

PROJECTING CAPITALISM

A History of the
Internationalization of
the Construction Industry

Marc Linder

Contributions in Economics and Economic History, Number 158



Greenwood Press
Westport, Connecticut • London

Digitized by Google

Original from
UNIVERSITY OF CALIFORNIA

Library of Congress Cataloging-in-Publication Data

Linder, Marc.

Projecting capitalism : a history of the internationalization of
the construction industry / Marc Linder.

p. cm.— (Contributions in economics and economic history,
ISSN 0084-9235 ; no. 158)

Includes bibliographical references and index.

ISBN 0-313-29293-0 (alk. paper)

1. Construction industry—History. 2. Engineering firms—History.
3. International business enterprises—History. 4. Railroads,
Colonial—History. 5. Capitalism—History. 6. Technology transfer—
History. 7. International economic relations—History. I. Title.
II. Series.

HD9715.A2L498 1994

338.8'872—dc20 93-50546

British Library Cataloguing in Publication Data is available.

Copyright © 1994 by Marc Linder

All rights reserved. No portion of this book may be
reproduced, by any process or technique, without the
express written consent of the publisher.

Library of Congress Catalog Card Number: 93-50546

ISBN: 0-313-29293-0

ISSN: 0084-9235

First published in 1994

Greenwood Press, 88 Post Road West, Westport, CT 06881

An imprint of Greenwood Publishing Group, Inc.

Printed in the United States of America



The paper used in this book complies with the
Permanent Paper Standard issued by the National
Information Standards Organization (Z39.48-1984).

10 9 8 7 6 5 4 3 2 1

10

The World Construction Market Constructs Its Own World Labor Market

Society, the united individuals, may possess the surplus time to build the road, but only united. ... Insofar as the uniting of their powers increases their productive power, it is by no means clear that they possess numerically the labor power all taken together—if they do not work together.... Hence the forcible rounding up of the people in Egypt,...India, etc. for compulsory construction and public compulsory works. Capital effects the same union in another way, through its manner of exchange with free labor.¹

Technological progress in transportation and communication has imparted a different character to the “annihilation of space by time”² in the late twentieth century than that which prevailed in the mid-nineteenth century when British railway builders had to ship capital and labor halfway round the world. Nevertheless, even in an age when billions of dollars of capital in its money form can be electronically flashed from New York, Frankfurt, or Tokyo to Jakarta, Riyadh, or São Paulo almost instantaneously, the physical movement of less abstract forms of capital remains a formidably capital-intensive and arduous process. The assembly of all the dead and living labor required for the recreation of the built environment in less industrialized societies is a particularly mammoth logistical undertaking. The construction of an industrial city in Saudi Arabia, a copper or gold mining complex in New Guinea or the Peruvian Andes, or a hydroelectric dam in Mozambique has been likened to the invasion of Normandy: “Tons of supplies are shipped in, prefabricated dwellings are hauled over jungle roads, and helicopters ferry the amenities and personnel.”³

The purchase, lease, and timely shipment of huge quantities of raw materials and machinery as well as the industrial plant and equipment to be installed to areas such as the Middle East—where “the only materials not imported are sand, gravel, and gasoline”⁴—is a complex task of coordination.⁵ The daily purchase orders of Fluor in the mid-1970s, for example, included five tons of structural steel, \$2.5 million of process equipment, and \$1.5 million of piping and valves. Fifteen years later, Bechtel was procuring \$4 billion annually in materials and equipment.⁶ In

¹Karl Marx, *Grundrisse der Kritik der politischen Ökonomie (Rohentwurf) 1857-58*, at 427 (1953).

²*Id.* at 423.

³Michael Kolbenschlager, “Bechtel’s Biggest Job—Constructing Its Own Future,” *Forbes*, Dec. 7, 1981, at 138, 141.

⁴Shawn Tully, “France’s Master Builder Is on the March,” *Fortune*, May 2, 1983, at 210, 216.

⁵For a good overall description, see Walter McQuade, “The Arabian Building Boom is Making Construction History,” *Fortune*, Sept. 1976, at 112.

⁶“Where the Constructors Strike it Rich,” *BW*, Aug. 23, 1976, at 46, 56; *1991 Bechtel Report to Employees* at 31 (n.d.).

extreme cases, the firms' "engineers dream up their own exotic machinery"—such as "the building of the world's largest air-cushioned amphibious barges to carry 250-ton modules" to a liquefied-natural-gas plant on an island in the Persian Gulf.⁷ These exports of productive capital generated by the international construction industry constitute a significant source of demand for the products of First World heavy industry such as steel and machinery. Unsurprisingly, an inverse relationship exists between a "host" country's GNP and its volume of construction machinery imports.⁸

This ongoing worldwide transshipment of construction capital in its productive form is promoted by competitive bidding practices. Although multinational companies generally calculate their bids by assuming that their capital equipment will be used up and thus completely amortized on one project, frequently they can continue to use it on subsequent projects. Firms therefore have a competitive incentive to submit their next round of bids without making any financial provision for their already written-off capital equipment (especially for the more sophisticated kinds) in order to lower their bids.⁹

International Migrancy

In the present day labour can with the utmost ease be transferred from place to place—exported, shipped, or sent by rail like any other commodity.¹⁰

This physical mobilization of capital has brought in its wake an unprecedented and multilayered system of recruitment, mobilization, provisioning, housing, and control of the requisite multinational, multiracial, multilingual unaccompanied male labor force.¹¹ In camps specially built and segregated to avoid "the constant threat of conflict" international construction firms may be "feeding and servicing" upwards of fifteen thousand workers. And although the labor force of any single one of these projects may be eclipsed by the 20,000

⁷Dan Cordtz, "Bechtel Thrives on Billion-Dollar Jobs," *Fortune*, Jan. 1975, at 90, 142.

⁸National Export Expansion Council, *Report of the Industry Committee on Engineering and Construction Services* 112 (1970).

⁹Erich Gluch & Jürgen Riedel, "The Federal Republic of Germany," in *The Global Construction Industry: Strategies for Entry, Growth and Survival* 120, 136 (W. Strassmann & Jill Wells ed., 1988).

¹⁰"The Importation of Foreign Labour," 44 *Engineer* 299, 300 (1877) (editorial).

¹¹See J. Birks & C. Sinclair, *International Migration and Development in the Arab Region* 110-11 (1980); Sooyong Kim, "Contract Migration in the Republic of Korea" at 45 (ILO, International Migration for Employment Working Paper 4, 1982). Scattered exceptions exist to be sure. Under U.S. rule, female laborers figured prominently on road-building projects in the Philippines. "Philippine Road Building," 75 *EN* 112 (1916). One-tenth of the workers employed by Kaiser in the construction of a steel mill in India in the 1950s were local women. "Beating the Odds When Building Abroad," *ENR*, Mar. 27, 1958, at 31, 32. U.S. military contractors also employed many Vietnamese women in Vietnam. "Vietnamization: Roads, Bases and Skills," *ENR*, Jan. 15, 1970, at 25. In general, however, the international construction industry lags behind developments even in the United States, where fifteen years after the U.S. Department of Labor promulgated hiring goals for women, only 1.9 per cent of construction workers are female—compared with 1.2 per cent in 1970. See Georgia Dullea, "Women Fight for More Construction Jobs, Less Harassment," *NYT*, Aug. 23, 1977, at 30, col. 1; "U.S. Rules Will Push More Women's Jobs in Construction," *WSJ*, Apr. 10, 1978, at 3, col. 4; "Women in Construction Still Waiting for Respect," *NYT*, Sept. 29, 1992, at B12, col. 1 (nat. ed.). In the Soviet Union women, who accounted for 30 per cent of all construction workers, while female construction workers constituted six per cent of all female workers, "perform a man's work and get a man's pay." Waldo Bowman, "Construction Today in the U.S.S.R.," *ENR*, Aug. 30, 1962, at 38, 39 (quotation); Svetlana Turchaninova, "Trends in Women's Employment in the USSR," 112 *ILR* 253, 256 (1975); Norton Dodge, *Women in the Soviet Economy* 178-79 (1966). Women's share of construction employment was, except for transportation, nevertheless the lowest of any industry in the Soviet Union. Tsentral'noe Statisticheskoe Upravlenie pri Sovete Ministrov SSSR, *Narodnoe khoziaistvo SSSR v 1974 g.: Statisticheskii ezhegodnik* 559 (1975). In the other former Comecon countries women formed between one-sixteenth and one-seventh of all construction workers. Institut für die Wirtschaft des sozialistischen Weltsystems an der Akademie der Wissenschaften der UdSSR, 3 *Sozialistisches Weltwirtschaftssystem: Arbeitsteilung und Standortverteilung der Produktion* 101 (1968).

