The International Labor Organization: Paradox and Promise

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The International Labor Organization (ILO) strives to achieve good and admirable goals. The mission of the ILO is to advance opportunities for “decent and productive work in conditions of freedom, equity, security and human dignity.”

But the ILO and similar organizations work in a very challenging environment. They are not governments and, hence, do not have direct law-making authority. They often attempt to soften or even counter powerful economic forces. They can succeed only with the cooperation of governments with very diverse populations and labor conditions. Those governments are usually in competition with one another in one or more domains, such as competition to offer “good” regulation or to attract capital.

Drawing on a body of research on similar organizations in the United States, this paper suggests that there is often a mismatch between the problems the ILO seeks to address and its governance capacity. This mismatch leads to significant paradoxes. Where violations of labor standards are most severe, international standards are either not needed or ineffective. When international labor standards attempt to address races to the bottom, they may help facilitate them. At the same time, the standards may make races to the top less likely. International labor standards may be least effective on issues that are most important to workers, such as ensuring “decent” or “productive” work.

At the same time, while this analysis suggests that the ILO is more limited than we might hope it to be, it also points to the types of problems that the organization may have the capacity to address. Specifically, the ILO may be able to address certain types of coordination problems and to provide important benchmarking functions to help facilitate intra-country democratic discussion and change.

Section I of this paper will describe the governance position of the ILO and compare it to a well-known and influential organization in the United States, the Uniform Law Commission.

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The two organizations are broadly similar in structure, role, and goals. This comparison is useful because there is a body of research in the United States on the promise and limitations of organizations in the governance position of the ULC. Section II will describe the findings of that research. Finally, Section III will explore the implications for the ILO of this research on similar organizations in the United States.

I. The ILO as a Private Legislature

The ILO is similar to the ULC in many respects. As shorthand, following the United States literature, I will refer to them as “private legislatures.” “Private” signals that they are not “real” legislatures with the authority to enact binding law. “Legislature” signals that they are nevertheless in the business of rule production on important social issues. Like all shorthands, the label is not perfect. This section will describe and refine the private-legislature category, and situate the ILO and ULC within it.

Although both the ILO and ULC function similarly to legislatures, neither are governmental entities with the authority to promulgate law. Thus, both are in the position of proposing legal reforms to others. This imposes an enactment constraint on both entities. That is, their actions take place within the shadow of enactability concerns; their actions will be largely for naught unless others with legal authority act on their recommendations. As we will see, this may influence the types of rules the organizations produce. At the same time, this factor should not be over-emphasized. For a number of reasons that apply to both organizations, the constraint may not be all that restricting. For example, both organizations work very deliberately and have long lag times between initial conception and ultimate product. This makes it difficult to predict the likelihood of enactment and, as a result, minimizes the constraint. Similarly, the ethos and main function of both organizations is to produce legal rules for enactment. Those pressures may well overwhelm the extent to which concerns about enactability may slow, derail, or even influence the rule production process.

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2 Although known informally as the Uniform Law Commission, the official name of the organization is the National Conference of Commissioners on Uniform State Laws.
The ILO and ULC are also structured similarly although, of course, there are also differences. Let us begin with the similarities. First, the compositions of the main bodies of both organizations are largely similar. At the ILO, the formal work is done by the International Labour Conference which meets annually. Each member country can send four delegates to the Conference, two governmental members and one representative each for workers and employers. At the ULC, each state can send a delegation. The delegations vary in a number of ways such as size and composition, but delegates are usually appointed by the state Governor and the delegations often include legislators and academics.⁴ There are two important points of similarity here. One is that interest groups have a significant role in the main governance bodies of both groups. For the ILO, workers and employers are explicitly represented; for the ULC, state legislators, academics, and others are very present in the process.⁵ The second point is that both governing entities are, at the same time, deeply connected with the underlying political processes of nations and states, respectively, while also being separated from significant, direct political accountability. For both groups, the official members of the ultimate governing body are political appointees but, in part because of the absence of legal authority, neither body’s actions register significantly on the local political landscape.

