

2023

The World the Fire Wrought: A Tribute to Fran Ansley - Part 1

Jennifer Gordon

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Recommended Citation

Gordon, Jennifer (2023) "The World the Fire Wrought: A Tribute to Fran Ansley - Part 1," *Tennessee Law Review*. Vol. 90: Iss. 3, Article 7.

Available at: <https://ir.law.utk.edu/tennesseelawreview/vol90/iss3/7>

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Jennifer Gordon, *The World the Fire Wrought: A Tribute to Fran Ansley*, 90 TENN. L. REV. 555 (2023).

ALWD 7th ed.

Jennifer Gordon, *The World the Fire Wrought: A Tribute to Fran Ansley*, 90 Tenn. L. Rev. 555 (2023).

APA 7th ed.

Gordon, Jennifer. (2023). *The world the fire wrought: tribute to fran ansley*. *Tennessee Law Review*, 90(3), 555-564.

Chicago 17th ed.

Jennifer Gordon, "The World the Fire Wrought: A Tribute to Fran Ansley," *Tennessee Law Review* 90, no. 3 (Spring 2023): 555-564

McGill Guide 9th ed.

Jennifer Gordon, "The World the Fire Wrought: A Tribute to Fran Ansley" (2023) 90:3 *Tenn L Rev* 555.

AGLC 4th ed.

Jennifer Gordon, 'The World the Fire Wrought: A Tribute to Fran Ansley' (2023) 90(3) *Tennessee Law Review* 555

MLA 9th ed.

Gordon, Jennifer. "The World the Fire Wrought: A Tribute to Fran Ansley." *Tennessee Law Review*, vol. 90, no. 3, Spring 2023, pp. 555-564. HeinOnline.

OSCOLA 4th ed.

Jennifer Gordon, 'The World the Fire Wrought: A Tribute to Fran Ansley' (2023) 90 *Tenn L Rev* 555
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THE WORLD THE FIRE WROUGHT: A TRIBUTE TO FRAN ANSLEY – PANEL I

JENNIFER GORDON

“As much as fires are deadly, they also prepare the ground for regeneration. Let me talk a little about a few hopeful things I see growing the past thirty years in this ... terrain ...”

One of the central themes of Fran Ansley’s extraordinary body of work is that capital and human mobility are related, and that we need a better understanding of what happens in the places where they meet. Fran started her academic career by exploring the way corporations and money move around the world, and how law facilitates that movement. Very quickly, this took her to the way people move around the world—and how law puts up barriers to that movement. She then began to plumb the relationship between these two phenomena. As someone who shares Fran’s engagement in these arenas, I’d like to say a few things about her insights as a scholar and the light she shed on developments underway in the 1990s and early 2000s, interspersing some reflections on what is happening at this same intersection today.

As I prepared for this symposium, I went back and re-read five pieces Fran wrote on themes of trade and plant closings, the subject of this panel.¹ As different as each of those articles is, each one builds on a set of basic understandings that I think of as foundational to Fran’s way of seeing the world, and that I aim to replicate in my own.

- The world is complex. Strategies for change are complex. People are complex. It is complexity all the way down. If you don’t recognize and engage with the complexity, you’re not really grappling with the problem.
- The one constant in all that complexity is the massive power imbalance between corporations and human beings, as structured by law.

1. Frances Lee Ansley, *North American Free Trade Agreement: The Public Debate*, 22 GA. J. INT’L AND COMP. L. 329 (1992); Frances Lee Ansley, *U.S.-Mexico Free Trade from the Bottom: A Postcard from the Border*, 1 TEX. J. WOMEN & L. 193 (1992); Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, and America’s Eroding Industrial Base*, 81 GEO. L. J. 1757 (1993) (hereinafter “*Standing Rusty*”); Frances Lee Ansley, *Rethinking Law in Globalizing Labor Markets*, 1 U. PA. J. LAB. & EMP. 369 (1998); Fran Ansley, *Inclusive Boundaries and Other (Im)possible Paths Toward Community Development in a Global World*, 150 U. PA. L. REV. 353 (2001).

- There is no neutral vantage point on all of this. You have to own yours.
- Where you sit may determine your first instinct about where you stand in this world, but you are duty bound to look at where others are sitting, ask what they think, and re-examine your instinct. When it does not hold—and it will not—you must face the dizzying need to develop a new vantage point.
- It may be hard to see the road ahead, but so long as people are fighting back, all is never lost.