corvée laborers pressed into service to build the Suez Canal in the 1860s, or the 45,000 workers recruited from almost 100 countries who worked on the Panama Canal in 1913,¹² at any one time a large multinational firm may be overseeing the work of more than a half-million workers around the world.¹³

Multinational firms have met some of their labor requirements during the post-World War II period by resurrecting the nineteenth-century practice of dispatching (often unemployed) First World construction workers to the Third World. Thus in mid-1976, 10,000 British construction workers found employment in the Middle East in part to avoid the building depression in Britain.¹⁴ The prominence of Italian construction firms in Third World markets in the 1970s and 1980s was in part a function of the willingness of tens of thousands of Italian construction workers, who may have accounted for as many as a quarter of those employed abroad by these firms, to "accept[] working and environmental conditions that would be refused by Americans or most other Europeans."¹⁵

U.S. construction firms began sending tens of thousands of skilled and unskilled workers to their overseas projects in the early post-World War II period. Many of these sites were U.S. military bases. This stream of recruitment expanded through the 1950s and reached its absolute peak during the massive involvement of civilian construction firms and workers in building military facilities in Vietnam in the second half of the 1960s. The petroleum boom during the 1970s and early 1980s created a second, albeit lower, peak demand for U.S. workers especially in the Middle East, but also in other oil-producing countries such as Indonesia and Venezuela.¹⁶

Multinational construction firms' employment of First World construction workers in the Third World was checked to some extent when "host" governments in the 1950s began inserting clauses into their contracts requiring companies to hire and train local workers.¹⁷ By the mid-1950s, U.S. construction firms had also begun to reduce the number of U.S. personnel employed abroad as one means of staving off competition by European firms that paid lower wages and salaries.¹⁸ Later, international construction firms, driven by competitive cost-cutting, initiated even greater restraints on the hiring of First World workers as they increasingly

¹²John Marlowe, *The Making of the Suez Canal* 152-57 (1964); *Annual Report of the Isthmian Canal Commission and the Panama Canal for the Fiscal Year Ended June 30, 1914*, at 293 (1914); Gerstle Mack, *The Land Divided: A History of the Panama Canal* 533-51 (1944); Ian Cameron, *The Impossible Dream* 142-43, 153-59 (1971).

¹³See Robert Ingram, *The Bechtel Story: Seventy Years of Accomplishment in Engineering and Construction* 61-62 (1968); "Where the Constructors Strike it Rich" at 56; E. Stallworthy & O. Kharbanda, *International Construction* xv (1986).

¹⁴James Buxton, "Manpower: An Army Moves in," *FT*, July 28, 1976, at 15, col. 1.

¹⁵"Italy's World Builders," *Economist*, Nov. 11, 1978, at 80, 81 (quotation); Karin Behring, Erich Gluch, & Volker Rußig, *Entwicklungstendenzen im deutschen Auslandsbau* 56 n.3 (1982) (estimating the share of Italian workers in the absence of data); Aldo Norsa, "Italy," in *The Global Construction Industry* at 87, 91.

¹⁶"Combine for Overseas," *ENR*, Feb. 1, 1951, at 24; "Labor Sought for Offshore Work by Joint Ventures," *id.*, Mar. 22, 1951, at 16. Much of the information in this paragraph was furnished by the president of the Overseas Craftsman's Association, an organization that has referred U.S. construction workers overseas since the end of World War II. Telephone interview with Gary Koontz, Cypress, California (July 21, 1993).

¹⁷Telephone interview with Gary Koontz (July 21, 1993). There are several earlier isolated instances of such contractual requirements in Latin America. Thus the Chilean government stipulated that three-quarters of the staff employed by Sir John Jackson, Ltd. on railway construction be local workers. "The Arica-La Paz Railway," 62 *ER* 16 (1910). And when John Roebling & Sons built a bridge in the Dominican Republic in the 1930s, the government required the firm to employ only native workers with the exception of one resident engineer. Allegedly the firm recruited the bridge workers from the peasantry. Charles Jones, "The San Rafael Bridge in San Domingo," 112 *ENR* 249, 253 (1934). On similar provisions in effect on the Cuban Central Highway project in the 1920s and 1930s, see chapter 7 above.

¹⁸"Competition Tightens Overseas," *ENR*, Nov. 14, 1957, at 25, 27.

came to rely on the "host" country or third countries such as South Korea, Thailand, Pakistan, India, Yemen, the Philippines, Turkey, Portugal, Egypt, and Sri Lanka for the hundreds of thousands of manual laborers whom they employ overseas while continuing to send engineers and managers from the First World to world market sites. Thus French construction firms employed 90,000 workers abroad in 1978 of whom only 17,000 were sent from France. In performing construction services abroad, U.S. firms were estimated to have employed 162,000 workers in 1982; only one-seventh of them, however, were American citizens working outside the United States.¹⁹ Intensified competition finally led multinational firms to hire cheaper Third World engineers as well for overseas projects.²⁰ Consequently, by the early 1990s, perhaps only one-fifth as many U.S. construction workers were working overseas as at the height of the Vietnam-era military construction.²¹

The character and function of this international movement of so-called contract laborers have changed little in the century since socialists began attacking it as "the capitalistically organized importation of sweated labor." Already in the nineteenth century advances in transportation and communication made it feasible for employers in Western Europe and the United States to recruit workers from less industrialized regions whose lower standard of living created a reference point that pressed down on the value of labor power of their competitors in the advanced capitalist countries. Then, too, capitalists preferred such workers on large construction projects such as railroads, canals, and ports in order to suppress the wage increases associated with sudden spikes in demand in the labor market. In order to seize upon the full culturally internalized significance of the importees' precapitalist standard of living, recruiters obligated workers to the terms of employment while they were still in their home countries and thus without insight into the cost of living at the remote location. And if, after arrival at the construction site, the workers' experience with their new working and living conditions impelled them to demand a wage increase, their employers could fire them, leaving them unable to find other employment and without the means to travel home. If this threat did not suffice to dampen their rebellious spirits, the state could intervene by punishing them for breach of contract or deporting them.²²

All of these characteristics have been reproduced by multinational construction firms operating in the Middle East and elsewhere. If the "Yankee Pizarro" Henry Meiggs could make his fortune by buying cargoes of Chinese coolies to build railways in the Andes in the 1860s and 1870s, and John "Empire Jack" Norton-Griffiths made his on the Angolan railway in 1905 with "shipment[s]" of Hindu coolies, Senegalese, and Cape Verde Islanders,²³ a century later multinational construction firms are achieving the same end with workers from other Asian countries.

