

Part II

**Supranational Norms and Discourses
about Precarious Work**

*Rights, Risk, and Reward:
Governance Norms in the
International Order and the Problem
of Precarious Work*

KERRY RITTICH*

INTRODUCTION

THE DECLINE OF the standard employment relationship and the increase in precarious work—work that is insecure, badly remunerated, unprotected, and largely beyond the control of employees—is widely recognised as one of the most fundamental and worrying problems of the new economy. While precarious forms of work are neither new nor unusual in the history of work (Deakin, 2001), they have become a focal point in contemporary discussions of work because of their apparent structural links to globalisation and the new economy. Moreover, precarious work remains deeply associated with constituencies which have always lacked significant leverage and power in the labour market; notwithstanding the extent to which it has spread within labour markets as a whole, those engaged in precarious work remain disproportionately women, racial and ethnic minorities, young people, and disabled workers (Fudge and Owens, chapter 1 in this volume). In short, precarious work both constitutes a general problem in the new economy and marks a persisting zone of secondary status in the labour market.

While the rise of precarious work is closely related to the proliferation of atypical, flexible, or ‘contingent’ work arrangements, it is fundamentally a governance problem. The persistence and proliferation of precarious work and the marginal status of those engaged in such work are not phenomena that can be attributed to the nature of investment, production, and

* Thanks to Judy Fudge and an anonymous reviewer for very helpful questions and comments; all errors remain mine.

exchange in the new economy alone. Rather, they are intimately linked to the institutional structure in which work takes place and the choices states make about the structure of legal entitlements; the distribution of resources through taxation and income transfers and expenditures on public goods; and the sharing of risk through legal and social institutions. Those choices, in turn, have much to do with perceptions of the available institutions and their appropriate roles, as well as the assessments that are made about their capacity to deliver particular social and economic outcomes. For these reasons, both the problem of precarious work and the range of possible responses to it are tightly tied to a larger set of governance debates in which we are now immersed.

This chapter aims to suggest how and why the international financial institutions (IFI), the World Bank and the International Monetary Fund (IMF), have become important to the international debates on labour market reform and, by extension, to the issue of precarious work. The point of entry is the connection between these issues and questions of governance and institutional design. Although the IFI have no direct mandate over the global labour agenda, they have become centrally involved in the general question of governance within market societies, which they define in broad terms as both the exercise of political powers and the management of human, natural, and economic resources (Shihata, 2000). Since their conclusion that 'good governance' and institutional reform are the key to economic growth (World Bank, 1989; Wolfensohn, 1999; Rittich, 2002b), the IFIs have developed a set of governance norms and progressively elaborated an institutional or structural reform agenda which, in their view, provides a framework or matrix, if not a blueprint, for economic success in the global economy. This agenda both sets the general justifications for the regulation of markets and frames the analysis and the range of possible responses to specific labour market problems and concerns such as precarious work.

The IFI exercise direct influence over the governance and policy choices of developing and transitional states through mechanisms such as the attachment of conditions to loan agreements and the provision of 'technical' legal assistance (Shihata, 1997). However, they also exercise influence in a variety of other soft or indirect ways, primarily because of their surveillance and comparisons of different market economies and role as arbiters of 'good governance' and best practice in respect of institutional or structural reforms (IMF, *World Economic Outlook*, various years; World Bank, 2004). Here, their reach is not limited to developing and transitional states but extends to industrialised states as well. This soft power is enhanced by the fact that they are the largest, most well-funded sources of development research in the world. Both the IMF and the World Bank now generate an avalanche of research and policy reports on the legal and institutional bases of economic growth; however, many are designed to confirm a set of propositions about the connections between economic growth and the structural

and institutional reforms that they have already been promoting as best practice for some time (see, for example, World Bank, 2004).

The IMF recently encapsulated and justified these reforms in the following way:

Structural reforms entail measures that, broadly speaking, change the institutional framework and constraints governing market behavior and outcomes. In general, structural reforms have been associated with the notion of increasing the role of market forces – including competition and price flexibility, and the term is often used interchangeably with deregulation – reducing the extent to which government regulations or ownership of productive capacity affect the decision making of private firms and households ... [Structural reforms rest on] a variety of factors, inducing growing evidence that not only markets but also governments can fail – that is, governments' regulations can in practice fail to deliver what they are supposed to do in theory, namely to resolve problems related to market failure or inefficiency. ... Fundamentally, structural reforms aim at adapting institutional frameworks and regulations for markets to work properly.

(IMF, 2004, 104–5)

As this passage indicates, the reform strategy is deeply functionalist in orientation, and the functionality of institutions is defined in a very particular way: their contribution to the efficient allocation of resources and the facilitation of market transactions. Resistance to these reforms is typically presented as the carping of special interest groups at the expense of the general interest in economic growth; while concessions to losers may sometimes be required, it is only to the extent necessary to sustain the political support for reforms (IMF, 2004; World Bank, 2004).

This agenda might be of limited interest on its own but for the fact that it appears to be gaining weight and credence through an iterative process within the international system, and visibly influencing other institutions such as the United Nations (UN), United Nations Development Programme (UNDP), and the International Labour Organization (ILO) at the level of tone, substance, and strategy. Recent reports across a range of international institutions are either marked by or explicitly framed in the language of good governance and their recommendations increasingly operate within the basic institutional and policy parameters that have been established by the IFI. Indeed, other international institutions, or specific projects within them, now simply invoke IFI research findings, incorporating them without more into their own analyses and policy reports (see UNDP, 2004, referencing World Bank, 2004). There is no easy or certain way to account for their influence. However, as few, if any, of the other international institutions have comparable resources at their disposal, the sheer quantity of analyses generated by the IFI and the categorical terms in which their conclusions are articulated often go a great distance to establish the terms of contemporary debates around institutional reform within the international order. One

result is that where previously the different concerns of the international institutions were clearly visible and distinguishable, as were the constituencies for whom they spoke, now they are becoming more difficult to tease out. Goals are increasingly merged as policy analysis is organised around exhortations for better governance.