The two organizations also have leadership structures that play an important role in setting the agenda. The Governing Body of the ILO is composed of a subset of the Conference’s membership and it has the responsibility of setting the agenda for the Conference, electing the Director-General, and proposing the program and budget for the organization. The ULC has an Executive Committee, also chosen from the larger body’s membership, that performs similar functions, especially agenda-setting functions. This similarity means that both organizations have at least a two-stage process to produce enactments: (1) having a proposal forwarded by the Governing Body or Executive Committee and (2) having the proposal adopted by the Conference or Commission itself.

The process used by the two organizations to consider and adopt proposals is also similar. Most importantly, both organizations require at least two considerations by the main body for every enactment. For the ILO, this means preparation and discussion of at least two reports at annual meetings of the Conference. For the ULC, each draft enactment must be read line-by-line

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⁴ The author is one of Nebraska’s commissioners on the Uniform Law Commission.
⁵ Even when not implicitly represented by delegates, interest groups are explicitly invited and welcomed into the rule drafting process of every ULC project.
at no less than two annual meetings of the Commission sitting as a committee of the whole. This produces carefully crafted and well-considered products, but it also means relatively long delays in production and more room for the play of political dynamics within the organizations.

Another interesting similarity is that both organizations produce two types of proposals, which are broadly similar to each other. The ILO produces conventions and recommendations. Conventions are draft legislation that is forwarded to countries for enactment or ratification, that is, for some action that makes the legislation legally binding. Recommendations, on the other hand, are not intended to be legally binding, but rather set out suggested guidelines on policy, legislation and practice. Similarly, the ULC produces uniform and model acts. Uniform acts are intended to be enacted by States exactly as written to ensure uniformity. Model acts, on the other hand, operate much like ILO recommendations; they are “designed to serve as guideline legislation, which states can borrow from or adapt to suit their individual needs and conditions.”

I will discuss this interesting similarity later, but it focuses attention on the difficult balance between the advantages of uniformity, on the one hand, and the need for differences given diverse conditions, on the other hand.

Some quick comparisons with other similar organizations highlight the similarities of the ILO and ULC. The American Law Institute (ALI) is another influential group in the United States that has been classified as a private legislature. It also produces non-legally binding statements of legal principles, primarily in the form of influential “restatements” of various areas of the law, such as contracts, property and torts.

There are, however, important differences between the ALI, on the one hand, and the ILO and ULC, on the other hand. The ALI’s membership is even more divorced from politics, as it is a self-perpetuating group that chooses its own members, rather than one in which the members are appointed by governmental authorities. Even more significantly, the primary audiences and main effect of ALI products are different than those of the ILO and ULC. The primary audiences of ALI products are the courts, lawyers, and academics; the restatements, generally speaking, are careful formulations of legal principles used most commonly by courts and lawyers, rather than suggestions for legislative

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7 Information on the ALI can be found on its website, http://www.ali.org (last visited August 15, 2010).
8 The ALI also produces statutes to recommend to state legislatures, usually in collaboration with the ULC. This comparison, however, focuses on its main products, the restatements.
enactment. This means that the ALI does not operate with the enactment constraint of the ILO and ULC but, on the other hand, if the restatements are not of high quality, they can easily be ignored by courts and lawyers. Thus, there is an “influence” constraint on the ALI that is clearly distinct in nature and effect from the enactment constraint on the ILO and ULC. Again, this brief review indicates that the ILO and ULC are quite similar, more similar than either is to the ALI.

Comparison with the International Institute for the Unification of Private Law (UNIDROIT) also confirms the basic similarity of the ILO and ULC. UNIDROIT is an international organization that operates as a private legislature focusing on harmonization and unification of private law and, in particular, private commercial law. Like the ILO and ULC, one of UNIDROIT’s main activities is the production of uniform laws which it urges member states to adopt. Thus, it also acts with an enactability constraint. It is interesting that UNIDROIT also produces products similar to ILO recommendations and ULC model acts and does so explicitly because of difficulties it has encountered in having its uniform laws enacted by member states. But one significant difference between UNIDROIT and the ILO and ULC is that these alternative products are directed to broader audiences. The ILO and ULC alternative products are still directed primarily at legislatures. In contrast, UNIDROIT’s alternative products are directed not only to legislatures, but also to others such as judges, arbitrators, and parties involved in commercial transactions. Although these broader groups may be interested in ILO and ULC products, legislatures are the primary audience, rather than these other groups.

