

Multi-stakeholder Regulation: Privatizing or Socializing Global Labor Standards?

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Summary. — This paper evaluates leading non-governmental labor regulation initiatives in the United States and Europe. It comparatively assesses the codes of conduct and monitoring systems within these initiatives, discusses their different models of regulation, and proposes criteria for evaluating their effectiveness. It identifies critical factors which appear to support more effective non-governmental regulation, such as substantive participation of local stakeholders; public transparency of methods and findings; and mechanisms that bring market pressures to bear on multinational corporations, and simultaneously support processes of multi-stakeholder problem solving within factories and global supply chains.

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1. INTRODUCTION

The most dynamic experiments in global governance are not about national regulatory policies, international trade agreements, or even international agency initiatives. Rather, a new class of governance institutions has emerged that involve private and non-governmental stakeholders in negotiating labor, health and safety, and environmental standards, monitoring compliance with these standards, and establishing mechanisms of certification and labeling that provide incentives for firms to meet these standards. These non-governmental systems of regulation are expanding extremely rapidly across industries and regulatory arenas—from garments, to shoes, toys, forest products, oil and gas, diamonds, chemicals, coffee, electronics, and even tourism (Cashore, 2002; Gereffi, Garcia-Johnson, & Sasser, 2001; Herrnstadt, 2001; Utting, 2002; Wick, 2001)—in response to recent trends in the weakening of national regulatory systems, the strengthening of multinational corporations, increasing importance of brands, and growing demands from civil society actors for new mechanisms of corporate accountability.

Proponents argue these initiatives are more flexible, efficient, democratic, and effective than

traditional labor regulation (see Bernstein, 2001), while critics conversely assert that non-governmental regulation is a cynical attempt to free industry from the last vestiges of state regulation and union organizing (see Justice, 2001). Some fear non-governmental systems of regulation will preempt or “crowd-out” worker organizing efforts and the current role of unions, while others believe these systems can support worker empowerment and participation in shop-floor negotiations. Some believe monitoring and certification will provide consumers with a false sense that problems have been solved and will de-mobilize international labor and environmental campaigns, while others see the information generated by non-governmental regulation as key to transforming how we produce, consume, and regulate global products and processes.

Perhaps the most damning critique of non-governmental governance systems is that they represent a new form of privatized, elite regulation, and that these systems are mainly designed to protect multi-national brands, rather than to actually solve labor or environmental problems. From this perspective, much

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that falls under the heading of global governance is suspect, unaccountable, and likely to benefit multi-nationals more than workers, communities, or the environment. Even labor governance regimes driven by NGOs from the north can be viewed as top-down, consumer-oriented, “elite” forms of regulation (Rodríguez-Garavito, 2005).

It is within this critical frame that new systems of non-governmental labor standards, monitoring, and regulation must be evaluated: first, for their general effectiveness, and second, for their accountability to local stakeholders. This paper seeks to critically and constructively engage this heated debate and assess emerging systems of non-governmental labor monitoring and regulation. Based on interviews with staff of the leading initiatives in the United States and Europe, interviews with multi-national managers and advocacy organizations, a review of the existing literature and program documents, and direct evaluation of monitoring of factories in China, Indonesia, and Mexico, this paper details efforts at non-governmental labor regulation, explains how these systems function, describes the challenges they face, and evaluates their effectiveness in improving labor practices. The concluding concern of the paper is whether and through what institutional designs these systems could more effectively improve conditions in factories, and more broadly operate as effective, credible, and locally accountable systems of governance.

The paper begins by describing and evaluating the leading non-governmental labor regulatory programs in the United States and Europe: the Worldwide Responsible Apparel Production (WRAP) certification program, Social Accountability International (SAI), the Fair Labor Association (FLA), the Ethical Trading Initiative (ETI), the Fair Wear Foundation (FWF), the Worker Rights Consortium (WRC), and a range of private internal monitoring initiatives. The paper comparatively assesses these systems, discusses their different models of regulation, and proposes a set of criteria for evaluating their effectiveness. The paper then discusses several cases that appear to be examples of successful non-governmental governance, interrogating their underlying dynamics, and drawing implications for broader efforts to make global governance more democratically accountable to those most directly impacted. The paper concludes by discussing factors which appear to support more effective non-governmental regulation, such as

substantive participation of local stakeholders; public transparency of methods and findings; and mechanisms that bring market pressures to bear on multi-national corporations, and simultaneously support processes of multi-stakeholder problem solving within factories and global supply chains.

2. NON-GOVERNMENTAL LABOR GOVERNANCE

Non-governmental systems of labor monitoring and regulation are both more diverse and messier than traditional government stipulated fixed rules and standards, monitoring and enforcement, and judicial review (Arthurs, 2001; Lipschutz, 2000; Reinicke, 1998). Non-governmental initiatives involve multiple actors in new roles and relationships, experimenting with new processes of standard setting, monitoring, benchmarking, and enforcement. They include chains of standard setters, layers of monitoring and enforcement, and competing systems of incentives and action.

To some degree this reflects the move from factory-centered, state regulation focusing on individual sites of production, to supply-chain and “brand” regulation, focusing on multiple actors in a production chain. The aim of the new non-governmental governance is to create a network of regulators, involving multiple stakeholders along global supply chains using NGOs, firms, and sometimes government agencies in setting standards and monitoring protocols. Enforcement relies largely on market sanctions—either through inter-firm purchasing decisions or NGO consumer campaigns that seek to influence consumer purchasing.

A diverse family of regulatory strategies are involved. In this paper, I use “internal monitoring” to refer to monitoring conducted by brands and retailers, “external monitoring” to refer to monitoring conducted by third-party organizations, and “verification” to refer to independent evaluations (not paid for by those being monitored) of the results of monitoring systems. Detailed descriptions of existing programs can help elucidate these different models. The codes themselves are diverse (Compa & Hinchliffe-Darricarrere, 1995; Diller, 1999; Varley, 1998). Some detail precise rules of action, while others present only general principles of good practice. Many appear to be converging now around the ILO core standards (MSN, 2004), and basic principles regarding

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