Establishing a causal relation between economic growth and specific structural reforms is notoriously difficult; moreover, the track record of reforms promoted by the IFI is marred by the fact that they have often failed to generate their predicted consequences and sometimes made things worse even by their own standards (Stiglitz, 2002). Despite this, within the IFI little research has been directed at testing their foundational assumptions, or even at investigating why it is that states that have varying institutional structures and governance norms and that have taken different reform routes also seem to have been able to generate economic growth. Yet however limited or problematic the research might be and however questionable or spurious some of the resulting claims, they gain legitimacy as they are adopted and recirculated within other institutions. The result is a rapidly consolidating foundation of maxims and principles about the nature of the new economy and the institutional bases of efficient markets that are increasingly pervasive and difficult to contest at the political and institutional levels, even if they are far from unassailable at the analytic level. Among them is a set of basic propositions about labour markets, including: the foundational role of continuous growth through private sector investment; the inefficiency and distorting effects of labour market institutions; the primacy of labour market policies that enhance workers' skills; and the limits of the regulatory and redistributive state in the global economy. While there might be disagreements over the desirability of particular rules and policies, more and more of the discussion now takes place within a broader zone of convergence over the institutional foundations of growth.

Although one conclusion might be that we really have reached the 'end of history', that all this convergence merely marks the dawn of market enlightenment in respect of the regulation of market societies, it is belied by the ongoing disputes over the institutional bases of growth and the efficiency of different legal rules (Deakin and Wilkinson, 2000; Rodrik, Subramanian, and Trebbi, 2002; Stiglitz, 2002); it also ignores the well-established critiques of functionalist analyses of legal regulation in market societies (Gordon, 1984). Whatever the outcome of these debates, the entrenchment of this particular governance frame is a particularly fateful turn of events for workers because of the way that the aims and justifications of regulation and policy in general and labour market regulation and social protection policy in particular are represented within it. One effect is substantially to normalise the emergence of precarious work. Refracted through the lens of best practices and good labour market governance, precarious work emerges re-branded as flexibility and opportunity. As a

problem, precarious work is not so much engaged as displaced, overwhelmed by a counter-narrative of progress for workers through the opening of markets, the accumulation of skill, and the use of entrepreneurial savvy.

The rest of this chapter will attempt to outline how this occurs, by describing the vision of labour market reform that predominates within the IFI and outlining the features that make it an uncongenial, even perilous, frame within which to resolve the problem of precarious work. It will then describe the ways in which that agenda is increasingly reflected in the analyses of the ILO, notwithstanding its efforts to advance the position of workers through initiatives such as the Decent Work Agenda.

GOOD GOVERNANCE AND THE NORMALISATION OF PRECARIOUS WORK

Describing the New Labour Market

Both the World Bank and the IMF have weighed in heavily on the debate around the future of work, devoting major policy reports and substantial portions of their analysis of institutional or structural reforms to the question of labour market reform. Labour market flexibility is a linchpin of this agenda. Developing countries repeatedly have been advised to maintain flexible labour markets and eschew the introduction of burdensome regulations (World Bank, 1995). Industrialised countries have been exhorted to reduce existing levels of job security and the costs of their provision to employers, to move from passive income support to 'active' labour market policies, and to 'make work pay', largely by eliminating rules, policies, and programmes that have the effect of reducing the incentives to work (OECD, 1994b, 1999).

The most unvarnished arguments for such structural reforms to labour markets along these lines can be found in the analyses of the IMF. In a series of reports over the last six years, the IMF has hewed to a consistent line on reforms, couching its analysis first in terms of causes of and cures for unemployment (IMF, 1999a: chapter IV) and, more recently, restating the benefits of such reforms (IMF, 2003: chapter IV) and proposing ways to manage the political obstacles toward what, in its view, is a self-evidently more desirable state of affairs (IMF, 2004: chapter III).

In these reports, the Fund has been explicit about the need to exert downward pressure on wage levels, benefits, and security for workers in industrialised countries in order to combat the excessive labour market rigidity that, in its view, is a source of both inefficiency and distributive injustice. It argues relentlessly that what is needed in the new economy is not protection for workers against the risks of the new economy, but rather a greater emphasis on skills and greater worker adaptability to the demands of the market. While many of the arguments relate to efficiency concerns, the

arguments for reform are not grounded only in the demands of growth and competitive labour markets; rather, labour market institutions are undesirable because they cost jobs and produce protected classes of labour market 'insiders' at the expense of outsiders. To inject greater flexibility into labour markets, the Fund proposes a set of institutional reforms, the overall aim of which is to reduce the constraints on labour market contracting on the theory that those constraints prevent prospective workers and employers from reaching bargains that they otherwise would. To this end, the Fund proposes that bargaining be decentralised as much as possible, job security reduced, and access to unemployment and other benefits significantly curtailed. But the constraints that in its view contribute to labour market rigidity traverse the entire field of labour and employment regulations; they include not only the rules listed above but working time regulations, those governing part-time work and minimum wages, and health and safety regulations as well (IMF, 1999a: 99–100).

The governance norms espoused by the World Bank and the IMF have shifted somewhat in recent years in response to a range of factors and forces including: internal and external critiques of their evident shortcomings in particular contexts (Stiglitz, 2002); a reconceptualisation of development as freedom (Sen, 1999); the recognition of human rights as both a constitutive part of development and an aid to growth (Wolfensohn, 1999; World Bank, 2000); and a new recognition of the problems of market distortions and the possibilities of regulating for efficiency (World Bank, 2004). The inclusion of human rights within the development framework may have induced the World Bank and the IMF to move some distance towards the recognition of 'core' workers' rights, although the OECD had already argued persuasively that freedom of association posed no barrier to trade (OECD, 1996), while freedom from discrimination has independent economic appeal because of its role in ensuring general access to labour markets. However, both the World Bank and the IMF have been careful to qualify their support for freedom of association, largely because of their concerns about the negative impact of unions and collective action by workers on efficiency, investment, and economic growth (World Bank, 1998; IMF, 1999a; Rittich, 2003a). Moreover, labour market institutions beyond the core continue to attract critical scrutiny notwithstanding the many arguments that have been made in respect of their efficiency-enhancing properties (Deakin and Wilkinson, 2000).