It is more than 30 years now since Fran joined others in Tennessee seeking to understand and address the injustices in the ways trade and immigration were playing out in their community. Fran later wrote, reflecting on her own and others' work, "it was as if plant-closing foes began by trying to put out what they thought was a small kitchen grease fire, only to realize as their efforts continued that arsonists had set the blaze and already the basement was fully involved."²

Today, the blaze has taken the whole building, and the block, and we've gotten used to living in the ashes: the fully globalized, supply-chain-driven, manufacturing-moves-outside-the-US-into-export-zones and immigrants-come-here-to-do-service-work-while-facing-the-constant-threat-of-deportation world. For many people around the world, those ashes are cold and bitter. We all know this, and I don't want to dwell here, but I will offer two stories that suggest the extent to which human beings have now been impacted by the trends that Fran mapped at their outset.

The first story highlights the daily struggle of workers in one place to which corporations have long relocated production: the US-Mexico border. Geographers Nina Ebner and Kelsey Mae Johnson describe a common practice today in the same maquiladora³ zones that Fran and workers from manufacturing plants in Tennessee visited in the 1990s. Because wages in maquiladoras are (still) too low to cover what workers need for their own and their families' survival, many

2. Nina Ebner & Kelsey Mae Johnson, *Blood and Borders: Geographies of Social Reproduction in Ciudad Juárez–El Paso*, 111 ANNALS AMER. ASSOC. GEO. 498 (2021); see also Aaron Nelson, *Plasma Donation is a Bloody Business at the Border*, TEXAS MONTHLY, July 2023 (hereinafter "Plasma Donation is a Bloody Business"), <https://www.texasmonthly.com/news-politics/mexicans-plasma-donations-border/>.

3. Maquiladoras are manufacturing plants in Mexico, often located near the US border, that operate under rules reducing or eliminating tariffs as a part of a legal regime designed to incentivize foreign investment in production for trade.

maquiladora workers now regularly cross the border into the United States in order to “donate” their own blood plasma, for money, at centers set up just across the border for this purpose.⁴ In this way—in addition to giving their youth and energy to the demands made of laborers at the maquiladoras—workers must literally mine their own bodies for resources in order to make a life they and their children can live.

The second story is about corporations taking their ability to play the global field one step further than even Fran imagined. Fran and her colleagues were among the first people to describe plants closing in the US and reopening in Mexico, and migrants coming from Mexico to the US, as part of a single system. When they identified these two things as part of a whole, though, they were still operating separately in the world. At the time of their work fighting plant closings in Tennessee, corporations were making a choice. If what they produced could be made elsewhere, as with cars or clothes, they moved production to where the workers were cheaper (in other words, they used trade to cut costs and increase profits). If what they produced was rooted here, as with construction, care work, and hospitality, the corporations remained here but hired immigrant workers who were cheaper than citizens (in other words, they used immigration to cut costs and increase profits).

Today, however, there are places where corporations are making both of these choices at once, as part of a single production strategy. In a recent article,⁵ I highlight cases where brands with global supply chains began by contracting out their manufacturing to plants in an export processing zone in a country where labor was cheaper. So far, we’re in the same world Fran described. But over time, as the brand continued to press for lower prices, the plants reduced wages to the point where workers from that country could no longer afford to take the jobs. To provide a labor force for export manufacturing, the government of that country allowed plants to import into the zone a

4. The workers have to go into the US for this purpose because Mexico, like many other countries, has banned the practice of paid plasma “donations.” Plasma Donation is a Bloody Business (“Paying for plasma is illegal in Mexico.... The U.S. is one of the few countries in the world that permits the practice, which most others forbade after thousands of recipients contracted HIV and other illnesses from tainted blood in the eighties.”).

5. Jennifer Gordon, *In the Zone: Work at the Intersection of Trade and Immigration*, 23 THEOR. INQUIRIES L. 147 (2022). Fuller versions of the arguments I develop in this and the next two paragraphs, with citations, can be found in that article.

labor force of immigrants from a third country where workers are cheaper still. This phenomenon now fuels a large percentage of the garment export manufacturing in zones in Jordan, where women from South and Southeast Asia are the primary workforce, and in electronics and garment export manufacturing zones with migrant workforces in Thailand and Malaysia as well. In or outside zones, the reliance on migrant workers to lower the price of exported goods has become commonplace throughout the world, including in countries like the United States.

