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The Unfree Labour Category and Unfree Labour Estimates: A  
Continuum within Low-End Labour Relations  
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## The Unfree Labour Category and Unfree Labour Estimates: A Continuum within Low-End Labour Relations?

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**Abstract:** The article argues against the singling out of unfree labour as something wholly unique and entirely separate and different from other labour relations. Existing dichotomous approaches to free–unfree labour hinder a proper understanding of these labour relations, both theoretically and empirically. It argues that the way in which both mainstream and Marxist approaches conceptualise and operationalise unfree/forced labour is problematic and proposes replacing the unfree-free dichotomy with a continuum of unfreedoms. Such unfreedoms should be understood as one among many ‘un-decent’ forms and aspects of labour relations. All of these can be understood as outcomes of the class struggle from above, which in today’s world is part and parcel of neo-liberalism. The discussion is informed by examples primarily from India and China.

**Keywords:** Unfree labour; labour relations; class struggle; ILO; India; China

## INTRODUCTION

Academic discussions and political campaigns against unfree labour draw on a deep vein of moral indignation. Who, after all, would not be against ‘forced labour’ or ‘new slavery’?

Conceptually, this is underwritten by a dichotomous view of labour relations: that they are either free or unfree. This approach is more or less universal and held by the International Labour Organization (ILO), which is the UN organization in charge of international attempts to eradicate forced labour; leading NGOs in the field; and neo-classical economists as well as scholars of Marxian persuasion.

This article analyses categories and processes relating to a spectrum of labour relations, spanning both those generally seen as ‘unfree’ or ‘forced’ as well as other ‘low end’ labour relations. It is argued that the forced/unfree – free labour dichotomy hinders a proper understanding of these labour relations for two reasons: firstly, there are serious problems in the way it is applied empirically, with all that entails in terms of a geographically and politically skewed understanding of these labour relations and, secondly, it is a dubious theoretical categorization.

The line of argument taken here not only involves a rejection of aspects of mainstream approaches to unfree labour (‘forced labour’ in ILO parlance), it also argues, against classic Marxism, not only that present-day unfree labour is better understood as a capitalist labour relation rather than as a pre-capitalist relation (a disputed view but, nevertheless, one shared by several other scholars (Breman, 1990; Brass, 1999; Banaji, 2003) but also that unfree–free labour relations are best understood as part of a *continuum* of labour relations, ranging from

fully unfree relations till it reaches at point at which it meets socially and historically continuously re-negotiated minimum criteria regarding pay and conditions. The objective is to argue against the singling out of unfree labour as something wholly unique and entirely separate and different from other labour relations. It is argued that most of the labour relations which today are classified as unfree labour share characteristics with a wider set of relations, both with regard to the underlying processes which lead to their creation by capital and concerning conditions of work and pay for labour. Today, such similarities across a range of forms of labour relations are made invisible by the free-unfree dichotomy which, wrongly, normalises all but the so-called unfree labour relations and makes it harder to understand underlying processes.

The analytical approach taken here, though, is not without its political and moral pitfalls. It might be criticised for normalizing repugnant ‘unfree’ labour relations. However the point that is made is actually the opposite: it is that a *wider* set of labour relations should be condemned, not just what we, today, see as forced or unfree labour. This position is outlined here it is thus empirically grounded and has clear-cut policy implications.

The article is shaped as a discussion of two strands of work: that of the ILO and that of a number of scholars working, to a varying degree, from a Marxist perspective. The ILO is a core proponent of the classic liberal (Adam Smithian) understanding of standard ‘free’ labour relations as being non-exploitative. It is a major player within the field of forced labour, not only as provider and upholder of international definitions but also as funder of studies of forced labour; a synthesiser of such studies; and, importantly, as the provider of the most detailed and thorough estimate of the world-wide magnitude of the forced labour.

A discussion of the ILO approach and how its dichotomous definitions and their operationalization skew our understanding of these labour relations forms the mainstay of the empirical discussion. The argument made is that not only is the ILO estimate wrong, it is seriously biased not only due to reasons which might be political but also due to the difficulties arising from its dichotomous free-unfree concept. The theoretical approach by the ILO is also analysed, but the main theoretical discussion of the paper relates to Marxian analyses of unfree labour which, it is argued, lend themselves better to the kind of approach suggested here.

The first section below deals with the ILO approach and estimates while the following section discusses Marxist analyses. The latter section first argues that Marxist analyses suffer from some of the same difficulties as do those of the ILO. This leads to a discussion of a wider approach to unfree labour as one amongst many 'un-decent' labour relations arising from the same underlying processes. Finally the free-unfree dichotomy is modified as a 'continuum' approach to unfree labour is suggested. Empirically these two proposals enable the identification of distinct trajectories of labour relations and of the forces that drive them in different parts of the world. This is exemplified in the last of the main sections which provides a brief discussion of labour relations focussing on India but also including aspects of relations in Brazil, showing both the strengths of the approach and areas for further research and analysis. The main points of the article are then discussed in a concluding section.

## ILO APPROACHES TO UNFREE LABOUR

The ILO takes a social democratic approach to labour relations, a position which could be characterized as a modified classic liberal view. The classic liberal view was that the value and price of labour are based solely on the price it is able to command in the labour market. The ILO might appear to challenge this when, in its 1919 constitution, it states that ‘labour should not be regarded merely as a commodity’, and when, in the ILO Philadelphia Declaration of 1944, this was sharpened into ‘labour is not a commodity’ (ILO, 1944; Rodgers, Lee, Swepston, & van Daele, 2009, p. 7). Through this the ILO supported and propelled the emerging welfare state consensus that labour had certain economic, social, political and human rights. In Polanyi’s terms – and Polanyi published his major work in the same year as the Philadelphia Declaration – the economy should be socially embedded (Polanyi, 1957). However, these statements regarding the wider societal framework within which labour markets exist did not challenge the classic liberal view of how the labour market functions: in spite of the bravado, ILO theorists still viewed labour as a commodity traded in labour markets (Standing, 2009, pp. 32–56).