Thus, the logic animating labour market reform has not (yet) significantly changed. The World Bank and the IMF continue to promote a greatly decentralised structure of bargaining and workplace norm-setting within a 'deregulated' market governed largely by the property and contract rights of employers. The assumption is that the end result will be a dispersion of economic reward commensurate with the level of human capital of the worker, its value to the enterprise, and the degree of risk and individual work undertaken.

Recoding Precarious Work

Animating the regulatory agenda of the IFI is not only the standard neoclassical account about the efficiency- and growth-impeding effects of labour market rules: there is an image of the ideal worker and a set of assumptions about the nature of contemporary work as well.

At the heart of the new labour agenda is a new regulative ideal, the entrepreneurial worker. The archetypal worker emerging from this agenda is the skilled, knowledge worker of the post-industrial world (see Fudge and Owens, chapter 1 in this volume). This is a worker who both cooperates with his employer in the pursuit and successful execution of commercial ventures but maintains an entrepreneurial approach to work, seeking not the security of a long-term employment relationship but rather continuously improving opportunities in which to deploy his skills and maximise his returns in the market. This worker is also largely unencumbered by outside constraints and is both willing and able to devote his primary energies to positioning and advancing himself in the market.

If the archetypal worker is the highly skilled knowledge worker, then the archetypal workplace is a site of continual innovation embedded in a high-velocity market (Barenberg, 1994; Hyde, 2003). Whether the task is the production of goods or the provision of services, the operating assumption is that the demands for greater efficiency now place a premium on continual innovation at work. Both at the level of the organisational structure and at the level of work processes, the assumption is that this will translate into networked production and more transitory contractual and employment relationships counterbalanced by flattened workplace hierarchy and a higher degree of input and control on the part of workers. Wages and income are supposed to rise with investment in human capital and increased skill, so that there is a direct relationship between conformity to the regulative ideal and income and employment security in the new economy.

Various scholars and analyses have suggested why such labour market reform strategies might radically underplay the complexity of work relations in the new economy. In addition to new problems such as the generation of trust and commitment in transitory relationships (Stone, 2001) and the organisation and financing of skill acquisition in a knowledge-based economy (OECD, 2003b), there are on-going problems centred around the role of employer power and control at work (Klare, 2000), the provision of collective goods and other issues requiring collective action, as well as the persistence of other labour market imperfections and social norms that systematically prevent both workers and employers from behaving according to script. While many of these problems are associated with the old economy, it is not obvious that they have disappeared in the new (Deakin and Wilkinson, 2000).

Although the assumptions that make the entrepreneurial ideal seem attractive are descriptively accurate for only a segment of the labour market (Standing, 1999a), this ideal still has a powerful hold on contemporary debates about work. Like the ideal or normative worker so critical to the fate of women workers of the post-war world, the intersecting images of the entrepreneurial worker and the innovative workplace dominate the regulatory and policy agenda and play a constitutive role in precarious work.

Much of the work is done through a shift in the frame in which we view the world of work. It is not difficult to see how on the basis of a changed set of assumptions and norms precarious work might take on a different cast. Once the optic is adjusted, for example, short job tenure and instability in employment appear as inherent parts of the process of 'creative destruction' at work analogous to the on-going cycle of start-up, competitive selection, adaptation, and consequent success or failure that characterises life in the commercial world as a whole. Insecure employment becomes simply the natural fate of those who have inadequate skills for the new economy. Lack of control over work is something that can be remedied by the contribution of more valued skills, not the exercise of collective worker power. Wages are not 'low', indeed, they cannot be low in any absolute sense; they are set by the market, and set correctly once regulatory 'distortions' are removed. While there is no promise of a secure employment, there is the promise of wages commensurate with productivity, merit, performance, and marginal product or value to the enterprise. In this world, as in the wider commercial world, the mantra might be, 'worker prove (and be prepared to continually reprove) your worth'.

In other words, according to the logic animating this idea of good labour market governance, it is not clear that precarious work emerges as a problem, at least one that merits any specific legal response beyond the general reforms that are thought to be beneficial to workers and labour markets as a whole. To the extent that it does, because, for example, precarious work is also associated with labour market inefficiencies, any response would differ fundamentally from the classical post-war approaches to labour market regulation and social protection. As the standard 'deregulatory' prescriptions suggest, greater worker rights and protections, labour market regulation, and union-inspired collective action are themselves figured as the problem, the central reason that labour markets fail to produce the good jobs that would otherwise emerge from well-functioning labour markets.

Notwithstanding the strength of this narrative and the power of the new regulatory ideal, there is another story to be told about contemporary labour markets. Part of it concerns the organisation of work. Whatever the decentralising pull of networked production and the enhanced possibilities for cooperation in innovation-driven markets, workplace hierarchy stubbornly persists: employers continue to control the operation of enterprises and the organisation of work. This is not merely a matter of employer

preference, although the desire to maintain rather than share control surely plays a part; the wider structure of legal rules is also implicated. For example, corporate law in the Anglo-American jurisdictions induces, even compels, employers to give primary attention to the interests of shareholders, not the wider 'stakeholder' community of which workers are a part (Barnard and Deakin, 2002). In the drive to increase shareholder returns, workers are still often treated as costs to be managed and reduced rather than as assets to be cultivated.