Against the background of this venerable history, it is not surprising that the prediction by the trade press in the late 1970s that "cheap labor mainly on a subcontract basis" could create only a "short-lived" success²⁴ did not resonate with multinational firms. Instead, they promptly resolved to enhance their

¹⁹Behring, Gluch, & Rußig, *Entwicklungstendenzen im deutschen Auslandsbau* at 53 (data exclude overseas subsidiaries); Strassmann, "The United States," in *Global Construction Industry*, tab. 2.2 at 26 (the data exclude work performed by the Corps of Engineers).

²⁰Gluch & Riedel, *The Federal Republic of Germany* at 125, 134-35.

²¹Telephone interview with Gary Koontz (July 21, 1993).

²²Otto Bauer, "Proletarische Wanderungen," 26:1 NZ 476, 482-84 (1907).

²³Robert Middlemas, *The Master Builders: Thomas Brassey; Sir John Aird; Lord Cowdray; Sir John Norton-Griffiths* 256 (1963).

²⁴"Non-U.S. Firms Grab Big Share of Global Market," *ENR*, Dec. 6, 1979, at 26, 36.

competitiveness by increasing their use of low-cost labor from the Third World. Thus the largest U.S. construction firm in 1975, Fluor, trained several thousand Javanese workers for a project in Indonesia and planned to "ship" them to a new site in Saudi Arabia, where it had been experiencing difficulty in recruiting 30,000 workers for a huge gas program. The training and transportation costs were more than offset by monthly wages of fifty dollars.²⁵ Nor is this type of transshipment peculiar to U.S. firms. For example, when the Swedish firm Skanska completed projects in Saudi Arabia in the 1970s, it sent its Thai workers on to the next sites in Algeria although that country offered "a reasonable supply of local labour."²⁶

The specific model of the international division between mental and manual or supervisory and executory labor on construction projects in the periphery organized by metropolitan capital²⁷ was strictly implemented, for example, during the construction of the Panama Canal, for which (in part for racist reasons) all the skilled workers and no unskilled laborers were recruited from the United States.²⁸ The model was linguistically captured in Ghana shortly after World War II when the large British firm of George Wimpey Ltd. built a university: "It was not long before any white man of the works-foreman category became a 'wimpey.'"²⁹

The model was reestablished by the U.S. military and U.S. construction firms, which recruited large numbers of low-wage third-country nationals, principally Filipinos, in the 1950s and 1960s to perform construction work in Korea, Vietnam, Thailand, and Guam especially during the Korean and Indochina wars.³⁰ This racial-geographic division of labor still flourishes. The common law of international construction projects prescribes, for example, that no U.S. workers ever take orders from Asian foremen. It also recreates a national wage hierarchy ranging from Filipinos to Sri Lankans.³¹

When, for example, a major British firm built one of the largest industrial projects ever undertaken, an aluminum smelter project in Dubai in the late 1970s, 500 Europeans supervised 3,500 Third World nationals. Seen from a different perspective, the system is also illustrated by the practice of one of the world's most diversified multinational construction firms, Bechtel, which in the early 1980s performed half of its work outside the United States but employed four-fifths of its workforce in the United States, where it concentrated its engineering and design activities.³²

The fact that First World construction firms operating in the Third World have had access to this worldwide labor sourcing meant that no nation's firms

²⁵ENR, Nov. 19, 1987, at 11; "Where the Constructors Strike it Rich" at 56; Jim Antoniou, *Construction in the Middle East* 70-71 (1978).

²⁶Stephen Drewer, "Scandinavia," in *The Global Construction Industry* at 160, 174.

²⁷This model was not universally applied in Latin America even in the pre-World War II period. Thus Pearson is said to have employed Mexican engineers and workers on his many turn-of-the-century projects in Mexico. See J. Spender, *Wetman Pearson First Viscount Cowdray 1856-1927*, at 100 (1930).

²⁸See Velma Newton, *The Silver Men: West Indian Labour Migration to Panama 1850-1914*, at 36-47 (1984); Cameron, *The Impossible Dream* at 142.

²⁹James Moxon, *Volta: Man's Greatest Lake* 28 (1969).

³⁰See *Foreign Assistance and Related Agencies Appropriations for 1964: Hearings Before the Senate Committee on Appropriations*, 88th Cong., 1st Sess. 216-30 (1963) (statement and testimony of George Fischer, Exec. Sec'y, Overseas Craftsman's Ass'n, Inc.); L. Lazo, V. Teodosio, & P. Sto. Thomas, "Contract Migration Policies in the Philippines" at 12 (ILO, International Migration for Employment Working Paper 3, 1982); John Smart, "Saudi Demand for Filipino Workers: Labor Migration Issues in the Middle East," 9 *APCF*, Aug. 1982, at 1, 2.

³¹Telephone interview with Gary Koontz (July 21, 1993).

³²P. Marsh, "The Dubai Aluminium Smelter Project," in *Management of International Construction Projects: Proceedings of a Conference Organized by The Institution of Civil Engineers* 155 (1985); *U.S. International Competitiveness: The Construction Industry: Hearing Before the Subcomm. on International Policy & Trade of the House Comm. on Foreign Affairs*, 98th Cong., 1st Sess. 11 (1985) (testimony of Michael Stephenson, vice president, Bechtel National, Inc.).

could compete primarily on the basis of a cheap captive labor force. The one exception was South Korean companies. At least through the 1970s, virtually all Korean construction workers in the Middle East worked for Korean firms, which, in turn, employed almost exclusively Korean workers. With labor costs preeminent in international construction projects, South Korean construction firms, by employing manual workers at wages only one-quarter of those paid to workers from Western capitalist countries, were, at least on labor-intensive projects, ultimately able not only to break through the oligopoly maintained by First World firms, but to become, for a time during the early 1980s, the leading contractors in Saudi Arabia. The Korean firms' meteoric rise was reflected in their construction exports, which jumped a hundred-fold from \$83 million in 1972 to \$8 billion in 1978. By 1983, 162,000 South Korean construction workers were employed abroad, 150,000 of them in the Middle East.³³ Importing their own nationals enabled Korean firms to "impose their own standards of discipline without difficulty" especially when the entire workforce was employed under the terms of a standard labor contract, designed by the South Korean government, that entitles employers to dismiss workers who instigate a slowdown or work at another construction site.³⁴

South Korean firms were, however, themselves soon overtaken by others from Turkey, the Philippines, Thailand, India, Pakistan, and Bangladesh, which "as an element of their national economic planning...have invested in export construction capability as a means of raising export income."³⁵ By using the South Korean model of "price dumping via wage cuts," they "began to deprive Korean firms of their comparative advantage built around cheapo labor costs."³⁶ Consequently, South Korean construction firms too began hiring laborers from even lower-wage third countries such as Thailand, Pakistan, India, Bangladesh, and the Philippines. The Korean firms paid them only half of the wages that they offered Korean workers overseas, whose own low basic wage for an eight-hour day caused them to work overtime despite the consequences to their health of such long workdays in temperatures of 50° centigrade. The Third World workers' productivity was sufficiently close to the Koreans' that the Korean firms were able to achieve the desired cost reductions. But once the focus of Saudi construction projects shifted from labor-intensive infrastructure to technology-intensive industrial projects, even very low wage costs could not keep the Korean firms competitive. Because the Korean firms failed to diversify—in 1982, for example, more than 90 per cent of their new contracts (by value) was to be performed in the Middle East—their loss of the Middle Eastern market also signaled their decline on the world market altogether. This decline was clearly mirrored in the rankings of the 250 largest international contractors: the contingent of Korean firms, which had peaked at thirty in 1982, fell by 1989 to a mere four; likewise, their share of the value of Middle East contracts fell from more than one-fifth in 1982 to zero seven years later.³⁷ Stymied in the Middle East, some South Korean contractors have

³³See Strassmann, "The United States" at 33; Kim, "Contract Migration in the Republic of Korea" at 1, 21; Chung In Moon, "Korean Contractors in Saudi Arabia: Their Rise and Fall," 40 *MEJ* 614, 616-18 (1986); OECD, *Globalisation of Industrial Activities. Four Case Studies: Auto Parts, Chemicals, Construction and Semiconductors* 107, 111 (1992).