In extension of this position, the ILO definition of unfree labour is based on the liberal understanding that, in general, labour and capital, as factors of production, meet as free agents and that labour relations are non-exploitative. Unfree labour is theorized as a deviation from such standard free labour relations. Opposed to standard labour relations, forced labour relations are by definition ‘exploitative’. They exist where market forces have been circumvented by the employer through the deployment of extra-economic force, and this enables the employer to undercut the market price of labour and to disregard the rights

of labour (ILO, 2005a, p. 7; Belser & Andrees, 2009, pp. 4–5).<sup>i</sup> This is unique to unfree labour. The centrality of the use of non-economic force in unfree labour relations is reflected in the overall ILO definition of forced labour as well as in the ILO conventions against forced labour, as they hone in on a) involuntary entry into the labour relation and, b) the retaining of labour through a ‘menace of penalty’, i.e. through force or threat of force (ILO, 2005b, pp. 7–8).

According to the official ILO definition and thus also the definition of international conventions, it is only when *both* entry into and exit from the labour relation are conditioned by non-economic force that the labour relation is unfree (ILO, 2005a, p. 5). However, this is modified considerably when the concept is operationalized. Then only one of the following three criteria needs to be fulfilled:

- Forced entry
- Retaining labour in an employment relation against his or her will
- The employment can be left only at great risk

These three criteria cover conditions such as: entry through deception; the physical retaining of the worker; confiscation of identity papers; holding back part of wages; and for debt bonded labour contexts where debt repayment is not limited to a reasonable time or where the work of the debtor is not reasonably applied towards the liquidation of the debt labour (ILO, 2005b, pp. 12–13, 28). Based on this the ILO has calculated a minimum estimate of forced labour in the world of 12.3 million (ILO, 2005b, p. 2). Of these, 7.8 million are forced labour through ‘private economic exploitation’, as opposed to ‘state or military imposed’ forced labour (2.5 m), ‘commercial sexual exploitation’ (1.4 m) or ‘mixed’ (0.6 m) (ILO,

2005b, p. 2). Each of these categories deserves a separate discussion. In this article, as should be clear already, the focus is on forced labour through private economic exploitation.

Technically the estimation methodology used by the ILO is probably the best possible, given the paucity of statistics and other sources on forced labour. The estimates are based on a sampling of all existing reports etc on forced labour, using the ‘capture – recapture’ sampling method. While it can only draw on existing studies it seeks to go further than these by estimating the magnitude of unreported areas of forced labour, thus at least *seeking* to deal with more ‘hidden’ types of forced labour such as commercial sexual exploitation (ILO, 2005b, pp. 13-37). Nevertheless, there are a number of underlying problems with the ILO operationalization and with the minimum estimate of forced labour. Depending on how these problems are solved, the number of forced labour in the world is either much higher than the estimate – or much lower! Looking at why the number might be much higher, there are, at least, two issues. First, at least one important aspect of unfreedom listed in the ILO 2005 reports is not included in the final ILO operationalization. The ILO reports state that it constitutes forced labour if workers are forced to provide ‘additional labour’ of ‘long overtime hours’ (ILO, 2005b, p. 8) ‘beyond the scope of their contract or of national law’ (ILO, 2005a, pp. 5–6). This is a criteria often discussed in relation to export industries (ILO, 2005a, p. 30), but it appears to be excluded from the final ILO operationalization of its forced labour concept (ILO, 2005b, p. 28). Had the overtime criterion been taken seriously, the minimum estimate would have looked quite different. This would probably be the case in many countries but it suffices to draw attention to the case of China. The Chinese Labour Contract Law stipulates that the working week is 40 hours and, in addition, it allows for a maximum of 36 hours monthly overtime. However, there is broad agreement that this

overtime limit is routinely flouted, with forced overtime hours well above the limit as the standard in most export factories.

This is a point made by academic scholars (e.g. Chan, 2000, p. 265; Pun & Smith, 2007, p. 40), NGOs (e.g., the Hong Kong based NGO China Labour Bulletin (China Labour Bulletin, n.d. a) and the US based factory audits and labor research NGO Verité ('Secrets, Lies', 2006a), and respected business magazines such as Bloomberg Businessweek ('Secrets, Lies', 2006b). The precise number of workers affected by this is not known, although it has been suggested that 95 per cent of all export factories break the overtime rule (Bloomberg Businessweek, 2006b). With the overall number of rural–urban migrants standing at 150–200 million (Breman, 2010, p. 236), even if it is conservatively (and fairly randomly) estimated that the excessive amount of forced overtime only applies to, say, a quarter of them, this would add 37–50 million to the global forced labour tally, making the existing ILO minimum estimate irrelevant.

Disregarding the forced overtime issue it may still be argued that in China alone forced labour as operationalized by the ILO is well above the world minimum estimate of forced labour. Forced labour is not a concept much used in China. Its existence is acknowledged in relation to extreme cases of forced labour, often located in remote areas in sectors such as brickworks (China Labour Bulletin, n.d. b), but it is not part of the vocabulary used in relation to the modern industrial sector. Nevertheless, aspects of many export factory labour relations are unfree, at least on paper. The Chinese household registration system (*hukou*) provides a means for employers to impose unfree conditions on their migrant workers, the group of workers who form the mainstay of the workforce in the export industries. Migrant

workers often have to borrow from the employer in order to pay the fee for their temporary work permit; they are often charged a ‘deposit’ from the factory in order to gain employment; their work permits are often held by the employer; corporal punishment of workers is not uncommon (Chan, 2000, p. 263; Pun & Smith, 2007, p. 40);<sup>ii</sup> and non-payment of wages is the most common issue in labour rights disputes (China Labour Bulletin, n.d. c). It may be that such restrictions can be circumvented by labourers (for example by using forged papers or by non-implementation of work permit rules) or that conditions are not worse than in many other jobs in the developing world, but if such cases in China are enumerated in accordance with the ILO operationalization principles, it is to be expected that these cases on their own would exceed the present total global forced labour minimum estimate.