Another part of the story concerns the nature of work. Whatever the importance of human capital, much work still is, and may be organised to remain, relatively unskilled. It has long been observed that the global cities which are the engines of economic growth in the global economy and the natural repositories of high-skilled work simultaneously produce a set of low-road counterparts, a sort of third world within the first (Sassen, 1991). It is also clear that modernisation and growth are no longer the route out of labour market informality; rather they generate informality as well (Castells, 2000). Moreover, there is accumulating evidence that wage gaps, especially those that track gender or racial lines, persist even when the human capital of those on the wrong side of the line exceeds that of those on the right (McColgan, 2000c). These complications put significant dents in the contentions that precarious work is a supply-side problem and that attention to human capital largely solves the poor prospects in the labour market.

Sceptics could obviously raise a host of additional problems. While concerns about the disparity of bargaining power may be allayed by the specific skill set some workers bring to the table, or even the advantages some labour forces as a whole bring to particular industries, is the typical worker now on a level footing with her employer? Has conflict at work really been supplanted by cooperation? How do we square this with the constant reminders that replacement workers stand by ready to claim jobs in the next jurisdiction if workers' demands are too high? What place is there in this narrative for the specific risks faced by women, many of which contribute to their vulnerability at work?

In this labour market governance agenda, these issues are not so much confronted as avoided, subsumed within the dream of market solutions. The power of this agenda seems to lie in the fact that it marries propositions that are attractive, persuasive, and at least partly true to others that are speculative, disingenuous, or simply objectionable. But the failure to address concerns that, whether from the standpoint of efficiency or distributive justice, are painfully easy to point out suggests that, notwithstanding the description of workers as a whole making progress, poor jobs and precarious work may be integral to the labour market reform agenda in a more fundamental way. The labour market governance narrative is a bold attempt to persuade everyone to buy into a new set of propositions about

the global road to progress in the world of work. However, it may also function to distract attention from labour market problems both old and new. For these reasons, we should be alert to the manner and extent to which it becomes entrenched and accepted.

DIFFUSING GOOD GOVERNANCE NORMS

The ILO has an explicit mandate to advance the conditions of labour and further the cause of social justice, and in these capacities has launched a number of initiatives to respond to the social deficit of globalisation. By contrast with the IFI, whose engagement with the issue is collateral to their main concerns, the ILO is intimately, and directly, involved in the problem of precarious work. Indeed, it is possible to understand the ILO's 'Decent Work Agenda' (ILO, 1999) as fundamentally a response to the centrality of precarious work in the global economy. The Decent Work Agenda seeks to reverse the slide toward precarious work by holding up its mirror image as the goal. Stressing the four 'pillars' of decent work, the ILO now promotes the protection of workers' 'basic' or core rights and seeks a reinvigorated commitment to employment, social protection, and dialogue at work.

Rather than assess these efforts on their own terms (see Vosko, chapter 3 in this volume), the following analysis considers the extent to which the ILO appears to accept, qualify, or reject the governance agenda promoted by the IFI. Recent reports suggest that, despite the effort to promote decent work through core rights, employment, social protection and social dialogue, and to do so at least partly by relying upon the policy and regulatory tools of the old world so disparaged by the IFI, the ILO also increasingly operates within the parameters defined by the IFI as good governance. The intuition pursued here is that the acceptance of the overall framework and the failure to scrutinise the ways in which the institutional infrastructure associated with it might itself be implicated in current labour market problems both diverts attention from issues that are critical to the interests of workers and weakens the overall analysis of the issues that are considered. In particular, it undercuts the capacity to deal comprehensively with precarious work because it fails to give serious attention to its institutional substructure but rather leaves much of it intact.

Two recent examples, both of which are pertinent to the issue of gender and precarious work, give some indication of the reach of the governance norms now promoted by the IFI within the ILO and, indeed, the wider policy-making community. The first is the Final Report of the World Commission on the Social Dimension of Globalization, *A Fair Globalization* (ILO, 2004a); the second is the fourth global report following the Declaration on Fundamental Principles and Rights at Work, *Time for Equality at Work* (ILO, 2003c). The first aims at a comprehensive

response to the social deficit of globalisation; the second addresses the question of discrimination and equality in labour markets.

A Fair Globalization: A Summary

The World Commission on the Social Dimension of Globalization was specially constituted by the ILO as a group of diverse and broadly representative actors and experts charged with the task of making a systematic attempt to find common ground on the question of the social dimension of globalization. As the title of its final report suggests, the animating impulse was the sense that there was an urgent need to generate proposals for ‘righting the imbalances’ of globalisation. (ILO, 2004c). The ‘common ground’ from which the analysis proceeds is, for this reason, critical to understanding the report itself; in many ways, it is the very object of the exercise.

At first glance *A Fair Globalization* seems like a welcome response to the emergence of precarious work; it is certainly possible to find references to problems such as growing insecurity and pressures on the quality of employment (ILO, 2004a: para 283). Yet, read as a whole, and in the context of the governance agenda in particular, it begins to look less promising. What follows are some observations about the continuities and discontinuities of *A Fair Globalization* with both the governance agenda and the traditional concerns and optics of labour.

The language of governance is all over the report. But *A Fair Globalization* does not simply endorse the centrality of rules and institutions, it adopts a general vision of good governance that sounds remarkably like the one promoted by the IFI. References to the need for ‘sound institutions’ and a ‘well-functioning market economy’ appear right off the bat. Here, as in the analysis of the IFI, they end up functioning as codes for specific institutional reforms. The general policy focus is on ‘enabling’ strategies for labour market participation, a strategy that is consistent with the role figured for the state by the IFI of ‘enabling’ market processes and creating a market- and investment-friendly environment.