I call this move by corporations *double labor arbitrage*. To arbitrage is to take a profit by buying something at a low price and sell it at a high one. Companies arbitrated labor in the 1990s when they shifted production from Tennessee to Mexico, buying labor at a low price while selling the goods that labor produced for a high price in the US. In the situations I've just described, however, brands are arbitraging labor twice, first by moving production out of the country and then by relying on even cheaper workers brought to the new location to do the work.

Double labor arbitrage creates conditions ripe for forced labor. Migrants enter the country with high debt due to exploitative recruitment practices. Their visa ties them to a single employer, so if they complain about conditions and are fired they will be deported. Deportation would mean defaulting on the loans they have taken out to pay recruitment fees and migration costs, and often losing the cars, homes, or businesses migrants or their families have put up as collateral. Meanwhile, they are often restricted to living inside the export zones, under constant surveillance. These vectors of control combine to make it easy for employers to coerce migrants to work long hours for low pay, and to keep quiet when subjected to harassment and gender-based violence.

There is no denying, then, the pain in the aftermath of the fire that Fran described. But much as fires are deadly, they also prepare the ground for regeneration. Let me talk a little about a few hopeful things I see growing the past thirty years in this same terrain. I primarily want to discuss trade, since others here address immigration. Still, before I turn to trade, I can't resist saying a few things about the organizing efforts of immigrant workers in recent decades.

One way that NAFTA was sold to the public in the United States was as a measure to reduce immigration from Mexico.⁶ Before NAFTA was approved, Fran and those she worked with argued that it would

6. See Gordon, *supra* note 5, at 175–76 and accompanying footnotes.

do the opposite. They were right. Immigration from Mexico to the US soared in the years after NAFTA.⁷ As immigrants came to the United States in increasing numbers, many of them undocumented, a new organizing model arose: worker centers, which build immigrant leadership to respond to labor abuses. There were a handful of such centers in place around the country when I founded the Workplace Project in New York in 1992.⁸ Today there are around 250.⁹ Workers centers are a vibrant and varied community of organizations through which immigrants themselves are fighting back against the conditions to which they are subjected on the job.

The model has spread beyond the US. In Mexico, and in the early stages in Central America, we're seeing migrants adapting the workers center model to organize in their own countries to protect their rights as workers, whether they are at home or abroad.¹⁰ And worker centers are far from the only way immigrants are taking leading roles in new organizing campaigns. For just one example, a

7. *Id.* Over the past ten years, fewer immigrants have come to the United States from Mexico, although the trend may be reversing; see Oscar Lopez & Maria Abi-Habib, *Ending a Decade-Long Decline, More Mexicans Are Migrating to U.S.*, N.Y. TIMES (July 1, 2022), <https://www.nytimes.com/2022/07/01/world/americas/migrants-mexico-texas.html>.

8. For a foundational history and analysis of the worker center model, see JANICE FINE, *WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* (2006). For discussion of the Workplace Project's development, see JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANTS' RIGHTS* (1995). For an overview of worker center activity as of 2021, see THOMAS KOCHAN, ET. AL, U.S. WORKERS ORGANIZING EFFORTS AND COLLECTIVE ACTIONS: A REVIEW OF THE CURRENT LANDSCAPE 31–36 (2022) (hereinafter "U.S. WORKERS ORGANIZING EFFORTS"), <https://mitsloan.mit.edu/institute-work-and-employment-research/new-report-u-s-workers-organizing-efforts-and-collective-actions>.

9. U.S. WORKERS ORGANIZING EFFORTS, *supra* note 8, at 6.

10. See, e.g., Coalición de Trabajadoras y Trabajadores Migrantes Temporales de Sinaloa (The Coalition of Sinaloa Temporary Migrant Workers) (operating in Mexico), <https://prodesc.org.mx/coalicion-de-trabajadoras-y-trabajadores-migrantes-temporales-sinaloenses/>; see also Centro de Integración para Migrantes y Personas Trabajadoras (CIMITRA, The Center for the Integration of Migrants and Workers) (operating in El Salvador), <https://adelantecimitra.org/>. Migrant workers in the export zone in Jordan have a workers' center too. See Suneetha Eluri, "Al Hassan Migrant Worker Centre," *Presentation at the ILO Centenary Conference*, Georgetown University, November 22, 2019; see also *Building Hope and Opportunity: The Al Hassan Worker Center*, ILO (March 14, 2015), https://www.ilo.org/global/topics/labour-migration/photo-video/WCMS_353477/lang--en/index.htm.

group of Venezuelan workers in Bogota, Colombia, part of the diaspora of millions of Venezuelans all over the Americas,¹¹ have started a new union of app-based delivery workers.¹² They are laying down new tracks in one of the hardest-to-organize sectors in the world. When people move, we see over and over that they bring with them their knowledge, courage, and determination to fight for better lives.