On the other hand, it is also clear that if the ILO took seriously its own core definition of forced labour, then its global minimum estimate would be a good deal less than 12.3 million. As shown above, the ILO moves from a double entry–exit clause in its core definition of forced labour, to an operationalization which suggests that it is sufficient to show that *either* involuntary entry *or* inability to leave the job due to the ‘menace of penalty’ is present. The ILO argument is that one can assume that if the extra-economic force is present in one of these relations, then it is also present in the other: if workers cannot leave their job due to the ‘menace of penalty’ then, the ILO argues, it is reasonable to assume that their entry into the labour relation was involuntary as well (ILO, 2005b, p. 8). This, however, is unequivocally not so in most instances. India is of particular importance here, as the largest proportion of all forced labour due to private economic exploitation as measured by the ILO today is situated in this country.<sup>iii</sup> Numerous case studies from India (e.g. recent studies by

Lerche, 2007; Guerin, 2009; Picherit, 2009) show that workers enter the kind of labour relations that the ILO classifies as forced without having been compelled to do so by non-economic force, and knowing full well what awaits them, i.e. without having been tricked into the relation. They are driven to this kind of work solely by harsh economic compulsion, and they often follow employment patterns tried and tested by their family, friends or fellow villagers. This unpalatable income-earning option is, for them, the least bad available (be it by way of this employment relation providing the largest up-front loans, better remuneration or in other ways) even if this involves debt bondage, extremely harsh conditions of work etc. More often than not, non-economic force is employed in order to keep workers in a specific job, e.g. non-payment of wages, cheating of workers with regard to debt repayment rates,<sup>iv</sup> threats of punishing the family of the worker if he absconds etc. When the ILO classifies this as forced labour due to the ‘menace of penalty’ involved, they do so in disregard of their own double clause definition (ILO, 2005b, pp. 7–8). In my view it does indeed make sense to drop the double clause in relation to present-day forced labour (see below), but the point here is that the ILO is wrong when claiming that if a menace of penalty is involved, then the entry into the labour relations *must* also have been unfree. It follows that if the ILO had stuck to the strict double criteria of its own definition: that both entry and exit should be marked by non-economic force, then the global minimum estimate would have been much lower.

It should be clear by now that the estimate of the number of forced labour in the world would vary to a quite extreme extent, depending on how the ILO forced labour concept is operationalized. This makes the official ILO estimate more of a political than a scholarly exercise. The ILO office for forced labour interacts regularly with academics, it has funded a

number of empirical studies of forced labour, produced the so far best global empirical overview of forced labour and successfully established the credentials of its estimation methodology. This makes it noticeable that there is no particular academic rationale detectable behind the precise operationalization methodology chosen by the ILO. It is not theoretically or methodologically defensible both to maintain, in principle, the ‘double’ clause, and then to drop it in practice. As shown above, having dropped the double clause, the ILO then proceeds to adjust its estimate very significantly downwards by not operationalizing their new ‘single’ clause approach properly, and by not including certain forms of what it, itself, has defined as forced labour. Unfortunately these two technical/political wrongs do not make a right.

The ILO is caught in a bind by the discrepancies between its theoretical model of free–unfree labour relations and the realities of such relations. Moreover, even minor changes to its theoretical approach are difficult. Such changes could involve either the relaxation of the boundary between freedom and unfreedom, or of the boundary between economic and extra-economic force. However, regarding the unfreedom-freedom boundary, to the ILO this is synonymous with the non-exploitation/exploitation dichotomy, so softening this boundary would involve a gradation of ‘exploitation’. But as the liberal exploitation category is based on the negation of ‘normal’ free labour which per definition is non-exploitative, it follows that the exploitation/non-exploitation approach has to be dichotomous. In other words, the ‘political’ aspects of the labour relation (‘freedom’) would have to become unhinged from the economic aspects (‘non-exploitation/exploitation’).<sup>v</sup>

On the issue of economic and extra-economic force, it can be questioned whether it matters if the worst forms of un-decent labour are due to non-economic force, or 'only' due to economic compulsion.<sup>vi</sup> However, for the ILO, the underlying liberal approach to labour markets necessitates also this distinction.<sup>vii</sup> According to this approach, if labour is compelled solely by economic reasons to accept abysmal pay and conditions of work, then this is by definition not exploitative nor unfree, as the price of labour and conditions of work are decided by the market and hence represent a 'just' price while the labour is 'free'. For example, if labour is compelled by extreme conditions such as hunger or near-hunger to accept below-poverty line pay and appalling condition of work, but there is no extra-economic compulsion involved, then this is simply how the labour market works, and thus has nothing to do with unfree labour. It is only the deviation from 'free' labour markets that should be avoided, even if the outcomes from 'free' labour markets and from labour markets where non-economic force prevails are more or less the same.<sup>viii</sup>

What the ILO cannot recognise is that there is always likely to be a power relation between employer and employee, and that this is likely to be a harsh one at that end of the labour spectrum which offers what I have termed the worst forms of 'un-decent' work (Lerche, 2007), whether or not such particular employment relations fall within or outside of the ILO definition of forced work. Relations of power mean that other factors than economic ones are at play in the labour relation: the economic/extra-economic dichotomy is fictional, and it is so across the free/unfree divide. However, to admit that would put paid to the liberal theory of labour relations on which the ILO approach is based.<sup>ix</sup>

## POLITICAL ECONOMY APPROACHES TO UNFREE LABOUR

Scholarly work inspired by Marxian political economy faces many of the same problems as the ILO approach. Long before the ILO, Marx viewed extra-economic force as the distinguishing factor between free and unfree labour; and in spite of important conceptual differences between present-day Marxian analyses of unfree labour and that of the ILO, they use the same empirical markers and categories and hence display the same empirical flaws.