The most basic message of the report is that ‘globalisation is good’; it just needs to be made to work better. The report does not question the basic proposition that greater economic integration is beneficial for workers. This is a position that should be at least somewhat controversial: whatever the aggregate efficiency gains and ultimate economic benefits of trade and integration-driven growth, the distribution of those gains and benefits remains highly uneven, both between and within states and regions. As the report notes, the imbalance of power between countries is a central governance problem in the global economy. However, it is striking that the report says almost nothing about the imbalance of power between workers and unions on the one hand and employers on the other, as there is general agreement

that, so far, the process of integration has very much favoured capital holders over labour. While in theory these defects (and other distributional concerns too) could be at least partly remedied by institutional reforms, the barriers to such reforms remain formidable. Whether in their absence the ILO should remain so sanguine about the benefits of greater economic integration for workers should be the question, not the presumption.

There are repeated pleas for greater policy coherence among the international institutions and ‘enhanced coordination of macroeconomic policies to attain a more balanced strategy for sustainable global growth and full employment’ (ILO, 2004e). This is hardly undesirable, especially given that pro-worker reforms in one arena might be completely undone by reforms with cross-cutting effects elsewhere. However, ‘failure of coordination’ seems to understate the problems with, and the gravity of, an institutional agenda that has had labour market deregulation at its heart. The report places great stress on the benefits of social dialogue, which the ILO defines as ‘all types of negotiation, consultation or exchange of information between or among representatives of governments, employers and workers on issues of common interest relating to economic and social policy’ (ILO, 2004d). Such dialogue may range from completely informal discussions among any of the social partners to arrangements that are entrenched and supported by institutions and legal entitlements both substantive and procedural. In practice, the framework in which such dialogue occurs is crucial, not peripheral, as freedom of association and rights to collective bargaining may ring hollow depending on their particular institutional form, the manner in which they are adjudicated, and the extent to which they are enforced (Human Rights Watch, 2000). For this reason, the call for greater ‘social dialogue’ seems a totally ineffectual response to the actors and institutions on the other side who reject any automatic role for unions and are explicitly seeking to break corporatist arrangements, decentralise bargaining, and weaken the collective power of workers by dismantling many of its institutional supports.

There is great stress on the imperative of growth and many references to growth as the best route to full employment. However, *A Fair Globalization* contains relatively little analysis of the specific demands of pro-employment growth (ILO, 2004a: paras 281, 282). This issue should be much more central to a global labour or social justice analysis; whether growth without employment is desirable in itself raises some of the issues discussed above.

Throughout the report, the language of cooperation between workers and employers dominates this analysis, totally eclipsing the spectre of conflict. Equity and efficiency are generally presented as complementary objectives. Rather than devices for worker empowerment and protection, labour market rules and institutions are typically characterised as a response to some market failure and repeatedly justified in terms of their contribution to efficiency. To state what may be obvious, the decision to characterise them in

this way ignores their role in redressing the inequality of bargaining power between workers and employers. Apart from displaying a startling amnesia about the history of labour market institutions and controversies out of which they emerged, this account stands in tension with the longstanding view within the ILO that 'labour is not a commodity' and has the effect of instrumentalising worker protections in the service of growth. While this frame provides a justification for labour market institutions that is consistent with the overall logic animating the governance agenda, it ignores their role in redistributing power and authority among workers and between workers and employers and mediating conflicts of interest at work, many of which still exist. As well as obscuring the trade-offs and choices among different objectives, it may also have the collateral effect of delegitimising rule, institutional, and policy responses that cannot be easily or uncontroversially subsumed under the rubric of efficiency.

In common with the labour market strategies of the IFI, *A Fair Globalization* stresses the importance of investments in human capital, making this the major orientation of labour policy and regulation in the new economy. What might be expected in this analysis, and what is largely missing, is more attention to the demand side of the equation too: without it, we are invited to conclude that a skilled, educated labour force creates its own market (Amsden, 2001). Although the report suggests that there is global responsibility for ensuring demand, we learn nothing about what this might mean in policy or regulatory terms. Notably absent is a serious consideration of issues such as jobless growth; structural and cyclical unemployment; and the emergence of low-skill work. Most troubling is the lack of attention to making low-skill work 'good' work, that is, to contesting the assumption that, basic rights aside, skill is an adequate index of terms and conditions of work. These are all problems that either will not or cannot be solved by improving the value of workers to their employers.

In general, the regulatory and policy focus of the report is on compliance with core labour rights and the creation of a basic socio-economic floor. The discussion of labour market rules and institutions, by contrast, is surprisingly thin, given that even the IMF understands that the real conflict is over the institutional implications of those core rights or standards (IMF, 1999b) and appreciates that structural reforms that improve productivity may also increase earnings inequality and poverty (IMF, 2004: chapter III). While the references to a socio-economic floor add something to the institutional vision promoted by the IFI, viewed in historical perspective and in light of the total corpus of ILO activities, these are very modest, chastened objectives.

Beyond this, the most prominent regulatory concerns are the promotion of agreements on the cross-border movement of workers and the formalisation of labour markets. Although they are important, they do not begin to touch, let alone exhaust, the wide range of institutional concerns that are

relevant to workers in the new economy. Whether these are the most important regulatory issues for workers, rather than those that are least contentious and most compatible with other regulatory objectives, is unclear. What is clear is that hard distributive justice goals such as improving wages or strengthening workers' bargaining power receive little attention; at best, they are addressed indirectly through social dialogue.

If, on the one hand, *A Fair Globalization* contains some surprising omissions and concessions, on the other, it contains concerns that seem primarily explicable in terms of their centrality to the larger market reform agenda. The protection of property rights, for example, receive a degree of prominence that is puzzling in a discussion about social justice; it is less puzzling once we realise that property rights have been discovered by the World Bank as a major poverty-reduction tool (De Soto, 2000; World Bank, 2003). One of its more bizarre effects is to cast workers in the developing world as future entrepreneurs. Yet even if property rights work their magic and markets in land develop as predicted, many people are likely to remain in marginal self-employment. In addition, the ownership changes that accompany greater commodification of land will almost certainly result in greater inequality and produce numbers of workers with limited or no capital who face a quite predictable set of labour market issues. In other words, whatever their benefits, property rights do not solve the dilemma of precarious work: they will almost certainly produce more of it as well.

