of workers. The processes or pathways of exit operate to institutionalize and contain worker resistance. In so doing, these exit processes coordinate social developments and change. Finally, the associated concepts of recruitment and retention capture capital's quest for labour as its imposed through the apparatuses of the state. This provides the ongoing rationale behind the state's use of law to impose and intensify labour unfreedom.

In line with the wider rejection of the utility of freedom of movement as an explanatory tool beyond a normative or aspirational frame, which forms an important starting point for the dissertation, this chapter questions forms of resistance which fail to explicitly confront the hyper-exploitative nature of unfree labour. The inescapable network of mutuality that characterizes our social world provides a point of departure from which to mount and evaluate resistance. Although necessary, however, mutuality alone is not sufficient as a guiding principle of a truly transformative and emancipatory agenda. Workers must push for the kind of mutuality which allows them to decide the how, what, why and when of the deployment of their creative capacities. This belief, I contend,

encompasses individual freedom and agency yet extends beyond both to acknowledge mutuality as a starting point, and radical mutuality as a necessity.

The removal of unfreedoms does not simply connote the opportunity to toil under economic coercion alone. A truly emancipatory conception of freedom demands the capacity to say no -- such as having the freedom to move or not move, to engage or withdraw, as so desired -- while still enjoying the material conditions to subsist and creatively thrive. The challenge then is to overcome politico-legal or extra-economic and economic coercion. But it also requires the capacity to say no independent of categorizations drawn and imposed on the basis of perceived "racial" significance. This calls, then, for an internationalist outlook that recognizes the highly racialized and racist development of capitalist labour relations but which does not reinforce it -- through tactical or self-fulfilling appeals to racial categorization, through resorts to law-centric strategies, through non-oppositional politics.

The enduring nature of unfree labour derives from the complex interaction of law and the state, in the service of the profit motive and alongside it. But if labour unfreedom constitutes a strategic feature of capitalism, workers have, time and again, demonstrated a stubbornly persistent capacity to endure it. Meaningful opposition has occurred when workers confronted head-on the elitist purveyors of their ongoing misery. What the state forced back at them, typically through resorts to physical coercion, illustrates the overlapping nature of the coercive

dimensions of unfree labour. Labour's resiliency flows not from a willingness to downplay these and other contradictions of production relations, but from sustained and energized efforts to oppose them. In the face of overwhelming physical and politico-legal coercion, the only way out is through explicit and direct struggle.

CONCLUSION

The dissertation examines the impact of economic globalization on capital-labour relations with emphasis on the role of law and the nation-state as a site of struggle and contestation. Taking a comprehensive historical account of sugar labour relations in Trinidad, the dissertation constructs and applies a more nuanced approach that, while attentive to global political economy of law and to the conditioning impulses of trade liberalization, stresses the local contexts, including human agency and the richness of ongoing capitalist relations of production.

What happens to our understanding of the role of law and the state in "foreign" labour incorporation when we alter our starting assumption, shifting emphasis away from freedom of movement to the regulatory dynamics of unfree labour? The dissertation constructs a Marxist theoretical account of the role of law and the state in constituting the unfree labour regimes which governed sugar workers in Trinidad yet engages with the challenge of how to capture "the living texture of the historical process", as Trotsky once put it.[597]

As the first chapter made clear, the labour law and globalization literature takes an essentialist and homogenizing perspective on the impact of globalization. On this account, the processes of globalization are assumed to similarly and equally affect all states. Often, as explored, this culminates in the view that the nation-state is disempowered, transcended or in decline, which leaves little space to account for

[597] Leon Trotsky, The Third International After Lenin (New York, 1970) at 19-20.

differences within and between states, and even less space for human agency. The prevailing account of economic globalization reinforces sentiments of inevitability that are implicit in the intellectual habit of ignoring workers and labour power. To treat workers as actors in the global political economy, opens up space for their resistance – both in theory and in action.

The emphasis of the historical analysis turns on the development of the relations of production in the colonial and early post-colonial sugar sector of Trinidad. As demonstrated, the state turns to law to coerce and constrain workers, and to organize their opposition by channelling it through more manageable processes of exit.

Summarizing Key Findings

The historical evidence presented in chapters three, four and five demonstrate three phenomena. First, certain legal regulatory controls over labour permit mobility while other controls deny it. The mobilize to immobilize dynamic captures the generalizable framework of formal legal permissions and denials. This occurs in a more nuanced fashion than acknowledged by the idea of freedom of movement. Second, during shifts and transitions within and between unfree labour regimes, processes of exit intervene to undermine the resistance efforts of workers and their allies. These processes influence the expectations and behaviours of workers in noticeable ways. The third observation that emerges from the historical analysis relates to the interlocking demands of "recruitment"

and “retention” that are made through the state by aggregated capital and that are structured and manifest through labour controls.

Situated in the context of processes of racialization and racism, these phenomena deepen our understanding of the approaches to unfree labour incorporation within colonial and post-colonial Trinidad. The complex interaction of law and the state render labour unfreedom an enduring feature of capitalism. How workers endure unfreedom forms an important piece of the conceptual puzzle. The dehumanizing and interlocking dimensions of unfree labour coercion are revealed in the state’s ongoing attempts to drive back coordinated labour surges, whether with the crack of a whip, the threat of imprisonment, or the barrel of a gun. Even in the face of these overwhelming contradictions, the resilience of workers stems from sustained and collective engagement, not legalized dispute resolution. In these ways, the contradictions of unfree labour are truly contested and eroded. Only when workers stubbornly object to the deplorable and degrading conditions that they find themselves in, do they open up the prospects of transformative change. Only out of concerted and meaningful opposition will workers construct a new world.

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