That said, Marx's approach to unfree labour is quite different from that of the ILO. As is well known, to Marx, labour is exploited as the surplus value created by its labour-power is appropriated by – in capitalism – capital. Exploitation is thus not what distinguishes unfree from free labour. Instead Marx saw the free/unfree dichotomy as a core line of division between capitalist and pre-capitalist exploitation. This formed an important part of his general argument regarding how capitalism differs from feudalism. Under capitalism labour is 'doubly free': 'free', or dispossessed, from ownership of means of production and therefore compelled to work for others, and free to sell his/her labour power to any capitalist who wishes to buy it. Free labour is a necessary condition for capitalism to develop.<sup>x</sup> Unfree labour, i.e. labour that is not free to choose employer (serfs, slaves etc) is deemed to be a pre-capitalist form of labour.

So, to argue that unfree labour today is a capitalist phenomenon runs counter to Marx's analysis. Hence some Marxists chose not to use the unfree labour concept in relation to capitalist labour relations. For example, Mohan Rao does so as to him it is inconceivable that

non-economic force can come into play in highly developed capitalism;<sup>xi</sup> free labour is axiomatic (Rao, 1999).<sup>xii</sup> Present-day unfreedom in countries in the South is explained as being due to the ‘semi-feudal’ character of such countries (Rao, this issue).

Nevertheless I would argue, along with many other Marxian political economists, that present-day ‘unfree’ labour relations are not pre-capitalist. The category ‘unfree labour’ is useful in the study of capitalist labour relations, not the least in the context of present-day neo-liberal globalization – although it does need to be modified. Capitalism is not as all-conquering as expected by Marx; even so-called ‘mature’ capitalism involves social and labour relations that Marx thought would die out at an early stage of capitalism.

That said, unfree labour relations are not the same as they were during the early days of capitalism: a new type of capitalist unfree labour relations has developed. This has been studied most comprehensively by Jan Breman in India (see, for example, Breman, 2007). He argues that present-day unfree labour which he terms ‘neo-bondage’ is fully capitalist in the sense that a) it is based on an exclusively economic contract, stripped of pre-capitalist ‘patron–client’ vestiges linked to the need of landlords to enhance their power through such hierarchical social ties, b) it is now most often time-bound (sometimes only for a season) as opposed to unlimited, c) it is organized by a labour contractor who hires and fires bonded labour along principles based on free labour markets, and d) the bonded labourers are primarily migrant workers, not tied to employers through long-lasting ties (Breman & Guerin, 2009, pp. 4–5).<sup>xiii</sup>

A theoretical understanding of the relationship between capitalism and unfree labour has been developed by Jairus Banaji (2003). He argues that at societal level, the main contradiction within capitalism is indeed between capital and free labour, but different specific forms of surplus appropriation may exist at the level of individual capital, including that of unfree labour.<sup>xiv</sup> As Banaji reminds us, capitalism is based on general class-based, non-economic oppression: labour under capitalism is only free in the relative sense of being free to sell its labour power as a commodity. For this reason Banaji replaces the free–unfree dichotomy of Marx with categories such as ‘more-or-less unfree labour’. This certainly makes sense when discussing modern day capitalist unfree labour relations, and provides support to the view which will be developed by the present article, namely, that the free–unfree dichotomy should be replaced with an approach emphasizing that, under capitalism, freedom/unfreedom is a matter of degrees, not of binary oppositions, see below.

Returning to how unfreedom relates to capitalist development, in capitalism unfreedom represents extreme exploitation of wage labour. Marx pointed to the extreme exploitation through putting-out systems of work of ‘sweated labour’ under capitalism. Sweated labour was organized through middlemen who pay labour less than the ‘normal wage’, and they are labourers ‘who have sunk down below the average level of the normal workers who are combined together in trade unions’ (Marx, 2002, pp. 93-121).<sup>xv</sup> To Marx sweated labour was a phenomenon situated in early capitalism only, but I would argue that it is the very logic of sweated labour that underlies present-day phenomenon such as neo-bondage as outlined by Breman: unfreedom as a means to cheapen and control labour. Even ILO officials agree in this characteristic of unfree labour (Belser & Andrees, 2009, pp. 4–5).

Marx's formulation usefully points to the role in the creation of sweated labour of the on-going struggle between labour and capital. The relation between class struggle and unfree labour is pursued by Tom Brass. He argues that unfreedom is a result of 'class struggles from above' and that it equals de-proletarianization: a condition where labour is not even a class-in-itself (i.e. labour does not structurally constitute a part of the working class since it is not 'free'), let alone a class-for-itself (in a position to take class-based action). This makes 'unfreedom' unique (Brass, 1999). However I will argue that the claim of uniqueness of unfreedom is undermined by the fact that this category is not analysed in relation to other aspects of the general class struggle and of 'class struggle from above'. The concept 'class struggle from above' which is central to Brass' analysis was in fact coined by Ralph Miliband to conceptualise the multi-faceted class struggle waged by the 'dominant classes' to 'defend and strengthen the social order of which they are the main beneficiaries' (Miliband, 1987, p. 175). In short, the original concept emphasises that class struggle takes place along many axes. Drawing inspiration from this original definition I will argue that the class struggle from above involves a plethora of policies influencing conditions and positions of labour. It also has an immediate focal point, namely the labour process and struggles regarding its organization and terms and conditions of work (something which is not discussed by Miliband).

The multi-faceted character of the class struggle from above forms an important part of the argument put forward here: that unfree labour is not unique but is one of several means employed by capital to discipline and exploit labour. A core aspect of today's neo-liberal capitalism is arguably class struggle from above (Silver & Arrighi, 2001, pp. 56-63). Pro-labour political power in Northern countries has been rolled back, proto-social democratic

policies in the South abandoned and market forces supported in order to (re)commodify labour and lower its share of the wealth created (Standing, 2009, pp. 57-97; Wuyts, 2011). This has enabled (and been reinforced by) changes in the labour processes. Deregulation of labour markets has enabled increasing flexibilization and informalization of labour while the position of organized labour has been rolled back, sometimes through heavy-handed oppression of labour activists e.g., killings of union activists in Columbia, routine jailing of labour activists in the China.