Assessing A Fair Globalization

Notwithstanding that it was the perceived defects of the current global order that provoked the creation of the Commission and the report in the first place, *A Fair Globalization* reads less as a sober analysis of the requirements of distributive justice for workers than as a consensus document reminiscent of the negotiated outcomes of international conferences. Indeed, compared to at least one such document, the Copenhagen Declaration of the World Social Summit in 1995 (UN, 1995), it is less forthright about the challenges for workers in the current economy, advocates less on their behalf, and is more accommodating to the economic and regulatory norms that now prevail in the international economic order. Rather than confront the limits of the current paradigm, *A Fair Globalization* fiddles at the margins, hoping to stake out more promising territory for workers within it. At best, it raises cautions without going on to consider the extent to which problems are created by or can be resolved within the basic governance framework. This makes the analysis seem in the alternative vague and unhelpful or internally incoherent and unpersuasive.

A Fair Globalization begins in a promising vein by centring the problem of the social dimension in the distribution of costs and benefits in the global

economy; moreover, it attributes the problem to deficiencies in governance (ILO, 2004a: xi). However, it does not then go on seriously to consider or contest the basic thesis, advanced by the IFI and increasingly found elsewhere too, about the efficiency or non-efficiency of various labour market institutions, nor does it seek to implicate the other institutions that facilitate global markets in the current position of workers. Instead, it merely reproduces the idea that ‘sound market institutions’ are key. In so doing, it leaves untouched the deeply problematic proposition that labour market rules ‘distort’ otherwise neutral markets, as well as the assumption that other rules associated with ‘well-functioning markets’ necessarily operate to the benefit of both workers and societies in general.

These are concessions with very, very long legs. They arguably take the analysis away from where it most needs to look: the role of a wide range of rule and institutional choices in either aggravating or ameliorating the maldistribution of resources, authority, and power in the global economy. They have particularly profound implications for analysing and responding to the precarious work of women, for they work to normalise a contingent allocation of powers, risks, benefits, and burdens among market actors; this in turn helps to naturalise the very division between market and non-market spheres and concerns that must be challenged in order to address some of the basic sources of labour market disadvantage for women (Rittich, 2002b). But they also render a wide range of other proposals, many of which are still part of the ILO’s Decent Work Agenda and other projects, ‘second best’ solutions that constitute deviations from optimal policies, if they even make sense at all.

A Fair Globalization situates the plight of workers within the larger context of developments in the global economy; this is both its strength and its weakness. It seems clearly right that the fate of workers is tied to the larger economic and institutional climate rather than to a narrow set of workplace issues alone. However, the sense conveyed by *A Fair Globalization* is that the ILO is desperately trying to navigate a better path for workers within the global economy without challenging conventional institutional wisdom held in other quarters. The real question may be why the ILO chose to adopt this approach to analysing such a central problem for workers and societies in the current economy. Whatever the reason, the ‘common ground’ approach reflected in the Report of the World Commission may be perilous, if it induces the ILO to hold its fire and adopt a compromised set of reform objectives that are designed to merely soften the adjustment process for workers. Whether governance norms that challenge this ‘common ground’ are feasible right now is a live question; however, by subsuming the agenda for social justice within them, not only does *A Fair Globalization* accommodate those norms, it subscribes to, rather than questions, the theory that workers, too, stand to benefit from them. The failure to come to grips with the extent to which precarious work may

be structurally related to current governance norms and emerging labour market practices eliminates some of the key analytic and policy tools to address one of the most pressing labour problems of the new economy. When the ILO, too, simply recirculates the promise of the high-skill labour markets without scrutinising the other face of the new economy, the effect is to suggest that the problem of precarious work lies with workers. To the extent that the ILO adopts this approach, it risks abandoning its most vulnerable constituency.

Time for Equality at Work

Time for Equality at Work is the fourth global report on the ILO Declaration on Fundamental Principles and Rights at Work. Its purpose is to explicate the context and implications of one of the ‘core’ rights—freedom from discrimination—and to generate a consensus about the general direction of policy and regulatory reform to support it. As part of the ‘soft’ regulatory machinery of the Declaration, it bears a family resemblance to a range of other strategies to negotiate convergence in labour standards among states with diverse histories and institutional structures (Trubek and Mosher, 2003; Ashiagbor, chapter 4 in this volume.).

While this once lay beyond its interest and purview, the World Bank too has recently developed an interest in equality—gender equality in particular (World Bank, 2001, 2002, 2005). The World Bank now asserts that gender equality is good for growth; it simultaneously (and more controversially) claims that growth is good for gender equality, too, by advocating more and higher value labour market participation for women as the route to equality for women. For the purposes of this discussion, it is important to note the following things: in the name of protecting ‘choice’ for women, the World Bank explicitly endorses an ‘opportunity’ model over a ‘substantive’ model of equality; it focuses policy interventions on enhancements to women’s human capital; and while it recognises that some rights are essential for gender equality, basic anti-discrimination rights aside, it categorises labour and employment regulations as matters of economic policy that are subject to a cost–benefit analysis. In short, the Bank has a vision and model of gender equality that operates quite comfortably within the general regulatory framework it promotes in the name of economic growth.

Here my aim is to identify some of the similarities and differences between *Time for Equality* and the World Bank’s market-based approach to equality. While some aspects of the analysis would be weighted differently and some of the remedial strategies might be contested outright—for example, *Time for Equality* rejects equality strategies that stop with education and explicitly endorses remedies such as affirmative action (ILO, 2003c: part II), whereas the World Bank is much more cautious about such labour

market regulations, fearing their efficiency-impairing properties—what is noteworthy is how much of *Time for Equality* could have been generated by the staff of the World Bank.

