

Sustainable capitalism or ethical transnationalism: Offshore production and economic development[☆]

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Abstract

Multinational firms are increasingly facing pressures from consumer groups and activists to become more socially responsible. These pressures include calls for more environmentally safe production, improved labor conditions, and fair trade among transnational subsidiaries. While some describe the effects of globalization and the Corporate Social Responsibility (CSR) movement as ratcheting up transnational social standards, others claim that these efforts merely serve as a legitimizing mechanism of global capitalism, which sustains unequal distributional effects under the rhetoric of human rights. By tracing CSR activism surrounding the apparel industry (focused on Nike) and the mass-retail industry (focusing on Wal-Mart), this article offers a more nuanced analysis of recent developments in the quest for socially and environmentally responsible global production.

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1. Introduction

In this article, I argue that the duality between the two rival ideas of social responsibility and global mobility is largely false. For example, in the field of labor and employment regulation, the debate about the effects of globalization of labor standards must be approached with a more complex lens. While some contexts of globalization have undermined national industrial relations systems and eroded labor protections causing a global race to the bottom, other developments have had positive effects on the mobility and opportunities of labor. These latter forces have created competitive pressures to ratchet up production processes and work conditions

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and have pushed forward skills, training and economic development. Importantly, the mere debate about globalization – is it good or bad? – is largely archaic. Scholars of trade and the international and transnational political economy must recognize that the train of globalization has already left the station. Similarly, the idea that we can choose between forms of activism and regulation, between public legal regimes and voluntary private initiatives, or between domestic and international norms, is misleading. Most legal regimes are composed of public and private norms. The task then, for students of globalization and human rights, is to produce more nuanced analysis of mechanisms, incentives, and strategies for promoting social standards.

In the following sections, I offer some observations from my studies of labor standards and multinational corporations (MNCs), as well as my studies of employment law and work regulation in various legal systems. I argue that these often-false ideological left/right dichotomies in the controversies surrounding globalization and human rights impede our abilities to find common grounds and apply lessons about socially responsible global production. A primary example for this is the choice between hard and soft strategies for regulation. There is a range of different frameworks and mechanisms with which the question of global standards can be approached. These include conventional domestic law, through court litigation or administrative regulatory enforcement, international law, human rights non-governmental activism, and transnational labor networks. Supplementing conventional legal protections, an emerging school of thought within the legal academy argues that distinct from the approach of formal domestic and international laws in attempting to prevent a race to the bottom, there can be an effective framework for promoting labor practices that seeks to promote a “race to the top,” through privatized, softer approaches to work standards (Lobel, 2004; Sabel, Fung, & O’Rourke, 2001). This framework favors the adoption of “best practices” that will raise labor standards and create a positive spill over from multinational corporations to domestic firms.

The Corporate Social Responsibility (CSR) movement demands that corporations, because of their dominance as global institutions, address social and environmental problems around the world. Increasingly, as a response to public pressure from consumers, investors, unions, and NGOs, corporate codes of conduct are voluntarily adopted by MNCs. The main criticism, however, of these approaches is ineffective implementation, the absence of monitoring, and lack of incentives to comply. Yet, as law and society scholars have shown in various contexts, legal strategies must be understood as part of a dynamic and complex set of strategies, from both the public and private sectors, which bring about social change. In the following sections, I will demonstrate these complexities by looking at two paradigmatic examples for the push for Corporate Social Responsibility: the apparel industry during the 1990s and the mass-retail industry at the beginning of the 21st century.

Both contexts teach us that the past decades have seen significant changes in the types of demands the human rights community can make on the business community. By comparing the 1990s with 21st century activism, I will offer observations on the transformations in the scope of legitimate practices in the global arena and describe the frontiers of transnational social justice. In particular, I will demonstrate these developments through two paradigmatic corporations that have been the target of human rights investigation, media attention, litigation, grassroots consumer action: Nike and Wal-Mart.

2. From intentional ignorance to reactive declarations

While during the 1980s firms routinely responded to challenges by human rights activists with dismissal, using legal constructs to defer responsibility, recent years have seen a change in

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