More significantly, UNIDROIT is governed quite differently than the ILO and ULC. Although there is a general assembly composed of a government representative from each member state, the primary decision-making authority resides with a governing council, which is smaller, meets more often, and is more “expert” than the main governing bodies of either the ILO or ULC. Again, then, the ILO and ULC look more similar to each other than either is to UNIDROIT.

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9 Information on UNIDROIT can be found at its website, http://www.unidroit.org (last visited August 15, 2010).
10 In addition to uniform laws, UNIDROIT produces model law, statements of general principles, and legal guides. UNIDROIT admits that these other products are necessary because of enactability problems: “[T]he low priority which tends to be accorded by Governments to the implementation of such Conventions and the time it therefore tends to take for them to enter into force have led to the increasing popularity of alternative forms of unification in areas where a binding instrument is not felt to be essential.” See UNIDROIT web page, at http://www.unidroit.org/dynasite.cfm?dsmid=103284 (last visited August 15, 2010).
The ILO and ULC are not identical, of course, and some of the differences may be relevant to the analysis below. First, the ILO explicitly incorporates interest groups into its structure. One of its main features is that it is “tripartite,” that is, with explicit representation from government, workers and employers. In contrast, the ULC has no explicit interest group membership\(^\text{11}\) and, quite to the contrary, urges members to set aside their personal and professional interests and consider only the public interest in their ULC work. As will be discussed later, interest group dynamics may affect the types of products produced by private legislatures. Second, the ILO has a much larger administrative structure with a much more comprehensive set of duties. The ULC has a very thin administrative staff and most of the work of the group is done by the commissioners themselves and it is very directed to the task of producing and enacting uniform and model laws. The ILO, on the other hand, has a much larger staff, broader goals, and a broader portfolio of duties and responsibilities. In addition to production of conventions and recommendations, among other things, the ILO attempts to raise awareness of labor issues, provides technical assistance and training, and maintains a comprehensive set of data on labor issues.\(^\text{12}\) This expanded scope may play a role in accomplishment of some of the goals of a private legislature.

II. Private Legislatures: The American Literature

In the past fifteen years, scholars in the United States have developed an impressive body of scholarship on the functioning of private legislatures. This work has been almost entirely positive, in the sense that it has attempted to describe and understand how the organizations work, rather than normative, although it clearly has normative implications. In this section, I will describe some of the conclusions that have been reached by this scholarship. In Section III, I will consider how these conclusions might apply to the ILO.

First, the scholarship predicts when and why the products produced by private legislatures will be vague or specific. The literature predicts that private legislatures will normally produce vague rules because the median preferences of their members are quite

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\(^\text{12}\) For more detail, see the ILO’s website at http://www.ilo.org/global/What_we_do/lang--en/index.htm (last visited August 15, 2010).
different than the median preferences of the legislators they expect to consider the rules. The vague rules tend to delegate substantial discretion to courts who are more likely to share the preferences of members of the private legislature than the preferences of state legislatures.

Sometimes, however, private legislatures may propose specific rules. The literature suggests that this is likely to occur in two circumstances, either when there is so much agreement on the underlying policies that a uniform law may not have been necessary to achieve coordination in the first place,\(^\text{13}\) or there is a dominant interest group that was able obtain a victory in the policy debate within the private legislature and incorporated the specific rules to enshrine that victory.\(^\text{14}\)

The literature on private legislatures also cautions against enactment when there is the possibility of either a race to the bottom or a race to the top. Ironically, instead of protecting against races to the bottom, the literature suggests that the only way a uniform law can actually become uniform is to adopt the rules of the bottom-dwelling state. In every other case, there will be defectors and, as a result, the goal of uniformity will be undermined. The further the uniform law is from the bottom, the more likely there are to be defectors. Thus, the process contains pressures that tend to affirm the bottom or even accelerate races to the bottom, rather than address or stop them. Similarly, the literature suggests that where races to the top might be possible, through Tiebout sorting or otherwise, there are pressures within private lawmaking to set the standard significantly below the top, which would inhibit the race in that direction.\(^\text{15}\)