Like *A Fair Globalization*, *Time for Equality* is pervaded with arguments about the importance of equality for other ends. On the one hand, it endorses a ‘rights-based’ approach to development (ILO, 2003c: paras 44, 357). Precisely because the animating idea is to subordinate market reforms to a set of normative commitments that prevail notwithstanding their consequential effects, rights-based approaches to market design and structural reforms are something that the IFI have been clear to resist (Shihata, 1991; IMF, 1999b). However, *Time for Equality* actually advances countless instrumental arguments for attention to equality; indeed, references to the links between equality and growth, efficiency, political stability, and social inclusion arguably outstrip arguments for equality as an end in itself. The discourse of efficiency is salient throughout—for example, the merits of equality are often couched in terms of greater efficiency to society (ILO, 2003c: xi)—as is the ‘business case’ for equality. Whether it is for strategic reasons—for example, an effort to speak a language that policy makers and other international institutions are presumed to both hear and endorse—the burden of justification on those advocating on behalf of equality is unmistakable.

Second, the report proffers a very confined, formalistic definition of equality. Equality is defined as ‘free choice in the selection of occupations, an absence of bias in the way merit is defined and valued and equal opportunities in the acquisition and maintenance of market-relevant skills’ (ILO, 2003c: para 83). While the World Bank would probably be comfortable with this definition, it leaves intact a raft of equality concerns that arise from the structure and organisation of work and it fails to raise a host of questions that have been central to feminist inquiries into labour market equality, including the effects on women of otherwise neutral norms, and the market and non-market constraints on labour market choice for women.

Discrimination in the labour market is identified not as a function of the relationship of particular workers to emerging labour market or workplace norms (Brodsky and Day, 1996) or as a problem in the organisation of productive and reproductive work (Conaghan and Rittich, 2005), but as a problem of treating people differently (ILO, 2003c: paras 1, 7, 20). Framed in this way, discrimination becomes a wrong because it is an affront to the right of the individual worker to choose her destiny and pursue her options in the market, the result of perceptions, rather than objective ‘facts’, that are falsely ascribed to particular groups. This definition maps on to one of the enduring fantasies of those promoting market-centered approaches to equality, which is that the only thing barring workers from full participation in markets is either inadequate skill and effort or invidious discrimination on

the basis of personal characteristics that can be remedied with a right to non-discrimination.

Apart from the inherent limitations of conceptualising equality in this way (Minow, 1990; Brodsky and Day, 1996) and the consequent inability to resolve the equality dilemmas, especially for women, that tend to arise at work, this analytic framework has the effect of making the report seem uncertain of its central thesis; it also introduces discontinuities between the concept of equality and the way in which it is addressed. For *Time for Equality* does in fact make references to wider conceptions of equality (ILO, 2003c: para 8) and it advocates labour market strategies, such as minimum wages and pay equity, that go well beyond the requirement that people be treated as 'the same'. At the level of institutions and implementation, if not at the level of concept, *Time for Equality* registers significant divergences with governance norms. For this reason, it raises a number of questions: is the definition of equality strategic, designed to establish common ground with other institutions, while the real battle is fought over the operational details? Or does the definition of equality do significant work in itself, shifting the terrain and the burden of justification in ways that make it harder to respond to complex problems of equality?

At the same time, *Time for Equality* differs from the labour market strategies of the IFI, and even from *A Fair Globalization*, in key ways. There is no presumption that either markets or economic growth necessarily eliminate discrimination on their own. Solutions to discrimination are not limited to the supply side; consequently, there is less stress on human capital. There is explicit acknowledgement that regulatory choices such as 'deregulation' and decreased social protection as well as the fragmentation of labour markets place constraints on the elimination of discrimination at work. This puts it at odds with the IMF, whose concerns run towards restraining public expenditures and curbing 'disincentives' to work. *Time for Equality* also gives a prominent role to unions and collective bargaining in addressing workplace discrimination (ILO, 2003c: paras 304–6). While the IMF and the World Bank remain preoccupied with the negative effects of unions and collective bargaining on labour market efficiency, *Time for Equality* stresses the benefits of centralised over decentralised bargaining (ILO, 2003c: para 330) and the positive relationship between union membership and increases in women's wages (ILO, 2003c: para 309).

The most significant difference between *Time for Equality* and *A Fair Globalization*, however, appears to lie here. While *Time for Equality* uses the discourse of the new economy and frames the task as sustainable development and poverty-reduction too, it retains a fundamentally interventionist role for the state, stressing the importance of regulation, administrative structures, and enforcement, including traditional labour market institutions, for equality objectives. *A Fair Globalization*, by contrast, simply cautions that, however desirable, liberalisation and deregulation can go too far,

and offers only the most parenthetical reminder that there may still be a role for the state in limiting the impact of globalisation on inequality (ILO, 2004a: 246–51).

Perhaps for related reasons, *Time for Equality* fails seriously to engage with many of the features and characteristics of the new economy; these are central to the entire *raison d'être* of *A Fair Globalization*. For example, the whole question of the reorganisation of work receives relatively scant attention. However, work organisation is directly related to the rise of precarious work, which, in turn, is not randomly distributed among the workforce, but is disproportionately associated with women, racial and ethnic minorities, disabled workers, and other groups with marginal social power, in short the very groups that are invariably the subject of equality initiatives. Nor, despite the references to the salutary role of unions in remedying workplace discrimination and the continuing need for affirmative action, is the rise of labour market flexibility norms and the declining role and power of unions confronted directly. This risks leaving the misleading impression that flexibility norms are not relevant to the problem of discrimination; it also stops the analysis short of its target. While noting a trend towards the implementation of laws that impose a positive duty to promote equality (ILO, 2003c: xii), *Time for Equality* fails to probe the fate of other rules that may be inseparable from the practical realisation of equality such as pay and employment equity laws and affirmative action programmes; because of emerging governance norms, the regulatory picture looks much less rosy from here.