³⁴Mahlon Apgar, "Succeeding in Saudi Arabia," *HBR*, Jan.-Feb. 1977, at 14, 33; Kim, "Contract Migration in the Republic of Korea" at 27. Hedley Smyth, *Property Companies and the Construction Industry in Britain* 202 (1985), confuses or incorrectly lumps Japanese with South Korean construction firms.

³⁵National Research Council, *Building for Tomorrow: Global Enterprise and the U.S. Construction Industry* 17 (1988). On Brazil "as the South Korea of the Western Hemisphere," see Maurice Samuelson, "How Brazil Won Angolan Dam Deal," *FT*, Nov. 22, 1984, § 1 at 4 (Nexis); "Brazil Pushes Foreign Work," *ENR*, Dec. 17, 1981, at 43.

³⁶Moon, "Korean Contractors in Saudi Arabia" at 630.

³⁷"Cut Backs Clip Korea's Wings" at 30; Dae Chang, "The Republic of Korea," in *The Global*

resorted to shipping even lower-wage Chinese workers to the United States (that is, to the Northern Mariana Islands).³⁸

Reliance on third-country migrant workers is overwhelming in the Arab oil-producing states in which the local population either is too sparse in relation to the grandiose construction plans or has acquired "a privileged and parasitic position" inconsistent with the performance of manual labor. Thus in 1975-76, non-nationals—two-fifths of whom worked in construction—comprised six-sevenths of all construction workers in Bahrain, Kuwait, Libya, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.³⁹

Although the distribution of a portion of the oil revenues by the autocratic ruling families in the form of 'cake and circuses' to the citizen populations in countries such as Kuwait imparts a different character to the reasons for the unavailability of a local labor force,⁴⁰ the labor market consequences for late-twentieth-century multinational construction firms resemble those perceived by the U.S. Isthmian Canal Commission in casting about for labor at the turn of the century to build the Panama Canal:

The native Isthmian will not work. He is naturally indolent...; has no ambition; his wants are few in number and easily satisfied. He can live for a few cents a day, and he prefers to take it easy, swinging in a hammock and smoking cigarettes. The native population is wholly unavailable.⁴¹

This lack of an indigenous proletariat cut off from easy escape into precapitalist livelihoods made the recruitment of an international migrant labor force both a necessity and a virtue. And even then its employers insisted that it be a class whose members had been educated in the permanence of their dependence on wages. For that very reason those in charge of building the Panama Canal were skeptical of the Chinese coolie because "as soon as he gets a few dollars, he wants to keep a store,"⁴² and dismayed that from "the white man's point of view," the wants of West Indian workers were "primitive, and their efforts to supply them hardly go beyond the aim of securing food enough to ward off starvation."⁴³ Multinational construction firms' enhanced capacity for worldwide labor sourcing has dispensed them from the necessity of fashioning a world labor market in rigid conformity with precisely these characteristics. Indeed, unlike Brassey's mid-nineteenth-century pioneering operations in the periphery, the Mideast building boom not only did not give rise to an indigenous proletariat, but, to the extent that the Asian migrant workers on their return to their countries of origin invest their small savings in various penny-bourgeois spheres, the medium-term net international impact may be formal deproletarianization.⁴⁴

Construction firms' worldwide sourcing of labor has added a new dimension to the real abstractions of capitalism that must be borne by workers.⁴⁵ By

Construction Industry at 141, 152; Kim, "Contract Migration in the Republic of Korea" at 34, 40-43; "Top International Contractors," *ENR*, July 18, 1985, at 54, 55; Moon, "Korean Contractors in Saudi Arabia" at 630.

³⁸Philip Shenon, "Saipan Sweatshops Are No American Dream," *NYT*, July 18, 1993, at 1, col. 2, at 6, col. 6 (nat. ed.).

³⁹Fred Halliday, *Arabia Without Sultans* 421 (1974); R. Shaw, "Migration and Employment in the Arab World: Construction as a Key Policy Variable," 118 *ILR* 589, tab. 2 at 592 (1979).

⁴⁰See e.g., Halliday, *Arabia Without Sultans* at 432-40.

⁴¹Peter Hains, "The Labor Problem on the Panama Canal," 179 *NAR* 42, 50 (1904).

⁴²*Id.* at 50.

⁴³William Sibert & John Stevens, *Construction of the Panama Canal* 111 (1915).

⁴⁴See Cyrus Mechkat, "Production d'architecture, concentration du capital et migration du travail dans le golfe arabo-persique," in [4] *PBE: 1982, Labour in Building and Construction* 4-8, 4-36 (1983).

⁴⁵See Marc Linder, *Reification and the Consciousness of the Critics of Political Economy: Studies in*

metaphorically analogizing workers and money and the labor market and foreign exchange market, John Dunning, one of the foremost specialists on multinational enterprises, inadvertently captures an aspect of this reification of human beings inherent in their transformation into a mere coordinate factor of production. Dunning called attention to one of the real abstractions of capitalism by characterizing international construction companies that transport unskilled workers across national borders as “performing an arbitrage function which the international labour market is apparently unable to do.”⁴⁶ By the same token, however, if “[a]rbitrage is the mechanism which makes two markets, physically separate, a single market in the economic sense,”⁴⁷ constructors have performed that function only imperfectly. The enclave-exclave structure of the projects that multinational construction firms carry out in the Middle East with third-country Asian workers has meant that there is strictly speaking no labor market at all in the “host” country. Thus although the labor markets, for example, of Thailand and Kuwait have not become one economically, the firms have “been able to create new O[wnership] advantages.”⁴⁸

Feckless International Labor Law

I am immensely struck by the character of American employees who are engaged not merely in superintending the work, but in doing all the jobs that need skill and intelligence. [M]en and machines do their task, the white men supervising matters and handling the machines, while the tens of thousands of black men do the rough manual labor where it is not worth while to have machines do it.⁴⁹

The analysis that the International Labour Organisation (ILO) has made of the advantages of a world construction labor market accruing to countries such as Saudi Arabia applies also to the multinational building firms: “[B]y increasing the number of sources of its labour the labour importing country reduces the prospect of the formation of a union of emigrant workers or a cartel of labour exporting countries....”⁵⁰ Overcoming whatever competitive antagonisms otherwise divide them,⁵¹ multinational construction firms and their state and private customers have reached a consensus that, in order to maintain the upper hand over atomized migrant workers who might seek to take advantage of the projects’ tight deadlines and the lack of a local labor force willing to engage in hard physical labor, several counterforces are indispensable: enclave-like work camps building sites to segregate the labor force from the local population, rapid means of international transportation to expedite the shipment of replacements, and state-enforced violence.⁵²

Thus in 1975 when 100 Pakistani workers “rioted over ‘wages and living conditions’ at a \$400 million LNG plant that Bechtel [wa]s building on Das Island

the Development of Marx’ Theory of Value 317-25 (1975).

⁴⁶John Dunning, *Multinational Enterprises and the Global Economy* 351 (1993).