The literature on private legislatures makes a related point about federalism. The ULC is a private legislature which drafts and encourages enactment of a uniform law by many state legislatures. Another way of achieving uniformity is enactment by the federal legislature. The literature points out that a principal advantage of the private legislature/ULC approach is precisely that it is less likely to result in uniformity. A federal law, by definition, will be

\(^{13}\) Bruce H. Kobayashi & Larry E. Ribstein, Evolution and Spontaneous Uniformity: Evidence from the Evolution of the Limited Liability Company, 34 Economic Inquiry 464 (1996). In a later, paper, the same authors argue that the processes of private legislatures may actually cut against uniformity because the internal bargaining and compromises required by a private legislature may interfere with the uniformity that would otherwise be produced by the pressures towards efficiency created by inter-jurisdictional competition. Bruce H. Kobayashi & Larry E. Ribstein, The Non-Uniformity of Uniform Laws, 35 Journal of Corporate Law 327 (2009).

\(^{14}\) Schartz & Scott, supra note 3.

uniform. ULC products, on the other hand, are open to variation by state legislatures. Most “uniform” laws of the ULC are not enacted by state legislatures completely unchanged. Rather, changes are usually made to attend to local variation and circumstance. The literature on private legislatures points to this possibility of marginal variation as an advantage of the private legislative approach vs. the federal approach. The federal approach means that any costs imposed by the legislation caused by local variation must be borne by the locality (state). The ULC approach permits variation to avoid these local costs. Moreover, the possibility of variation at the margins, while maintaining the core of uniformity, means that some of the benefits of federalism can be retained, such as policy innovation, experimentation, and Tiebout sorting.\textsuperscript{16}

In addition to the comparison between federal and state legislation, the literature on private legislatures also compares private legislatures with other possible private law-making groups. In the United States, for example, uniform laws might also be forwarded by other private groups (such as the American Bar Association), by trade groups and associations, or by private individuals (e.g., through the production of authoritative treatises). The main advantage of private legislatures over these other possibilities, according to the American literature, is that they facilitate the pooling of sufficient resources to permit the promulgation of uniform laws. For the other groups, no individual or set of private interested parties may obtain enough benefits from a uniform law to invest the resources necessary to produce one. On the other hand, to the extent the ULC makes policy choices within their drafting process, those choices may be inappropriately shielded from state legislatures when they consider the bills. Shielding is less likely when the interested parties themselves forward uniform laws. The identity of the interested parties forwarding the proposal, by itself, will provide important signals to the state legislature of policy choices which should be explored.\textsuperscript{17}

I should add that these are not my conclusions; they are the conclusions of several well-known American academics based on careful study of private legislatures. And, once again, they tend to be positive assessments, in the sense that they are simply trying to describe the workings of these organizations. For the most part, they are not intended to be normative.

III. The ILO as a Private Legislature: Examples and Implications


\textsuperscript{17} Id.
This section will first consider whether the predictions about private legislatures seem to apply to the ILO. This is a positive evaluation. My general conclusion, based on a limited review, is that the ILO does seem to function as a private legislature in at least some of the ways predicted by the American literature. Then I will discuss possible normative implications of this for the ILO. In important respects, the American literature affirms the kinds of approaches taken by the ILO to accomplish its mission. At the same time, however, the analysis suggests important limits and constraints faced by the ILO.

To evaluate whether the predictions about private legislatures apply to the ILO, I examined two “fundamental” conventions relating to child labor: the Minimum Age Convention and the Worst Forms of Child Labour Convention. These two Conventions are quite different in their relative vagueness or specificity. The Minimum Age Convention is quite vague and open-ended and, indeed, does not even specify what the minimum age for working is. Instead, it permits countries to choose the minimum age(s), within limits. The Convention also permits countries to exclude certain categories of work and make other adjustments. The Worst Forms of Child Labour Convention, on the other hand, is quite specific about what it prohibits (for example, child slavery and prostitution) and provides very little room for local variation.