Seen from the view of capital, labour has been cheapened and disciplined. The position and conditions of work of labour in formal employment relations has worsened while cheaper and more docile labour has been created through global production systems involving subcontracting, the replacement of formal labour with informalized contract labour, the growth of home working/putting-out system, and the use of child labour – particularly in subcontracting units and home work (Mezzadri, 2008; Chang, 2009; Standing, 2009; Barrientos, 2010). Labour is being squeezed, and for those in the worst position Marx's analysis of 'home industries' in early capitalism seems apt: that the 'normal wage' is shared between labour and their contractors so that home workers are paid even less than the standard going rate for labour (Marx, 2002).

The argument here is that imposition of unfreedom is simply one of many ways of controlling labour while lowering wages below the going rate.<sup>xvi</sup> Far from being a unique type of labour relation, it can be understood as but one form or aspect of labour relations shaped by 'class struggle from above' under neo-liberalism. The root causes of the occurrence of capitalist unfree labour relations today are the same as for the occurrence of other forms of

very un-decent work, and they need to be understood in their totality, not in separate analyses.

However, it remains that scholars such as Breman and Brass maintain the uniqueness of unfree labour today, even after the de-linking of the category from classic Marxist and liberal discussions. To them, unfree labour relations are unique due to the presence of non-economic (over and above the general non-economic oppression in society (*pace* Banaji)); and for Brass, in addition, it uniquely results in de-proletarianization. And indeed, one might chose to label all labour relations where non-economic force is present as 'unfree'. However, for capital, unfree labour fulfil the same purpose as does labour relations such as putting-out systems, employment of labour through labour subcontractors, child labour and, at a societal level, oppression of labour rights: they create a more docile and cheap labour force. Similarly for labour, employment in unfree labour relations are not always seen as the worst possible kind of employment. The evidence is that it is chosen ahead of free labour alternatives available which are perceived as even worse, such as irregular and underpaid (but free) employment as agricultural labour, or survival petty commodity production. For both capital and labour unfreedom is one of many employment relations which serve the same general purpose.

The specific characteristics of unfree labour are also less clear-cut than generally suggested. I have argued elsewhere that they are so varied that the unfree-free labour dichotomy is better understood as a continuum of labour relations, all containing *degrees* of unfreedom (Lerche, 2007). The kind of unfreedom which entails fully-fledged de-proletarianization can be seen as an ideal type or extreme end-point in the continuum. Isabelle Guerin has shown the

difference between 'harsh' and 'mild' forms of unfreedom, in the case of bonded labour in India, ranging from unfree labour relations with conditions of physical near-captivity to milder forms where the workers are tied 'only' through debt bondage, which in some cases are of very short duration, ie in some cases down to a single work season (Guerin, Bhukhut, Mariou-Gnanou, & Servet, 2004). I suggest the extension of this continuum into what in normal parlance is viewed as 'free' labour relations but which also contains unfree elements such as the Chinese 'dormitory labour regime' which ties together employment, dormitories and work permits; forced overtime which however is so widespread that it forms part of the actual 'employment contract' if not of the formal contract and hence is not perceived by workers as a specific unfree element of their employment relation; petty use of non-economic force such as banning of toilet breaks etc. Somewhere along this hierarchy of steadily less significant (but still oppressive) unfree aspects most scholars would put a division line between 'unfree' and 'free' labour relations. The argument here is that all the forms outlined above are aspects of a continuum of measures deployed to discipline and cheapen labour. A cut-off point for unfree labour relations thus bestowing the 'free labour' category to other un-decent relations which also entails some non-economic force would be artificial and would blur the common root of all such aspects.

A rigid free–unfree binary also does not allow for an understanding of the struggles that what in common parlance is seen as unfree labourers are actually involved in. There is a good deal of evidence that workers in such relations do take action in order to defend and/or improve their conditions. This may even include the unionization of bonded labour (Lerche, 1995, 2007; Prakash, 2009, pp. 211-215). Needless to say such labour actions face an uphill struggle but the fact that struggles occur show that so-called unfree labour do

indeed take class-based action. They are not all *effectively* de-proletarianized as Brass would have it and only a less binary position such as the one proposed can explain this.

#### SPECIFIC FORMS OF EXTREMELY UN-DECENT LABOUR: THE INDIAN CASE

The specific ways in which labour is disciplined and cheapened matter for both capital and labour and may impact on class positions of capital and labour in general as well as more specifically on accumulation and conditions of pay and work. Here India is used as an example. It is commonly accepted that India has the highest number of unfree labourers of any country in the world. Using the standard free-unfree dichotomy, Anti-Slavery estimated that there were 20 million debt-bonded labourers in India in 2001 while the ILO minimum estimate for Asia and the Pacific was 5.96 million (Anti-Slavery, 2001; ILO, 2005a). In addition, much of the theoretical debate regarding unfree labour draws on evidence from India.