⁴⁷Charles Kindleberger, *International Economics* 60 (3d ed. 1963 [1953]).

⁴⁸Dunning, *Multinational Enterprises* at 351.

⁴⁹Letter from President Theodore Roosevelt to Kermit Roosevelt, Nov. 20, 1906, in 5 *The Letters of Theodore Roosevelt* 496, 497-98 (Elting Morison ed., 1952).

⁵⁰C. Stahl, “International Labour Migration and the Asean Countries” at 95 (ILO, International Migration for Employment Working Paper 13, 1982).

⁵¹For an example of such a dispute involving a project mentioned in the text paragraph, see *Abu Dhabi Gas Liquefaction Co., Ltd. v. Eastern Bechtel Corp.*, in *FT*, June 29, 1982, sect. 1, at 8 (Nexis).

⁵²Ismail Serageldin et al., *Manpower and International Labor Migration in the Middle East and North Africa* 49-51 (1983).

in the Arabian Gulf... [t]hey were shipped home after apologies to the governments involved."⁵³ Two years later, when the "grueling" working conditions of some 4,000 Korean workers in Jubail, Saudi Arabia "caused some riots," they too were "rapidly quelled."⁵⁴ To discourage future such acts of ingratitude, a Saudi Security Forces firing squad is said to have summarily executed three workers at random. "Saudi authorities tell the story to new arrivals to frighten them into behaving...and the executions worked."⁵⁵ Nevertheless, the rebellion persuaded the *Economist* Intelligence Unit that "exploitation of cheap labour from the Far East may not be a simple solution." If Asian workers' "dissatisfaction" arises out of their awareness of "the major difference in wages and living standards between themselves, the local Arab population and Western expatriates,"⁵⁶ enforced ignorance may dampen expectations. The relative infrequency of such revolts may therefore be a function of the fact that spatially segregated exclave workers "are under the control of employers in respect of virtually every aspect of their daily lives in the camps."⁵⁷

If, on the other hand, workers' protests are ignited not by comparisons with others' living and working conditions but rather with the promises that were made to them at the time and place of recruitment in Asia, then camp segregation cannot in itself blunt the insight. In fact, Asian workers recruited to the Gulf commonly do "find themselves at the mercy of someone who provides only the very minimum of facilities resulting in conditions no better than the ones he [sic] left behind." Desperation (for example, for early discharge from the South Korean army) and fraud are partial answers to the market-knows-best question as to why workers—including skilled U.S. building trades workers—would accept employment so far from home if the conditions leave them no better off.⁵⁸

One of the coercively fraudulent employment practices that has prompted such rebellions has long been well-known to domestic and international migrants in a number of industries. Under so-called contract substitution, "Asians who have signed a contract before leaving home are confronted with a choice on arrival of either signing a fresh contract, providing for a substantial wage cut and reduced working conditions, or an order to leave the country immediately."⁵⁹ High unemployment in the Asian sending countries has also led to intense competition for jobs in the Middle East, which in turn has enabled recruiters to increase the fees they charge workers:

The process of securing work abroad can put the prospective migrant heavily in debt.... Because...of the need to recover the huge initial investment made prior to departure.... migrant workers are in an extremely vulnerable situation on their arrival.... This pressure...means that migrant workers frequently work long hours under hazardous conditions and take unnecessary risks...for fear of losing their jobs or earnings.⁶⁰

⁵³"Where the Constructors Strike it Rich" at 56.

⁵⁴Youssef Ibrahim, "How Koreans Built Saudi Success," *NYT*, June 19, 1978, at D5, col. 1-2.

⁵⁵Said Aburish, *Pay-Off: Wheeling and Dealing in the Arab World* 78-79 (1985). Although Aburish dates this strike to 1981, he appears to be referring to the same one mentioned in the text.

⁵⁶Antoniou, *Construction in the Middle East* at 73.

⁵⁷Kim, "Contract Migration in the Republic of Korea" at 37.

⁵⁸Antoniou, *Construction in the Middle East* at 68-69 (quotation), 72. On complaints by U.S. workers recruited to work on a large petrochemical project in the Virgin Islands, see Richard Korman, "The Other Side of Paradise," *ENR*, June 7, 1993, at 6.

⁵⁹Thomas Land, "Migrant Labour Suffering from Mid-East Cut-Backs," *IC*, June 1984, at 4.

⁶⁰ILO, Sectoral Activities Programme, Building, Civil Engineering and Public Works Committee, Eleventh Session, *Measures to Overcome Obstacles to the Observance in the Construction Industry of ILO Standards* 64 (1986).

As these practices demonstrate, construction firms' control over this international migrant labor force has been significantly augmented by the accommodating role of the labor-importing states' regulations: "The ability to control workers' movements has been central to the Saudis' importation of foreign labour": the workers' "passports are usually held by their employers...to stop them from moving to better jobs or leaving the country on short notice."⁶¹ In the United Arab Emirates, the state has rendered such employer self-help unnecessary: since 1980 foreign employees who leave their work before the expiration of their contracts are statutorily prohibited from accepting, and other employers are prohibited from offering, employment for the period of a year.⁶²

Such actions on the part of labor-importing states are complemented by those of the states in the Asian "labour catchment area," such as Pakistan, Bangladesh, Thailand, Sri Lanka, India, and the Philippines, which have organized the "manpower export business" in order to monitor and capture the workers' mandatory remittances as a major source of foreign exchange. Although the promotion of a hybrid private-state corporate labor export strategy might weaken the multinational firms' oligopsony, without the formation of a labor union as a countervailing force, such a strategy is calculated only to redistribute income from the construction employers to the Third World recruiting entities. By imposing and enforcing restrictions on the workers it sends to Middle East construction sites, the Philippines government, for example, deprives its own highly mobile citizens—in 1983 230,000 Filipinos were working in construction in the Middle East—of the freedom of movement that is a prerequisite of normally functioning labor markets.⁶³ South Korea has imposed similar restrictions on the mobility of its international construction labor force, also forbidding its nationals to form unions while engaged in "contract migration" in the Middle East.⁶⁴ And in the case of Pakistan, the standard overseas employment contract expressly requires employees solemnly to confirm: "I shall not strike or abet it in the Middle Eastern country. In case of such activity, the Employer may terminate my contract."⁶⁵

Less easily classifiable are the thousands of workers sent abroad by Chinese firms, such as the China Civil Engineering Construction Corporation, since they began competing for overseas contracts in 1979. Although their crews work with large capitalist firms, such as Philipp Holzmann AG, the Chinese government contends that such international labor enterprises are designed to "'remedy the current pattern of...unequal international economic relations by...seeking the mini[m]um of profits."⁶⁶ In addition to the nominally cheap labor, which appeals even to other Third World (such as Brazilian) contractors who prefer Chinese workers to their own nationals, one of the virtues of "the Chinese-type contract" is that "any worker's complaint is directed to the Chinese government, not the

⁶¹Sara Marlowe, "Saudi Guest Workers Say Farewell," *FT*, Sept. 25, 1990, § 1, at 2 (Nexis).

⁶²United Arab Emirates, Federal Law to Regulate Employment Relationships, § 128 (No. 8, Apr. 20, 1980), reprinted in International Labour Organisation, *LS*, 1980—United Arab Emirates 1.

⁶³Stahl, "International Labour Migration and the Asean Economies" at 17-18, 95-97; Catholic Institute for International Relations, *The Labour Trade: Filipino Migrant Workers Around the World* 80 (1987); Katherine Gibson & Julie Graham, "Situating Migrants in Theory: The Case of Filipino Migrant Contract Construction Workers," 29 *CC* 130 (Summer 1986); ILO, Sectoral Activities Programme, Building, Civil Engineering and Public Works Committee, Eleventh Session, *General Report* 131-32 (1987); ILO, Sectoral Activities Programme, *Recent Developments in Building, Civil Engineering and Public Works, Twelfth Session, Report I* at 29 (1992).

