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Just Trade: A New Covenant Linking Trade and Human Rights. By Berta Esperanza Hernandez-Truyol and Stephen J. Powell.

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This volume is a concise discussion of many of the major issues affecting pension policy in the United States. A strength of the book is the comparison of U.S. pension policy to that in other countries. For the most part, however, the presentation is just a statement of what other countries are doing rather than an analysis of whether these policies would work in the United States The book does not contain original research on the effects of employer retirement plans or how these plans affect workers and firms; it does nonetheless survey the key issues facing policymakers. Thus, those interested in considering changes in pension regulations would find a range of options worthy of consideration in the volume.

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International and Comparative Industrial Relations

Just Trade: A New Covenant Linking Trade and Human Rights. By Berta Esperanza Hernandez-Truyol and Stephen J. Powell. New York: NYU Press, 2009. 416 pp. ISBN: 978-0-81473-693-7, \$55 (cloth).

For decades, perhaps centuries, international trade policies and international human rights policies have run either in direct opposition to each other, or at the least, on parallel tracks, viewed as conflicting global schemes. In fact, the authors note that in the early days of trade liberalization, the General Counsel of the World Bank stipulated that the Bank was prohibited from complying with U.N. human rights decisions. For decades as well, there has been concern in many sectors about the dark side of globalization and its impact on human rights. More recently, the World Bank has made clear its concern about the rise in inequality that has come with trade integration.

In their book Just Trade: A New Covenant Linking Trade and Human Rights, Berta Esperanza Hernandez-Truyol and Stephen J. Powell attempt to end the "splendid isolation" of the two areas of law. They argue that trade rules can be read—and in fact were meant—to support human rights. The authors intend the book to be a catalyst for discussion and development of policy coherence in these two areas. They should be applauded for an ambitious, even courageous, foray into this minefield and for a carefully developed, thought-provoking presentation.

Beginning with a primer on adoption of international law standards within the United States, the authors offer a general outline of the development of trade rules and international human rights standards. Following these introductory chapters is an exploration of several areas of human rights concerns—environmental degradation, health, labor, trafficking, gender, indigenous peoples, poverty, and democracy—in which

the authors explain how, in each realm, trade laws can and should be harmonized with human rights laws.

Article XX of the General Agreement on Tariffs and Trade (GATT) forms a centerpiece of the authors' thesis. Essentially, it gives the World Trade Organization ([WTO], to which GATT was later renamed) members the right to restrict trade in order to protect public health and welfare—specifically public morals, public health, and exhaustible natural resources. Hernandez-Truyol and Powell argue that these provisions established a common set of human rights norms applicable to all countries. In the context of labor, they cite the WTO agreement that the four core International Labor Organization (ILO) standards—freedom of association, no forced labor, child labor, or discrimination—constitute these norms.

Hernandez-Truyol and Powell review a number of WTO decisions as a way of indicating an evolving harmony between trade and human rights laws. They cite, for example, the *Shrimp-Turtle* case, in which the WTO Appellate Body eventually upheld a U.S. ban on imports of shrimp caught by boats without a turtle exclusion device, as evidence that reliance on Article XX is possible in the context of environmental preservation.

In each chapter and each human rights context, the authors relate the material concerns of communities—poverty, gender discrimination, migration, democracy, labor, health, indigenous peoples—regarding trade rules, including GATT's Article XX and the Sanitary and Phytosanitary and Technical Barriers to Trade agreements, which also allow governments to take measures to preserve human life, health, and the environment. They note that regarding the Japan-Agricultural Products phytosanitary case, which involved imported fruit, the WTO Appellate Body indicated that where there is sufficient scientific evidence to support a country's method of protection and an adequate risk assessment, WTO panels will uphold measures taken to protect human rights.

Just Trade presents a number of bold ideas for the incorporation of human rights standards in trade matters. The authors ask, for example, whether Article XX's allowance for the protection of "public morals" could be extended to products made by child or forced labor, and whether protection of human life in that same article could apply to the health of workers who make a particular product. They find support in the U.S. Business Roundtable's statement that Article XX's allowance of rules forbidding products made by prison labor may be extended to forced labor (p. 145).

They recommend further reforms in the area of trade regulation, suggesting first that trade rules should require multinational corporations to provide assurance that they are abiding by labor standards in order to gain access to favorable treatment, and second that new trade agreements should include a human rights impact statement to test what effect trade liberalization will have on issues such as the treatment of women, poverty, and migration. The authors also suggest that countries in which multinational corporations are registered be held responsible for human rights violations committed by the transnationals.