Work is not 'decent' (to refer to the ILO category of 'decent work') for the overwhelming majority of the Indian population: 92 per cent of the working population are in informal employment and this proportion is growing (from 91.5 to 92.3 per cent between 1999/2000 and 2004/05) (NCEUS, 2009, p. 13). It is no wonder that a staggering 77 per cent of the population lived below the international poverty line of \$ 2 a day (in purchasing power parity) in 2004-05 (Sengupta, Kannan, & Raveendran, 2008). In fact, the most recent data for rural wages indicate that real wages fell from 2004-05 to 2008-09! (Usami, 2011).<sup>xvii</sup>

Labour relations in India are in general not improving for labour. It is the case that some upgrading of production and of conditions of work does take place; but given the figures just presented it is clear that this is a weak trend, and it can only be documented through specific case studies. Upgrading may take the classic route of mechanization, which lowers the proportion of labour cost in production and increases the importance of a stable and semiskilled workforce. This creates the potential for workers to improve their position, and to do away with unfreedoms (Roesch, Venkatasubramaniam, & Guerin, 2009). This weak trend also relates to CSR codes of conduct imposed on main producers for Northern brand names or chain stores as such producers are compelled to maintain certain minimum standards. While they rarely have an impact on subcontractors and home workers, it has been shown to improve conditions of work in firms that Northern brand names and chain stores deal with directly (De Neve, 2009; Mezzadri, 2010, pp. 152-153).

The main trend is the continued disciplining and cheapening of labour. An important element in squeezing labour and cutting costs is the putting in place of several tiers of control and employment/market relations between the lead firm and the workers engaged in the actual production process. From the point of view of the lead firm this may involve subcontracting and, down the line of subcontracting,<sup>xviii</sup> the outsourcing of production to agents who in turn contract in home workers. For example, in subcontracted factories such as those in the garment hub of Tiruppur the norm is 12-hour shifts, there is little by way of safety rules and pay is low (De Neve, 2009). However, these jobs are still desirable as for many they are better than those in smaller, informal units where, for example, child labour occurs.

Home work, which is even more lowly remunerated and where child labour is commonplace, is generally agreed to be on the rise (NCEUS, 2007, pp. 59-73, 103),<sup>xix</sup> with the garment sector, weaving and tobacco products leading the way, outsourcing both operations such as the stitching, manual weaving, and tasks which are very labour intensive such as embellishment (Kantor, 2003; de Neve, 2005; Mezzadri, 2008).<sup>xx</sup> Nearly fifty per cent of women employed in manufacturing are home workers (4.4 million) (NCEUS, 2007, p. 58). They may well see home working as the best possible way of earning an income; but it is still a way of cheapening and disciplining labour. A recent case study from the Delhi garment sector showed a high incidence of child bonded labour in home working, thus starkly highlighting the cheapening/disciplining aspect of this type of labour relation (Bhaskaran, Nathan, Phillips, & Upendranadh, 2010).

Other workers have seen their pay and conditions plummet after they have been transformed from wage workers to 'self-employees' as their factories have shut down and transformed into contracting-out units while their ex-workers have become home workers (Breman, 1999, pp. 411-412; Madhavi, 2006; NCEUS, 2007, pp. 72-73).

Another way to put in additional tiers of control and to distance the lead firm from the labour relation is to subcontract the supply of labour to labour contractors who employ, pay and oversee the work of their labour. Such temporary labour can be treated as informal labour and offered the same kind of poor pay and insecure employment conditions as other informal workers. Labour contractors dominates in informalized sectors such as construction but has also been reported from garment sector enterprises. Overall 40 per cent

of the workers in formal sector enterprises are informalized (NCEUS, 2007, p. 39; Singh & Sapre, 2007).

It is in this context that unfree aspects of labour relations in India should be viewed. In the discussion of the interrelationship between neo-liberalism and unfree labour, there is sometimes a tendency to reduce the issue to labour relations in export production, commodity chains and global production networks. However international capital and commodity circuits are also setting the norms for domestic oriented production, and the national 'anti-labour regimes' that have been established under neo-liberalism in India have hit workers in domestically oriented production as well. In India in fact it appears that capitalist labour relations with unfree aspects occur primarily in capitalist agriculture and agro-industries, brick kilns and construction work; all sectors which are overwhelmingly oriented towards the domestic market. The dominant form of so-called unfreedom in these sectors is labour bondage based on yearly advance loans which are then paid back either the same year or over a number of years, in some cases decades, with all that implies in the way of variations in degrees of unfreedom (for overviews, see for example Srivastava, 2005; Lerche, 2007; Breman & Guerin, 2009). The loans are more often than not advanced by labour contractors. It is to these contractors that labour is tied, and it is the contractors who organise employment of 'their' labourers, who pay each individual labourer out of the sum paid to them by the end-employers, and ensure that they get what they consider their share from the debt bonding arrangement. The contractor is both employer, debt bonder and gang leader, negotiating terms and conditions with the end-employer. In each sector labour bondage co-exists with units not relying on bonded labour and/or not relying on labour

contractors (Guerin, Bhukhut, Mariou-Gnanou, & Ventatasubramanian, 2009, pp. 238-249; Picherit, 2009; Prakash, 2009, pp. 214-215).

Several authors have commented on the range of labour relations covered by the terms 'unfreedom' and 'bondage'. As mentioned earlier, Guerin et al. (2004) explicitly argue that there were harsh and mild forms of unfreedoms in the parts of South India they studied, ranging from relations where the labourers were locked up for the night and had no time off at all, to relations where labourers were 'only' tied by the debt bond. The ILO implicitly takes this continuum approach even further when they argue that not all debt bonded labourers are unfree, as not all debt bonded labour relations involve extra-economic force (ILO, 2005b). This seems plausible as debt bondage even without extra-economic force is likely to be sufficient to cheapen labour and tie it to the contractor.

Aspects of unfreedoms also occur in some export industries. For example, in the 1990s bonded labour was reported in some part of the diamond cutting industry (Kapadia, 1995). However, it remains the case that so far unfree labour has not been reported in large, labour-intensive export oriented sectors such as the garment industry (NCEUS, 2007, p. 106) except within the home working end of the industry as shown by the Delhi case study. The type of unfreedom experienced by the child labourers of the case study was also of the less harsh type, with constant communication with family and breaks in which the migrant children could return home (Bhaskaran et al., 2010). In such sectors the means of cheapening and controlling labour has been primarily through contract workers, subcontracting, child labour and home working, and generally poor conditions of pay and work also within factories. This also includes significant amount of compulsory overtime which, as discussed earlier,

according to the ILO also constitutes forced labour, but which is very much at the less harsh end of the spectrum.