⁶⁴Kim, "Contract Migration in the Republic of Korea" at 25; ILO, *1 World Labour Report: Employment, Incomes, Social Protection, New Information Technology* 112 (1984).

⁶⁵"Foreign Service Agreement," ¶ 33.e, reproduced in W. Böhning, *International Contract Migration in the Light of ILO Instruments, with Special Reference to Asian-Migrant-Sending Countries* 54, 56 (ILO, International Migration for Employment Working Paper 8, 1982).

⁶⁶"China's Labour Pleases," *IC*, June 1983, at 31 (quoting Chen Muhua, Minister of Foreign Economic Relations); "Germans, Chinese in Iraq," *ENR*, Oct. 3, 1985, at 26.

contractor," thus sparing companies possible litigation costs.⁶⁷

At the height of the Middle East construction boom, the ILO promulgated a Declaration of Principles Concerning Multinational Enterprises and Social Policy, stating both that the employees of such firms should have the right to organize and that governments offering special incentives to attract foreign investment should not include among them limitations on workers' freedom of association or freedom to engage in collective bargaining.⁶⁸ Yet in a region where labor unions are prohibited, labor "agitation" criminalized, "foreign workers deported for any form of protest," and labor codes either are so vague as to preclude enforcement or expressly exclude foreign workers, multinational firms have succeeded in freeing themselves of many of the labor market and legal limitations to which they are subject in their and their competitors' metropolitan domestic markets.⁶⁹ Migrant workers' contestation of such law-free international labor relations regimes has been made more difficult by the fact that both Saudi Arabia and the United States—the only such advanced capitalist country—have refused to ratify the ILO conventions guaranteeing workers freedom of association and the right to organize and to bargain collectively.⁷⁰

Although ILO Convention No. 97 ("Concerning Migration for Employment") obligates each member state to afford to international migrant workers "treatment no less favorable than that which it applies to its own nationals" with regard to rights to union membership and collective bargaining, neither the United States nor any Middle Eastern oil-producing state has ratified it.⁷¹ Even if Saudi Arabia, for example, had ratified this convention, the outcome for migrant construction workers there would be unchanged since the Saudi monarchy has deprived its own citizens of the rights in question by making it "illegal for any employee or employer to do any act that may bring pressure to bear on the freedom of the other or on the freedom of other employees or employers with the object of obtaining any interest or supporting any point of view which they adopt and which is inconsistent with the freedom of work...."⁷²

⁶⁷Josmar Verillo, "Brazil," in *The Global Construction Industry* at 180, 184-85, 190.

⁶⁸"Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy," in International Labour Organisation, 66 *OB*, Ser. A, No. 1, ¶¶ 41, 45, at 49, 54 (1978). On the fecklessness of the ILO, see the vacuous remarks by the chief of its International Employment for Migration Branch, W. Böhring, "International Contract Migration in the Light of ILO Instruments," in *idem*, *Studies in International Labour Migration* 233, 244-45 (1984 [1982]).

⁶⁹U.S. Bureau of Labor Statistics, *Labor Law and Practice in Saudi Arabia* 28 (Report No. 269, 1964); U.S. Bureau of Labor Statistics, *Labor Law and Practice in the Kingdom of Saudi Arabia* 57 (Report No. 407, 1972); Nazli Choucri, "Asians in the Arab World: Labor Migration and Public Policy," 22 *MES* 252, 266-67 (1986).

⁷⁰Convention No. 87: Convention concerning Freedom of Association and Protection of the Right to Organise (1948); Convention No. 98: Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (1949), in International Labour Office, *International Labour Conventions and Recommendations: 1919-1981*, at 4, 7 (1982); International Labour Office, International Labour Conference, 75th Session, Report III (Part 5): *List of Ratifications of Conventions (as at 31 December 1987)*, at 59, 64-65 (1988); Edward Potter, *Freedom of Association, the Right to Organize and Collective Bargaining—The Impact on U.S. Law and Practice of Ratification of ILO Conventions No. 87 & No. 98*, at 109-12 (1984). New Zealand, which has a strong labor movement, has not ratified Convention 87 because its labor statute gives the government the authority to deregister unions in contravention of article 4 of Convention 87. See Gordon Anderson & Peter Brosnan, "Freedom of Association: New Zealand Law and ILO Convention 87," *NZLJ*, Sept. 1984, at 307; Gordon Anderson, "International Labour Standards and the Review of Industrial Law," 11 *NZJIR* 27 (1986).

⁷¹ILO Convention No. 97: Concerning Migration for Employment, art. 6, § 1 (1949); ILO, *List of Ratifications of Conventions* at 63. But see International Labour Office, *The Rights of Migrant Workers: A Guide to ILO Standards for the Use of Migrant Workers and Their Organisations* 6 (1986) ("The right of all workers in member States of the ILO to belong to trade unions is protected by...Convention...Nos. 87 and 98...and by the Constitution of the ILO, so that this basic right must be protected even in countries whose governments have not ratified the Conventions").

⁷²Saudi Arabia, Labor Code, § 22 (Royal Decree No. M/21, Nov. 15, 1969), reprinted in International Labour Organisation, *LS*, 1969—Saudi Arabia 1. Violators can be sentenced to three years' imprisonment.

Such repressive bans on unions—to which the institutional memory of First World employers runneth not in their home markets⁷³—have been adduced as one reason why, even during the period when U.S. firms employed in the Middle East significant numbers of U.S. construction workers who were members of building trades unions in the United States, these firms were always able to avoid collective agreements.⁷⁴ The potential conflict between the Saudi Arabian statutory prohibition of collective bargaining and the U.S. National Labor Relations Act (NLRA), which makes it unlawful for employers “to interfere with, restrain, or coerce employees in the exercise of...the right to bargain collectively,”⁷⁵ does not appear ever to have been litigated before a U.S. tribunal.

In light of the enormous proliferation of multinational employment relationships in construction, manufacturing, mining, and other industries, this lack of protection for potentially vulnerable workers or even of clear legal guidelines may itself be an incentive for firms to operate in this legal no-man’s land. One doctrinal barrier to reaching this question is the threshold issue of the extraterritorial applicability of the NLRA to U.S. workers temporarily employed abroad by U.S. firms.⁷⁶ Surprisingly, even this matter has only rarely been adjudicated. The two clearest cases involved the International Brotherhood of Electrical Workers, which in the 1970s sought to represent employees of Radio Corporation of America (RCA) at a Distant Early Warning site in Greenland and telephone equipment installers of General Telephone and Electric (GTE) working in Iran. In both instances the National Labor Relations Board (NLRB) merely asserted apodictically that employees employed outside the United States do not fall under the jurisdiction of the NLRA.⁷⁷

The only legal precedent that the NLRB cited on either occasion was a decision by the U.S. Supreme Court that neither logically supports the claim that the NLRA has no extraterritorial application nor presents any socioeconomic arguments as to why extraterritoriality would not serve the purposes of the NLRA.⁷⁸ In that earlier case, *Benz v. Compania Naviera Hidalgo, S.A.*, the Supreme Court merely held that the NLRA did not apply to picketing by a U.S. union of a ship that was owned by a foreign employer and operated entirely by foreign seamen under an agreement made abroad under the laws of a foreign country, while the ship was temporarily in a U.S. port. In fact, the Supreme Court’s explanatory observation that the NLRA “is concerned with industrial strife between American employers and employees” could, in connection with its emphasis of the fact that the conditions of work were prescribed by the British

Id. § 190. On the origins of these bans as responses to strikes by Aramco workers in the 1950s, see Halliday, *Arabia Without Sultans* at 66-67.