As a labor rights practitioner, I found a number

of these ideas thought-provoking, including that of bringing more human rights issues to the WTO's dispute panels and bringing more human rights elements to trade treaties. Further analysis is still necessary, however, in some areas. For example, Hernandez-Truyol and Powell suggest that the WTO could be a forum for harmonizing human rights and trade law. Would a WTO panel asked to rule on a regulation forbidding products made by child labor be hostile to human rights claims, either because its expertise in this area is limited or because it fears going beyond its mission-or for other reasons altogether? Since non-governmental organizations (unlike under the North American Free Trade Agreement (NAFTA) or in ILO processes) have only limited access to WTO dispute settlement procedures, how would they induce governments to bring such disputes to the WTO? What kinds of claims would have the most salience? How would less-developed countries build the scientific evidence to support the health rules that they adopt?

On some level, the challenge for human rights advocates is not so much the lack of a forum or of applicable standards as it is the lack of political will by some countries to engage in a debate over human rights violations in the same way that they are willing to do so over trade violations. A recent example illustrates this challenge. In 2008, the AFL-CIO and six Guatemalan workers' unions filed a claim with the U.S. Department of Labor (DOL) pursuant to DR-CAFTA human rights provisions, alleging the mistreatment of union leaders and workers-including illegal firing, death threats, and several reports of murder. Though the U.S. DOL's findings overwhelmingly supported petitioners' claims, the agency declined to recommend that the U.S. request consultations with Guatemala pursuant to Article 16.6.1 of DR-CAFTA, the key enforcement provision in the treaty.

If this case is any indication, the most vexing problem for the advancement of human rights remains that states are often hesitant to bring human rights concerns to international bodies, either out of fear that their own practices will be exposed, or because they fear jeopardizing other national interests that always seem to merit higher priority than human rights. Despite these concerns, I look forward to the continued development of Hernandez-Truyol and Powell's ideas in the context of the many human rights challenges faced by our community.

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Historical Studies

Wealth and Welfare States: Is America a Laggard or Leader? By Irwin Garfinkel, Lee Rainwater, and Timothy Smeeding. Oxford: Oxford University Press, 2010. ix + 254 pp. ISBN: 978-0-19-957930-3, \$99.00 (cloth).

In this important and timely book, Irwin Garfinkel,

Lee Rainwater, and Timothy Smeeding examine the U.S. welfare state from a comparative and historical perspective. They contend that much of what Americans believe about the U.S. welfare state (that it is relatively small and that it reduces productivity and economic growth) is not, in fact, correct. In particular, the authors show that the answer to the question posed by the book's subtitle, "is America a leader or laggard?" depends on how the welfare state is defined. Social scientists who use a traditional definition of welfare, which includes public assistance and social insurance but excludes public education, conclude that the United States has been a welfare laggard throughout its history. Garfinkel et al. contend that public education is a welfare state program; indeed, it is "the most productive part of the welfare state" (p. 1). When education is included, the United States has not been a laggard in terms of aggregate welfare spending, at least not before the 1980s. The U.S. welfare state is, however, very different from that of most rich European countries. American exceptionalism is alive and well.

Following the Introduction, the authors examine, in the second chapter, why all rich capitalist countries have large welfare states. The reason is simple. Capitalism makes countries rich, but at the same time it creates large amounts of economic insecurity. According to the authors, by reducing the insecurity associated with capitalism, welfare states make rich capitalist countries even richer. Public education promotes economic productivity and growth, and social insurance increases "individual utility and economic well-being" by reducing risk (pp. 24–5).

Evidence on the extent of welfare spending and the effects of welfare state transfers are presented in Chapters 3 and 4. In Chapter 3, Garfinkel et al. examine welfare state spending in 14 rich capitalist countries: the United States, Canada, and Australia: and 11 European countries (the United Kingdom, Ireland, Germany, France, Belgium, the Netherlands, Italy, Spain, Norway, Sweden, and Finland). When education and employer-provided health insurance and pension benefits are included, social welfare transfers as a share of GDP in 2001 were higher in the United States than in Canada, Australia, Ireland, and Spain, and nearly as high as in the United Kingdom (pp. 42-3). However, the authors point out that American welfare spending is substantially different from that in most other rich nations. Pensions, for example, are the largest source of welfare spending everywhere but the United States, where the largest source of spending is health care. In most rich nations, 70% or more of welfare spending is in the form of "floors," which provide benefits to all citizens. In the United States, however, the majority of welfare spending comes through "safety nets," which assist the poor or near-poor, and "platforms" (pp. 51-3), which are more restrictive and often targeted to the well-off members of society (e.g. employer-provided health insurance).

In Chapter 4, the authors demonstrate how welfare spending redistributes income and promotes opportunity. Welfare state programs transfer resources from the top toward the bottom of the income distribution in all nations, although the extent of the redistribution