This difference aligns with some of the major predictions of the literature on private legislatures. That literature predicts, first, that vague rules will be produced when no interest group has been able to achieve a policy success within the private legislature. Given the tripartite representation of the ILO and the wide diversity of child labor conditions of the membership, it is unlikely that any particular interest group would be able to dominate the drafting process for the Minimum Age Convention. Thus, as predicted, the Convention turned out to be vague. In contrast, the specificity of the Worst Forms of Child Labour Convention may have been possible because there was such widespread agreement on the limited practices specified. Workers, employers and countries at every stage of development may well have agreed that the limited types of practices specified and prohibited ought to be forbidden. This

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hypothesis is supported by the rapid pace of adoption of the Worst Forms Convention compared to the Minimum Age Convention. Only 12 states have not enacted the former even though it has only been available for about a decade, compared to more than double that number which have not yet enacted the latter even though it has been available for well over three decades.\(^{21}\) This is consistent with the literature’s claim that specificity is likely to occur in circumstances where there is so much agreement that uniformity may occur spontaneously, even without the impetus provided by a private legislature. Thus, as a positive matter, these ILO Conventions seem to align well with the predictions of the American literature on private legislatures.

The Minimum Age Convention also seems to align well with the literature’s predictions about races to the top or the bottom. The literature doubts whether private legislatures will contribute to a race to the top because of pressures within them to set the standard well below the top. There is no doubt that the Minimum Age Convention is set well below “the top” wherever that might be. For example, the exceptions mean that countries can be in compliance even if they permit children as young as 12 years old to work under certain conditions\(^ {22}\) and even if some child workers are excluded from protection entirely.\(^ {23}\) Thus, as the literature predicts, the Convention is not likely to contribute to a race to the top.

On the other hand, the literature predicts that private legislatures may assist or solidify races to the bottom. The claim is that the standard will be set near the bottom to encourage enactments and that this may tend to affirm low standards. In this context, the affirmation may be a special problem because enactment of the Convention may provide cover for countries with questionable practices. On this point, it is certainly possible that labor standards could be set below the minimum level of the Convention, that is, closer to the “bottom.” On the other hand, the flexibility of the Convention means that countries may be able to comply even with fairly low standards. This may mean, as the literature predicts, that the Convention may tend to solidify low standards. The strategy of bottom-dwelling countries would be to ratify the Convention, comply at the lowest possible level, and then defend against allegations of poor

\(^{21}\) Of the 183 member countries, 12 have currently failed to ratify the Child Labour Convention and 28 have failed to ratify the Minimum Age Convention. Ratifications of the Fundamental Human Rights Conventions by Country, http://www.ilo.org/ilolex/english/docs/declworld.htm (last visited August 15, 2010).

\(^{22}\) Minimum Age Convention, art. 7(4), http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138 (last visited August 15, 2010).

child labor practices by pointing to compliance with the Convention. The pattern of compliance with this Convention does not prove that this is occurring, but it is consistent with the possibility.24 Thus, although this prediction is not as clearly supported as the prediction about races to the top, the evidence is consistent with the possibility that the Convention may affirm relatively low child labor standards.25

Thus, the ILO seems similar to the private legislatures discussed in the American literature both because it is structurally similar and because, based on a brief review, its actions seem to conform to the literature’s predictions. What might this mean normatively for the capacity of the ILO to achieve its goals?

First, the analysis suggests that the ILO’s structure is not well-suited to achieve its goal of uniformly high labor standards and social protection. On this point, we might begin by distinguishing attempts to eliminate the very worst labor conditions vs. attempts to improve labor standards. In the first category, this analysis suggests that the ILO is likely to be either unnecessary or ineffective. The ILO’s efforts will be unnecessary in most countries because, by assumption, the labor practices are so troubling that most countries will spontaneously prohibit them, even without any ILO action. These practices are likely to persist only in regimes where there is a significant democratic deficit and little regard for world opinion. For such regimes, the ILO standards are likely to be ineffective. As will be discussed below, the ILO’s success in creating change is likely to be a function of its ability to facilitate intra-country democratic discussion. But in these regimes for these issues, that avenue is unavailable.