⁷³See Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (1991).

⁷⁴Telephone interviews with Bill Sheridan and Rick Swaak, National Foreign Trade Council, New York (Feb. 3 & 4, 1993); Joe Maloney, secretary-treasurer, Building & Construction Trades Dept., AFL-CIO, Washington, D.C. (Feb. 4, 1993); Gary Koontz (July 21, 1993) (stating that U.S. construction workers have never worked under union contracts outside the United States except pursuant to a requirement in a U.S. government contract).

⁷⁵29 U.S.C. §§ 158, 157 (1991).

⁷⁶On the applicability of U.S. labor laws in general to the employment abroad by U.S. multinational firms of U.S. nationals and non-U.S. nationals, see James Zimmerman, *Extraterritorial Employment Standards of the United States: The Regulation of the Overseas Workplace* (1992).

⁷⁷*RCA OMS, Inc. (Greenland) v. International Bhd. of Elec. Workers*, 202 N.L.R.B. 228 (1973); *GTE Automatic Electric Inc. v. International Bhd. of Elec. Workers*, 226 N.L.R.B. 1222 (1976). But see *Great Lakes Dredge & Dock Co. v. United Marine Division*, 240 N.L.R.B. 197 (1979) (upholding jurisdiction over U.S. employer that refused to hire workers in the United States for dredging operations in Saudi Arabia because they were union members).

⁷⁸See Gary Nothstein & Jeffrey Ayres, “The Multinational Corporation and the Extraterritorial Application of the Labor Management Relations Act,” 10 *CILJ* 1, 24-25 (1976).

Maritime Board,⁷⁹ buttress the claim of workers, such as some of the aforementioned GTE employees, who worked under a union contract with the employer in the United States before being assigned to work overseas, that they and their U.S. employer can carve out a labor law enclave overseas where applicability of the law of the worksite-country would result in less favorable treatment of the workers.

The NLRB, however, decontextualizing phrases in the Supreme Court decision, has failed to come to grips with these substantive considerations. Commenting—in dictum—on the consequences of *Benz* for workers like the RCA employees, the NLRB quoted the Supreme Court's observation that "[t]he only American connection was that the controversy erupted while the ship was transiently in a United States port and American labor unions participated in its picketing."⁸⁰ From this statement the NLRB directly concluded that "although the employer and employees were American and the hiring occurred in America, the employees worked entirely in Greenland and any controversy would occur in Greenland, so that the single element in *Benz* that might have provided a basis for jurisdiction was lacking in RCA."⁸¹ This conclusion, however, lacks textual anchorage because the Supreme Court never held that a U.S. territorial worksite is an absolute precondition for—let alone the only basis of—jurisdiction over purely U.S. parties. Rather, the Supreme Court merely held that in light "of the clear congressional purpose to apply the [NLRA] only to American workers and employers,"⁸² the absence of U.S. parties to the underlying employment relationship was fatal to a claim of jurisdiction.

Despite this defective precedential foundation, the NLRB continues to deny jurisdiction over U.S. employees working overseas for a U.S. employer and the leading labor law treatise approves of that practice.⁸³ Only where a labor union's alleged unfair labor practice was at issue, have the courts and the Board recognized that *Benz* "did not restrict the scope of the NLRA to conduct which occurs within the geographic boundaries of the United States."⁸⁴ Confronted with this precedential monolith, U.S. construction unions, which perceive themselves as lacking the economic strength to enforce a collective bargaining agreement thousands of miles from the United States, have chosen not to contest the merely legal barriers to transnational organizing (except for their membership in Canada).⁸⁵ Such a predicament might not arise in countries such as Tunisia that permit key workers of the contractor's imported task force to benefit from the more favorable provision as between the host- and home-country law.⁸⁶ In other national legal systems, however, in which the extraterritoriality of labor laws is not an obstacle, application of international conflicts of labor law offers the possibility that First World employees could prevail against their employer's defense that it was merely obeying the law of the worksite.

Precedent for precisely such an outcome exists. The great expansion of international construction work performed by Finnish firms since the beginning of

⁷⁹*Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 139, 143-44 (1957).

⁸⁰*Benz* at 142.

⁸¹*Freeport Transport, Inc. v. Carr*, 220 N.L.R.B. 833, 834 (1975).

⁸²*Windward Shipping v. American Radio Ass'n*, 415 U.S. 104, 110 (1974).

⁸³NLRB General Counsel Advice Memorandum, Case No. 19-CC-1300, 1981 NLRB GCM Lexis 95; *The Developing Labor Law* 1581-82 (Patrick Hardin ed., 3d ed. 1992).

⁸⁴*Dowd v. International Longshoremen's Ass'n*, 975 F.2d 779, 788 (11th Cir. 1992). See also *International Longshoremen's Ass'n v. Coastal Stevedoring Co.*, 313 NLRB No. 53 (1993).

⁸⁵Telephone interview with Bud Fisher, International Brotherhood of Electrical Workers, Washington, D.C. (Mar. 8, 1993).

⁸⁶Ridha Ferchiou, "Tunisia," in *Global Construction Industry* at 199, 206.

the 1970s, making the industry one of the leading Finnish exporters, furnished the Finnish Labor Court with ample opportunity to adjudicate the issue. The industry-wide collective agreement between the Finnish Building Industry Federation and the Building Workers' Federation in force since 1972 provided that Finnish labor law would apply to the temporary employment overseas of Finnish workers employed by Finnish firms. It also specified that workers were to receive special cost of living allowances. A large multinational construction firm, Yleinen Insinööritoimisto (YIT), nevertheless sent employees to worksites in Saudi Arabia with contracts specifying that Saudi law would apply and failed to observe the aforementioned clause. The union then sued YIT in the Finnish Labor Court, alleging that the employer had also violated the Finnish Hours of Work Act as well as the hours provisions of the collective agreement. YIT defended, inter alia, on the ground that collective agreements were invalid in Saudi Arabia. The court, while conceding the force of this point, finessed it by ruling in 1979 and 1980 against the employer on the ground that terms derived from foreign collective agreements could and, under the Finnish Collective Agreements Act must, be included in individual contracts of employment.⁸⁷

The presence of strong domestic construction unions and the enforceability of much more stringent labor and immigration laws may account for the fact that First World firms generally do not import Third World (or even export their own domestic or other First World) workers for projects in other First World countries, although Scandinavian firms have relied on their own workers for projects in the Soviet Union.⁸⁸ One exception was the expansion of a New Zealand Refining Company refinery at Whangarei, one of the largest construction projects ever undertaken in New Zealand, by a joint venture between a U.S. firm, Badger, and a Japanese firm, Chiyoda, in 1982. The New Zealand Federation of Labour objected to the recruitment of boilermakers and riggers from the United Kingdom at a time of high unemployment especially because the employers allegedly both excluded certain local workers as troublemakers and violated their contractual responsibility to train New Zealand workers in order to maximize their employment on the project. This importation led to violent strikes, which the state ultimately quelled by enactment of an unprecedented statute. The Whangarei Refinery Expansion Project Disputes Act named eight scaffolders with whom it was unlawful for the workers to refuse to work, imposed fines for further unauthorized strikes, and deprived workers who refused to work under the terms of the statute of unemployment insurance benefits for four months.⁸⁹

By the same token, however, metropolitan construction firms have a long history of importing workers from other capitalist countries in order to break strikes or otherwise to readjust temporarily unfavorable labor markets. One of the most infamous such incidents took place in London in 1877 when the firm building

⁸⁷See Timo Esko, *The Law Applicable to International Labour Relations* 7, 13-14 (1982); *Työuomioistumien Vuosikirja*, TT 1979 No. 169 and TT 1980 No. 135; Felice Morgenstern, *International Conflicts of Labour Law: A Survey of the Law Applicable to the International Employment Relation* 104 (1984); A. Suviranta, *Labour Law and Industrial Relations in Finland* 55-56 (1987). In 1979 YIT was the 100th largest firm in terms of the value of international contracts awarded that year. "Non-U.S. Firms Grab Big Share of Global Market," *ENR*, Dec. 6, 1979, at 26, 29.