It is not known if labour contractors in large-scale industries also make use of bonded labour but it is unlikely that this is common.<sup>xxi</sup> While this kind of contract workers are employed under qualitatively worse conditions than workers in formal employment relations, these jobs are still a good deal better than what is on offer for labour compelled by economic necessity to take on labour bonding loans.

Relations akin to labour bondage do exist in the shape of loan-based tie-ins between groups of home workers and the traders/manufacturers/contractors who outsource to them. Since the outworker is not an employee in a strict sense this is not registered as a bonded labour relation. Degrees of unfreedom between formally self-employed workers and those commissioning, buying and often delivering the inputs to the production appear to exist in several sectors, including bidi rolling, weaving (NCEUS, 2007, pp. 59-73), garment production (Standing, Unni, Jhabvala, & Rani, 2010, pp. 55-57) and rubber production (Nair, 2008, pp. 207-208), where the growers/workers are tied in to the agents via credit relations and deferred payments. Tie-ins between self-employed workers and traders have a long history in agrarian India; what is relatively new is that they are now made to play an important role in modern-day organization of production relations.

In the previous section it was pointed out that so-called unfree labour in India often is not de-proletarianized in the full sense discussed by Brass; there are instances of collective action and even union activity although that is more rare (Prakash, 2009). Bonded labour who are

only tied by the debt bond also often do not see themselves as unfree, a condition they associate with generation-long tie-ins of the type which is by now quite rare in India (Lerche, 1995; Guerin et al., 2004). While worse degrees of unfreedom also exist it does appear that less extreme degrees of unfreedom is more common.

It should by now be clear that the cheapening and disciplining of labour in India works though different modalities including subcontracting and informalization of labour, contract labour, the replacing of employment relations with market relations and subcontracted home workers, and additional cheapening and disciplining through advance loans to labourers and home workers. They all represent various forms of wage labour and many of them display the same basic characteristics as those of 'sweated labour' as discussed by Marx.

It does appear that different industries develop their own specific mix of modalities. It might be that market orientation (domestic/export) plays a role herein, but market orientation does not constitute a line of demarcation between unfree and free labour. To underline these points, Brazil is another instructive example. Three different sectors have developed different modalities to create very un-decent labour relations. The Brazilian cattle ranch belt in the Amazon is as (in)famous for the political dominance of the large-scale farmers and their violent labour control methods as it is for its beef production for, among others, major fast food chains in the UK. In this area extreme forms of unfree labour including armed control and the chaining and locking up of unfree labourers have been widely documented (Sakamoto, 2009). Milder forms of unfree labour exist in parts of the domestically oriented garment sector in Sao Paolo (McGrath, 2010a), while very harsh conditions of work which, however, are not all unfree exist in the sugar harvesting and processing sector, where the

present increased competition related to US demand for ethanol may worsen conditions even more (McGrath, 2010b).

## CONCLUDING DISCUSSION

To recapitulate, the way both Marx and the ILO conceptualise and operationalise unfree/forced labour is problematic. However the ‘degrees of unfreedom’ approach point to a way out of the empirical problems detailed in this article. The theoretical approach of the ILO is unrescuable. It is argued here that the political economy approach can be developed by way of conceptualizing unfreedoms as an aspect of capitalist wage labour relations.

The main new proposal of the article is that a continuum of unfreedoms should be understood as one among many very ‘un-decent’ forms of labour relations, and that all of these forms can usefully be understood as outcomes of class struggle from above. In today’s world the analysis involves contextualizing class struggle from above as part and parcel of neo-liberalism. This includes both wider pro-capital and anti-labour policies and initiatives, and changes to the labour relation in order to cheapen labour and make it more docile. The theoretical analysis of present-day un-decent forms of labour relations draw on Marx’s concept of ‘sweated labour’ which is seen as an outcome of the weak class position of sections of the working class. This results in labour being forced to cede a part of the ‘normal wage’ to the contractor, leading to sweated labour being paid less than such a wage.

The Indian case study shows how such un-decent forms are changing and developing and how this potentially enables their further spread. The brief case study offered here opens up

for further studies of the forms of labour relations identified, and the identification of new forms and degrees of unfreedom, especially of the less extreme kind. Some forms of debt bondage are not even accepted as forced by the ILO; but they are certainly still ‘undecent’ and contains, in the vocabulary developed here, unfree aspects.

It is also noticeable that what is considered the dominant form of unfreedom in India, neo-bondage, till now has been located primarily in domestic industries and capitalist agriculture while other forms are developing in export industries. This may or may not be an India specific situation; certainly the harsh unfreedoms in the cattle export sector in Brazil show that it cannot easily be generalized. This does however raise the question of what decides the variation between sectors in the occurrence of unfreedoms, apart from obvious issues such as significance of labour costs and levels of capital investment. No doubt competitive pressures play a role, and more so in some cases than in others. However, the main driver does not appear to be the profit squeeze that commodity chains and subcontracting may impose on employers, as in India neo-bondage is not primarily a phenomenon among subcontractors. In fact both Breman (1996, p. 196) and Guerin (2009, p. 191) have calculated that profits are very high amongst brick kiln owners employing neo-bonded labour;<sup>xxii</sup> it appears individual capital engages in very un-decent labour relations simply because it *can*. Possibly there is a need to investigate the *materiality* of the production more, i.e. the specific production processes and the extent to which they can be broken down into elements which can be dealt with by significant input of relatively unskilled labour.<sup>xxiii</sup>

Both the class struggle from above and the means of oppression deployed in the creation of cheap and docile labour take many forms. To claim that one form is morally more repugnant

than the others is difficult: for example, how to rate degrees of unfree labour relations on a scale which can also include the killing of labour activists? More specifically, how to morally distinguish between different forms of very un-decent labour relations when they are all more-or-less unfree? There might be matters of degrees of unfreedom but fundamentally all such relations are the result of the non-regulation of labour relations achieved by the class struggle from above under neo-liberalism. While we need to understand the ins and outs of the relations better, enough is known already to morally condemn all of them.