The analysis is also not encouraging about the ILO’s ability to improve labor standards that do not fall into the especially egregious category. As discussed above, private legislatures like the ILO are unlikely to be able to foster races to the top. Moreover, distressingly, they may contribute to races to the bottom, or at least solidify relatively low standards. This problem is exacerbated by the tension between the language of “rights,” on the one hand, and the desire for “decent” and “productive” work, on the other hand. The basic problem here is that “rights”

24 A number of the countries that have ratified the Convention have been identified as having problematic child labor practices. For example, all but three of the 21 countries accepting grants from the United States Department of Labor in 2009 to combat exploitive child labor have ratified the Minimum Age Convention. See United States Department of Labor, Release No. 09-1113-NAT (2009), http://www.dol.gov/opa/media/press/ilab/ILAB20091113.htm (last visited August 15, 2010).
25 A full analysis would require a country-by-country analysis of labor standards before and after adoption of the Convention. The “affirmation” thesis would be supported if the child labor standards of bottom-dwelling countries remained the same after ratification of the Convention.
language signals a discrete, binomial variable – either one has or does not have a particular “right” – while the language of decent and productive work signals a continuous variable. “Decent” and “productive” work falls somewhere on a wide possible spectrum. This relates to the race-to-the-bottom problem, but is distinct from it. It is certainly possible to say that at a certain point work falls below an acceptable level of “decency,” but that (a) is likely to be at a relatively low level (which is the race-to-the-bottom issue) and (b) is not likely to reflect the higher aspirations of the ILO for decent or productive work. Thus, the language of “rights” tends to conflict with the more subtle delineations of “decent” or “productive” work or, at the very least, to leave those latter categories less rich and fully developed than they should be.

Despite these significant shortcomings, however, the literature does support important roles for the ILO, albeit in more limited areas than normally understood. First, the ILO may be able to play an important role where coordination problems result in low labor standards. Professor Alan Hyde has been the principal proponent of this view through his evocative stag hunt metaphor, and he uses child labor as his main example.26 The stag hunt story is one in which all hunters will be better off if they cooperate to capture and share a stag, but every individual hunter also has an incentive to defect and settle for a hare, a smaller prize that can be captured more easily. The strategic difficulty in the game is that, if even one hunter defects, then everyone should defect and settle for hare because the stag will not be caught; the larger prize can only be achieved if all hunters cooperate. Professor Hyde draws on this well-known game theory example to explain low child labor standards. All countries could be better off in time 2 if they prohibited child labor in time 1 and instead required children to attend school. But if even one country defects for the smaller, but quicker payoff from child labor in time 1, then all countries should defect. The possible role for an organization like the ILO is obvious. If it can obtain commitments from countries to follow the stag-hunting strategy in time 1 (no child labor), then all countries will be better off in time 2. The experimental evidence is clear that, in the absence of some coordinating mechanism, multi-player stag hunts will almost always end up

with hares instead of stags. Thus, again, the ILO could play an important and productive role if it could arrange coordination in these circumstances.

Despite carving out a role for the ILO, this coordination rationale is quite limited for a number of reasons. First, the stag-hunt conditions may be quite rare. Professor Hyde mentions explicitly only child labor, forced labor, and health and safety standards. But it is not even clear that all of these would satisfy the stag-hunt conditions. For example, the stag hunt requires that \textit{all} countries benefit in time 2 if they pursue the proper strategy in time 1. However, whether all countries would be better off in time 2 if they prohibit child labor in time 1 is an unanswered empirical question. If \textit{any} country would not be, then under this model that country should and would defect in time 1, which would cause other countries to defect and lead to a general unraveling. Under this scenario, pure coordination would not be sufficient to universalize a ban on child labor. Instead, something more would be required, such as a promised subsidy to this category of countries if they ban child labor in time 1 to ensure a higher payoff in time 2. But that is more than mere coordination and a more difficult strategy for the ILO to implement.