⁸⁸Telephone interviews with Mark Nacu, Human Resources Dept., Bechtel Corp., San Francisco (Feb. 3, 1993); Joe Maloney, secretary-treasurer, Building & Construction Trades Dept., AFL-CIO, Washington, D.C. (Feb. 4, 1993); Terry Chamberlain, Associated General Contractors, Washington, D.C. (Feb. 8, 1993); Drewler, "Scandinavia" at 174.

⁸⁹See Whangarei Refinery Expansion Project, Arbitration Court 162/82 and 198/82, [1982] NZILR 597, 605; Whangarei Refinery Expansion Project Disputes Act 1984, N.Z. Stat. 1984, No. 2, *repealed* by Labour Relations Act 1987, N.Z. Stat. 1987, No. 77, § 358; "Before the Wave Breaks," *Economist*, June 30, 1984, at 45; *OGJ*, July 2, 1984, at 42 (Nexis); *Report of the Committee of Inquiry into Industrial Relations on the Whangarei Refinery Expansion Project at Marsden Point* 95-127 (1985); Badger, "Construction Services" (n.d.).

the New Law Courts, Bull and Company, responded to a strike by masons over higher wages and fewer hours by importing strikebreakers from Germany, Italy, and even the United States. Although the majority of the U.S. workers promptly joined the union, the employer ultimately prevailed.⁹⁰

In the early part of the twentieth century German construction firms imported thousands of Italian and Polish workers to perform heavy and unhealthful infrastructure labor in Germany. Italian migrants also built railways and performed other construction work in France, Austria, Switzerland, Turkey, and Tunisia.⁹¹ Once again in the 1950s and 1960s construction firms in West Germany, France, Switzerland, and other Western European countries were able to keep down wage costs by importing hundreds of thousands of workers from Italy, Yugoslavia, Turkey, Spain, Portugal, and North Africa for work on domestic projects under conditions inferior to those of domestic workers. In West Germany, for example, foreign workers accounted for 28 per cent of total construction employment by 1972. That country's largest construction firm, Philipp Holzmann, based its profit-maximizing strategy in large part on the employment of a reserve army of such workers.⁹² Then beginning in the 1970s, Rumanian, Polish, and Yugoslav construction firms were permitted to employ their nationals on construction sites in West Germany. The use of such project-tied workers from lower-wage countries is expected to increase once freedom of movement is established in the European Community.⁹³

Third World states, however, have thus far unsuccessfully insisted on negotiating the issue of opening First World construction markets to Third World labor. They have sought to do so as a countermove to demands by First World states that the General Agreement on Tariffs and Trade (GATT) extend its rules to cover international trade in services in order to preserve access to markets in the Third World. Whereas large internationally oriented U.S. construction firms tend to favor inclusion as a means of forcing open markets, smaller firms operating in local markets have opposed GATT coverage for fear of increased competition from foreign firms operating in the United States.⁹⁴

After the multinational firms prevailed in the shaping of U.S. GATT policy on this issue, the more industrialized developing countries such as Brazil, Egypt, India, and Venezuela resisted the advanced capitalist countries' proposals. Basing themselves on infant industry arguments and the ramifying developmental linkages emanating from the growth of a domestic construction industry, they feared that such liberalization would "tend to freeze the industrialized countries' existing lead in service industries."⁹⁵ In order to create a bargaining position, Third World

⁹⁰*Times*, Oct. 23, 1877, at 9, col. 5; Oct. 24, 1877, at 9, col. 6; Oct. 30, 1877, at 4, col. 4; "The Importation of Foreign Labour," 44 *Engineer* 299 (1877); Sidney Webb & Beatrice Webb, *The History of Trade Unionism* 328-29 (new ed. 1902 [1894]).

⁹¹Otto Liebig, *Organisations- und Arbeitsverhältnisse im Baugewerbe: Eine volkswirtschaftliche Studie* 75 (1922); Robert Foerster, *The Italian Emigration of Our Time* 135, 139, 152, 157, 174-77, 191-93, 211, 214-15 (1924); Hans Meyer-Heinrich, "Die Entwicklung des Gesamtunternehmens und die Wandlung seiner Organisation," in *Philipp Holzmann im Wandel von Hundert Jahren 1849-1949*, at 9, 84 (Hans Meyer-Heinrich ed., n.d. [1949]).

⁹²Hauptverband der Deutschen Bauindustrie, *BJ* 1975, at 56; Jörn Janssen, "Unternehmenspolitik der Großkonzerne verantwortlich für Baukostenexplosion," 25 *WSI Mitteilungen* 392, 394-95 (1972).

⁹³See ILO, Building, Civil Engineering and Public Works Committee, Sixth Session, *The International Migration of Labour in the Construction Industry* 39, 73-75 (1959); ILO, *Meeting of Experts on Problems of Foreign Construction Workers Employed in European Countries* (1979); "Ostblock-Baufirmen verunsichern die deutsche Baubranche," *HB*, Feb. 1, 1974, at 18; "Auch Ostblock-Baufirmen spüren jetzt die Folgen der Flaute," *HB*, Aug. 21, 1974, at 5; Edith Gross, "Migration Within and Towards the European Community and Its Impact on the Construction Industry," 12 *PBE* (forthcoming 1993).

⁹⁴See James Lee & David Walters, *International Trade in Construction, Design, and Engineering Services* 63-111 (1989).

⁹⁵*ENR*, Oct. 10, 1985, at 7; U.N. Centre on Transnational Corporations, *Transnational Corporations in*

countries pressed the issue of labor mobility—India, South Korea,⁹⁶ and Mexico were planning to send their construction workers to the United States while Pakistan targeted the European labor market—by urging the inclusion of labor as a service under GATT rules. Despite multinational firms' extensive promotion of international labor mobility as a cost-cutting strategy overseas, they were not amused by the Third World countries' effort to take this approach to its logical conclusion. The U.S. trade representative for services characterized as not "salable" the Mexican suggestion of "a quid pro quo where we would provide an open market for their people and they would provide an open market for our investment."⁹⁷

the Construction and Design Engineering Industry 40, 44 (1989).

⁹⁶Impressed by the fact that average wages for construction workers in Alaska were twice as high as the salaries of Korean managers involved in a project on which it had bid, a Korean firm planned to hire as many naturalized Korean-American workers as possible. "Koreans Crack U.S. Market," *ENR*, Dec. 5, 1985, at 46.

⁹⁷"Construction Labor Looms as Spoiler in Trade Talks," *ENR*, Jan. 19, 1989, at 12; "GATT Negotiator Nixes Foreign Unskilled Labor," *ENR*, Feb. 23, 1989, at 16. For the U.S. position on regulating trade in construction services with the Third World, see *U.S. National Study on Trade in Services: A Submission by the United States Government to the General Agreement on Tariffs and Trade* 128-33 (n.d. [1984]).