What about recent developments in the world of corporate flight? Is there anything to give us hope there? At first glance it seems impossible for workers to respond to corporations' ability to move production around the world in search of the lowest-cost site for manufacturing. It was already clear when plants began moving their manufacturing from Tennessee to Mexico that the first move wasn't necessarily the end of the line. Brands can play countries off against each other, hopping from Mexico to China and then China to Vietnam—and later threatening to pull out of Vietnam for Ethiopia. If workers in one location push for better treatment, their efforts are often quelled by employers and the government, wielding a combination of force and the threat that factories in their country will be priced out of competition if they have to pay workers more.

But workers have proven resourceful. One source of inspiration here is the Asia Floor Wage Alliance (AFWA).¹³ AFWA began developing in 2006, led by Asian trade unions and workers rights organizations, and later added support from allies around the world.¹⁴ Unions representing garment workers in different countries in Asia brought women together to calculate a "floor wage" for each country, representing the purchasing power a worker needs to feed her family.¹⁵ From there they launched a strategy for negotiating with

11. Interagency Coordination Platform for Refugees and Migrants from Venezuela (R4V), <https://www.r4v.info/en/refugeeandmigrants>.

12. Unión de Trabajadores de Plataformas UNIDAPP, <https://www.facebook.com/unidappcolombia/>; Anastasia Moloney, *Colombia's Rappi App Draws Ire of Venezuelan Migrant Workers*, REUTERS (December 13, 2022), <https://www.reuters.com/article/colombia-tech-gigworkers/feature-colombias-rappi-app-draws-ire-of-venezuelan-migrant-couriers-idUKL8N32V4EQ>.

13. Asia Floor Wage Alliance (AFWA), <https://asia.floorwage.org/>.

14. For a history of the AFWA, see ANNANYA BHATTACHARJEE, ET AL, TOWARDS AN ASIA FLOOR WAGE: A GLOBAL SOUTH LABOUR INITIATIVE FOR GARMENT WORKERS IN ASIA 42–51 (2015), <https://asia.floorwage.org/reports/>.

15. For an explanation of the methodology, see ASIA FLOOR WAGE ALLIANCE, TOWARDS A WOMEN-CENTERED LIVING WAGE BEYOND BORDERS 13–15 (2023), <https://asia.floorwage.org/reports/>.

brands to agree to pay that floor wage across Asia. Their strategy is at the core of any response to corporate mobility: workers standing together across borders, resisting efforts to play them off each other. The Alliance hasn't yet achieved its goal, but it is powerfully exciting in its vision and in what it has done already.¹⁶

Finally, let me end by talking about where we are on questions of trade and labor rights, because there has been some movement on that front too. After NAFTA, advocates tried to use the World Trade Organization as forum to link labor rights to trade.¹⁷ Although they failed, in recent years the incorporation of labor rights protections has become much more widespread in unilateral trade laws and bilateral and regional trade agreements.¹⁸ In addition, the way they look has evolved. No longer are labor standards always relegated to a separate and weaker side agreement, as was the case with NAFTA. For example, in the new US-Mexico-Canada Agreement—the successor to NAFTA—workers' rights provisions are part of the main treaty.¹⁹ They are also much more targeted and operational. Among the innovative guarantees are an average minimum wage of \$16/hour for workers in auto supply chains, including in Mexico (a first),²⁰ and a

16. For example, AFWA has been a critical player in demanding that major garment brands pay workers for orders cancelled at the beginning of the global pandemic in 2020 and ongoing wage theft since then. AFWA & GLJ-ILRF, *BIG FASHION AND WALL STREET CASH IN ON WAGE THEFT* (2023), <https://globallaborjustice.org/wp-content/uploads/2023/02/FightTheHeistReportFeb2023FINAL.pdf>

17. Mark Anner, *The International Trade Union Campaign for Core Labor Standards in the WTO*, 5 *WORKINGUSA* 43 (2004).

18. James Harrison, *The Labour Rights Agenda in Free Trade Agreements*, 20 *J. WORLD INVEST. & TRADE* 705, 706–09 (2019).