As for the argument that by singling out unfree labour, ILO style, it will be possible to combat this type of labour relations effectively without changing the underlying processes which created them, the main difficulty is that there is no evidence that this is correct. Judged on the basis of the high profile campaign against child labour on which the ILO campaign against forced labour is moulded it may not work. The ILO now states that the decrease in child labour has slowed down and that campaign targets will not be met unless efforts to do so are increased (ILO, 2010). The real picture is likely to be even less rosy as one reaction to the campaign is for child labour to be relocated to less public areas hence not enumerated (Bhaskaran et al., 2010). So, also from a campaigning perspective it may in fact be necessary to focus more on the mechanisms creating 'indecent work' than on one of its forms only.

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<sup>i</sup> The term ‘exploitation’ is not explained by the ILO but it is used routinely as a description of what ‘forced labour’ entails, e.g. ‘forced labour for commercial sexual *exploitation*’ and ‘forced labour for economic *exploitation*’ (ILO 2005a: 13); italics added.

<sup>ii</sup> Anita Chan is one of the few academics arguing that this constitutes unfree labour (Chan 2000).

<sup>iii</sup> The ILO only specifies the broad global geographical region of forced labour, i.e. ‘Asia and Pacific’, but the general view is that the majority of all cases of ‘private economic exploitation’ forced labour are situated in India (Anti-Slavery 2001).

<sup>iv</sup> The ILO considers such conditions to be possible only under the threat of extra-economic force.

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<sup>v</sup> From a liberal perspective, it might be tempting to tie the ‘degrees of unfreedom’ approach together with the ‘development as freedom’ approach of Amartya Sen (1999). However, such a move would involve similar difficulties to those experienced in relation to the ILO approach outlined above: namely, that this would disregard the connection between economic theory and political theory with regard to unfree labour.

<sup>vi</sup> This is an issue also dealt with by Phillips and Mieres (NICOLA PLS INSERT REFERENCE).

<sup>vii</sup> In fact most of the operationalization discussion regarding forced labour issues concerns how to distinguish between economic compulsion of the workers and non-economic force. See, for example, the discussion ‘Forced labour versus poor working conditions’ (ILO 2005b: 8, 13).

<sup>ix</sup> The ILO is not alone in disregarding power relations; this is common within most mainstream studies, see, for example, Basu and Chau (2003) and Genicot (2002).

<sup>x</sup> Marx saw capitalism as relentlessly moving forward; it was inevitable that capitalism would develop into its most productive forms. He did not expect that forms of labour which do not speed up economic and technological development as much as free wage labour might continue to play a role beyond the initial stages of capitalism (Marx 2002: 93–121).

<sup>xi</sup> More precisely, non-economic force over and above what at any given moment in history is accepted as ‘normal’ in society at large, in a given society (Rao 1999).

<sup>xii</sup> Rao argues that what others see as unfree capitalist labour relations are solely the result of specific extreme power relations between capital and labour and thus qualitatively different from what Marx labels unfree labour relations (Rao 1999).

<sup>xiii</sup> Breman’s position is not explicit Marxist but his pro-poor empirical investigations of class and labour relations are clearly inspired by such an approach.

<sup>xiv</sup> Henry Bernstein has made a similar point regarding the continued reproduction of petty commodity production in farming. Banaji’s detailed analysis, among other things, is based on a distinction between Marx’s broader category ‘wage labour’ which *can* encompass both free and unfree labour. This is similar to Ramachandran’s earlier discussion of agricultural labour in India (Ramachandran 1990) and has been taken even further by Bhandari (2008: 81ff). On the other hand, Tom Brass disagrees very strongly with Banaji’s analysis even if he also argues that unfree labour is prevalent in mature capitalism (Brass 2003).

<sup>xv</sup> Sakamoto (2010) makes a similar point as he relates unfree labour to ‘primitive accumulation’ in general, a point strongly refuted by Brass as, to him, the upshot of this view is that unfree labour is related to aspects on non-mature capitalism only (Brass 2011).

<sup>xvi</sup> There is ample evidence that for employers unfree labour conditions represent a cheapening of labour compared to what is paid to labour undertaking the same tasks but who are not in these kinds of labour relations (see for example Guerin 2009: 173ff; Guerin et. al. 2009: 241-5; Roesch et. al. 2009: 290-1, Standing et. al. 2010: 55-7). However, it should also be noted that, as argued by Krugman, for the individual labourer it is of course better to be exploited than not being in work at all (Cawthorne and Kitching 2001).

<sup>xvii</sup> Rural wages (agricultural as well as non-agricultural) increased up to 2003-4 but since then price inflation has outstripped nominal wage increases (Usami 2011).

<sup>xviii</sup> Between 25 and 30 per cent of enterprises in the unorganized sector are subcontractors (NCEUS 2009: 272).

<sup>xix</sup> The number of home workers was estimated at 8.2 million 1999-2000 (NCEUS 2007).

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<sup>xx</sup> In 1999–2000, official figures showed that 12.6 per cent of all informal workers in the industry sector were home workers. (NCEUS 2007: 58).

<sup>xxi</sup> Global studies of labour contractors are yet to make this link empirically (Barrientos 2010).

<sup>xxii</sup> Guerin calculated the rate of profit to be around 40 per cent (Tamil Nadu) while Breman suggested rates of profits between 40 and 60 per cent in Gujarat.

<sup>xxiii</sup> The focus here is primarily on what drives the imposition of un-decent forms of labour relations from above, by the employers. Other aspects relating to the labour side of the equation have been discussed elsewhere (Lerche 2007, Phillips and Mieres (NICOLA – REFERENCE?)), with both agreements and disagreements with in this literature.