Despite its defence of traditional labour market institutions, *Time for Equality* fails to engage the relationship between equality and the drive for efficiency and competitiveness in any systematic way. This is significant, given that the relationship between equity and efficiency is one of the most deeply contested, and important, regulatory questions in the new economy. On the other hand, *A Fair Globalization* fails seriously to engage with the problem of labour market discrimination; this too is puzzling, if only because a major dimension of the social deficit of globalisation is growing labour market inequality along a variety of axes.

Finally, although *Time for Equality* might look responsive to the problem of discrimination if compared to the policy reports of the World Bank and the IMF, when juxtaposed with other research, the analysis seems thin. The matter of care does not receive much attention in *Time for Equality*. Despite the fact that the relationship between 'productive' and 'reproductive' tasks and spheres has been identified as central to the matter of gender equality in a range of analysis, scholarly and institutional, for at least a decade (Waring, 1988; UNDP, 1995, 1999; Beneria, 1999; Elson, 1999) and is now central to the transformation of work (Supiot *et al*, 2001) and the general crisis afflicting welfare state regimes as well (Esping-Andersen, 1999), the issue comes up quite late in the discussion of equality and is relatively

marginal to the report as a whole (ILO, 2003c). This is highly suggestive: it indicates that the equality analysis in *Time for Equality* is still securely anchored within, rather than across, the boundaries that divide the market from other social institutions. While this comports with the approach in the current governance agenda, for the reasons discussed below it severely limits the possibilities of tackling the gendered dimensions of precarious work.

Precarious Work and Gender Equality

Although the normalisation of precarious work suggests that we may now be moving toward a state in which women's labour market position converges with men's through the perverse route of downward harmonisation (Standing, 1999b), there are reasons, some of which are intimately related to current governance norms and assumptions, that precarious work can be expected to retain some of its gendered character in the new economy.

Among the sources of enduring labour market inequality for women is the idea that only market work is 'real' work. Feminist scholars have repeatedly demonstrated that women's disproportionate representation in secondary and precarious work is a structural, rather than contingent, feature of labour markets, one that is intimately related, moreover, to the very assumption that real work is paid work. It is well documented that women perform, by a very large margin, most of the unpaid, 'reproductive' work that is crucial for both the reproduction of societies and the operation of markets (Beneria, 1999; UNDP, 1999). This unpaid work operates as a constraint upon women's labour market participation and disadvantages women relative to men in economic terms. Rather than of purely private benefit, it confers at the same time a benefit upon those who labour in markets and those who profit from that labour. The reason is that all market activity is dependent, if in often unrecognised ways, upon the on-going processes of social reproduction (Waring, 1988; Picchio, 1992; Elson, 1999).

The extensive empirical literature documenting the extent and value of unpaid work has begun to register in the literature of the World Bank (2001). However, women's non-market work still remains entirely excluded from the calculus of economic growth. This work is, not surprisingly, often still absent from the considerations that are relevant to market design and structural reforms (but see OECD, 2001). Indeed, the disadvantage to women is increased by policies that are driven by a pervasive fear of fostering 'dependency' or are designed to decrease the fiscal burden on states.

The failure to recognise the extent to which unpaid work underwrites economic activity allows those costs to be externalised; this, in effect, means that women's contribution to economic activity is destined to remain under-compensated. It is not only that anyone with non-market obligations does not, in fact, have equal 'opportunity' to participate in the market, thus

undermining both emerging labour market ideals and equality norms at the most basic level. Nor is it that the market needs to ‘accommodate’ those with family obligations because of moral or social imperatives (ILO, 2004a: 4). It is that the assumption that the only real work is market work obscures the basic distribution of costs, risks, and benefits within the economy itself. The promise for workers within the narrative of the new economy is reward commensurate with skill, effort, and adaptability to the demands of the market. However, the presence of unacknowledged goods and services in the context of production, the costs and burdens they impose, and their association with particular groups skews the outcomes of labour market participation against those with obligations of care in predictable and well-documented ways. Analysts familiar with the gendered effects of economic restructuring and recent development policy (Rittich, 2002b), and neoliberal reforms in industrialised economies (Fudge and Cossman, 2002) could complete the story at this point. Residual support for critical but non-market ‘reproductive’ activities will be provided privately, much of it on an unpaid basis. Very often it will be women who do it; this in turn will impair women’s labour market prospects in predictable if varied ways.

CONCLUSION

To return to the beginning, there is a close nexus between precarious work and the issue of governance. On the one hand, it seems possible to imagine many different ways of responding to the current (mal)distribution of costs and opportunities associated with precarious work, at least some of which might be justified within the larger governance objectives and the logic now informing market design. For example, they may be necessary to induce higher levels of market participation among women; in so doing, they may both generate growth and actually reduce, rather than increase, the fiscal pressure on states. On the other hand, we could also use the problem of precarious work as a way to reread, and reconstruct many of the prevailing norms about good governance themselves; it is clear that a serious investigation of the gendered nature of precarious work is a productive way to uncover, and critically interrogate, many of the assumptions organising the current approach to labour market reform.

The two ILO reports represent two modes of engagement with the debates around the new economy. *A Fair Globalization* represents the possibilities for workers of the new institutional path at their most optimistic with a few cautions at the margins; *Time for Equality* represents a less sanguine view, but locates the solutions in regulatory institutions and strategies that are under siege. Both reports arguably fail to come to grips with the extent to which governance norms might themselves function as a mechanism by which workers are legally, materially, and ideologically disempowered. More

than anything, *A Fair Globalization* and *Time for Equality* document the current struggle and uncertainty, part of which is being played out within the ILO, to come to terms with the new economic and institutional terrain and its implications for workers. Whatever the outcome, the stakes for workers, particularly those in precarious work, seem high.