19. USMCA, Chapter 23; see also UNITED STATES DEPARTMENT OF LABOR, BUREAU OF INTERNATIONAL LABOR AFFAIRS, *LABOR RIGHTS AND THE UNITED STATES-MEXICO-CANADA AGREEMENT*, <https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca> (“The USMCA has the strongest and most far-reaching labor provisions of any trade agreement. The agreement contains a labor chapter that prioritizes labor obligations by including them in the core of the agreement and making them fully enforceable. This is a major change from NAFTA, which only contained a side agreement on labor.”).

20. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *UNITED STATES-MEXICO-CANADA TRADE FACT SHEET: MODERNIZING NAFTA INTO A 21ST CENTURY TRADE AGREEMENT* (2020), <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/modernizing> (“To support North American jobs, the deal contains new trade rules of origin to drive higher wages by

“Rapid Response Mechanism” that allows the US government to directly sanction a plant in Mexico for interfering with worker organizing.²¹

There’s another new tool in the box as well. In 2015, under pressure from advocates, Congress amended US trade law to make it easier for the government to stop imported goods at border when they are suspected of being made with forced labor.²² Civil society organizations have been actively filing petitions with the government to impose this forced labor import ban where they uncover forced labor in global supply chains. The US government’s use of the tool has skyrocketed; since the change in the law, it has imposed 43 new bans, referred to as Withhold Release Orders (WROs), and findings of forced labor.²³ Bans have been issued against goods from twelve countries across a range of industries.²⁴ In 2021, the US Congress extended Sec. 307 to ban all products from Xinjiang, China.²⁵

The forced labor import ban is what Fran has called a “crisis tool”²⁶—unlikely on its own to fix the problem, troubling in some aspects, but it’s all you have, so you use it. Fran has often written about the risks of legal strategies that force you to see and re-describe complex dynamics so they fit in the law’s box, when the resulting framing fails to capture the reality of what’s happening or deliver a genuine solution. The danger is especially acute when the strategy, however imperfect, is one of very few hammers available, leading to a search for nails that it might hit. The key, as Fran has taught us, is to critique the law even as you deploy it.²⁷ In this spirit, one of my current projects is to take a closer look at the forced labor import ban, asking: what are the benefits, and what is the price, of this particular carpentry job?

requiring that 40-45 percent of auto content be made by workers earning at least USD \$16 per hour.”).

21. USMCA Chapter 31 Annex A; Facility Specific Rapid-Response Labor Mechanism.

22. §307 of the Tariff Act of 1930, as amended, 19 U.S.C. §1307.

23. UNITED STATES CUSTOMS AND BORDER PATROL, WITHHOLD RELEASE ORDERS AND FINDINGS LIST (author’s calculation of orders and findings since change in law in 2015, as of May 2023), <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

24. *Id.*

25. Uyghur Forced Labor Prevention Act of 2021, Pub. L. No. 117-78, <https://www.govinfo.gov/app/details/PLAW-117publ78>.

26. *Standing Rusty*, *supra* note 1, at 1847.

27. *Id.* at 1799–1860.

Without going into too much detail, here's why I see the forced labor import ban as a potentially positive development. In a field where transnational corporations face very little by way of economic consequences for their treatment of workers in other countries, these bans have teeth. When workers are mistreated, and a ban is imposed, advocates can literally stop trade in its tracks. This is almost unheard of. Also, bans target corporations, unlike most other trade sanctions, which punish governments. This seems only fair, since forced labor is often driven by the contracting practices of corporations at the top of supply chains in the Global North, and so targeting the government of countries in the Global South where forced labor occurs punishes them for taking the only road those corporations have left open.

But channeling Fran, it's also obvious that there are reasons to be worried. There is the risk that an unremitting focus on forced labor will redefine the bottom-of-the-bottom as the threshold for our concern. Addressing forced labor is a far lower goal than, say achieving work with dignity at decent wages. Then there's the fact that it's rarely if ever the workers themselves who are making the decision to call down this penalty—instead its use rests in the hands of advocates in another country, and ultimately of the US government. Forced labor import bans are enforced by the US Customs and Border Protection agency, which also is responsible for immigration enforcement. I will leave it to you to imagine the complexities there. And so the project is to ask whether there are ways to approach the tool, or reshape it, so that it can contribute to efforts to build worker power and change corporate incentives, while minimizing the ways it reinforces the hegemonic role of the US government in the world.

So there you have it: my report-back from the world the fire wrought. I hope I have given you enough sense of its human pain, and also of the green bits of hope now growing, to do Fran justice.