Second, even if the stag-hunt conditions are present, it is not clear that the ILO could accomplish the coordination role. One impediment is that the experimental work on stag hunts indicates that coordination is unlikely in large groups even in repeated games.\footnote{See Hyde, A Game Theory Account, at 152.} It would be even less likely with labor standards where countries do not have the opportunity to play repeated rounds. Thus, the ability of the ILO to accomplish this type of coordination is questionable. Another impediment to coordination in the context of labor standards is inherent vagueness in the item to be coordinated. It would be one thing to say that the ILO will coordinate a time 1 ban on work applying to all persons younger than age 18. It is another thing to say, as the Minimum Age Convention does, that the coordination will ban work by persons younger than age 18 under some circumstances in some countries, but sometimes people as young as age 15 can work, or age 14, or age 12. There are good reasons for these kinds of distinctions in the Minimum Age Convention, but they make the coordination task much more difficult. Conversely, because coordination is more difficult, defection is more likely. They make it more likely that hares will be caught rather than stags.

These problems and limitations, however, should not obscure the opening provided for the ILO here. The stag-hunt metaphor indicates that there may be circumstances where
coordination, if it can be accomplished, would produce real benefits. Of course the task is difficult, but the ILO is uniquely positioned to play this coordination role. Thus, it is uniquely positioned to make these types of benefits possible for countries and their workers. On the other hand, if the ILO cannot accomplish the coordination, the benefit will be lost.

The literature on private legislatures also suggests another possible important role for the ILO. Instead of striving for uniform standards and international agreement, the ILO could serve an important role by developing high-standard benchmarks that would facilitate discussion and constructive change within, rather than between, member countries. On the one hand, this role for the ILO seems to depend on a different conception of the origins and development of high labor standards. It would claim that high labor standards depend importantly on within-country levels of development, productivity and political conditions, which are all highly variable between countries. It would doubt allegations of international races to the top or the bottom and, instead, rely primarily on within-country conditions to determine the level and direction of labor standards. It would assert that internal change could be influenced and improved by comparative information on high labor standards and good labor practices. On the other hand, even though many of these conceptions seem to differ from the ILO’s emphasis on uniformity and international agreements, the ILO already performs many roles which seem to fit within this framework, and it is well-structured to do so. It gathers extensive data on labor conditions and practices, provides technical assistance, and offers training and guidance on good labor practices. Although the ILO seems well-structured to perform this type of role (and already does it in many ways), it suggests a different approach to the development of conventions and recommendations. Instead of standards that seek broad adoption and, as a consequence, tend to be both somewhat vague and set at relatively low levels, the standards could and should be much more aspirational. They could be more specific and set at higher levels, recognizing that they would be subject to adjustment through within-country democratic processes.

This type of role – assisting internal democratic change toward higher labor standards – is suggested by the literature on private legislatures. That literature suggests that one function of a private legislature may be to pool resources to permit the development of standards. Here, the ILO could fill that role. In addition, the literature points out that one of the advantages of a private legislature is, ironically, that it permits non-uniformity. Instead of imposing the same rules on everyone, as a federal or international approach might do, a private legislature permits
adjustments and flexibility. In this context, the ILO would offer labor standards, but they could be adjusted through internal democratic processes to accommodate local conditions.

This type of role for the ILO is, at the same time, broader and narrower than its current role. It is narrower, obviously, because it does not aspire to broadly accepted international standards. On the other hand, it is broader because it facilitates the development of higher labor standards and a more varied approach to encouraging their adoption.

IV. Conclusion

The ILO is an important and positive force in international labor law. However, this analysis suggests that its success is likely to be uneven. On some issues, the ILO’s structure as a private legislature is likely to impose significant barriers to its ability to accomplish its goals. In particular, it may be difficult to forge international agreement on high labor standards, on specific standards, and on vague goals such as “decent” and “productive” work. In other areas, however, the ILO may be a powerful and productive force for positive change. The ILO may be uniquely positioned to coordinate labor regulation in circumstances where coordination could produce real value. It may also be able to provide examples of high labor standards that could serve as benchmarks to facilitate positive democratic change within member countries. Overall, this suggests that the ILO would be well served by focusing its efforts and resources on those areas where its work is likely to be most fruitful.