

# *The threat posed by 'corporate social responsibility' to trade union rights*

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## Paper Outline

This paper will attempt to advance our understanding of global governance by highlighting the multi level and multi sector nature of governing arrangements. This will be undertaken by pursuing an analysis which looks at domestic and international enforcement with an examination of the role of corporations and workers in shaping regulation and enforcement. Second, it will shed light on the puzzling problem of the lack of labor enforcement by challenging existing notions of norm cascading and spillover. Much of the regime literature is too complacent on the spread of human rights norms when one considers the ongoing abuse of basic labor rights. Third, it will highlight the diversity of factors in numerous countries that shape the labor standards regime. The factors cited above will likely play different roles in different states. Fourth, I will challenge liberal assumptions about the relationship between foreign investment and labor rights. Thus it will explain the surprise of Quibria (2006) at the 'paradox' of poor-governance countries attracting the highest levels of foreign investment. Fifth, the paper will highlight the role of labor agency in securing labor rights. Following up on some important research by Caraway (2006) in Indonesia on "why some transnational efforts are more effective than others," an effort will be made to fully address the issue of "different national contexts offering varying opportunities for, and constraints on, social movement mobilization. (Smith et al 1997).

There will be an examination of "non-electoral accountability", comparing the efficacy of "Corporate Social Responsibility" self-regulation schemes, worker self-help (strikes/protests) and global civil society pressure on governments to protect workers (i.e, by increasing the minimum wage or cracking down on unscrupulous labor contractors).

One tool to be used in the interrogation of the differences in these approaches will be the Governance Triangle (NGOs, the State and TNCs) developed by Abbott and Snidal (2006). In discussing Regulatory Standard Setting, they state that international organizations, "...lack the capacity to oversee implementation by firms, and states have not granted IGOs the authority or resources for effective monitoring or enforcement."

Further, "The symmetry of the Triangle - with actor groups at the vertices - may suggest that the three groups are equal in some sense. In fact, however, actors are often highly unequal in their interests, power and capacities..." One of the key challenges of this paper will be to quantify the imbalance in resources

Northern NGOs found themselves in a quandary in relation to voluntary standards. Many activists interested in improving conditions for workers in the developing world entered into partnerships with corporations that sought guidance or "dialogue". (Shaw 2004, cf. Khagram 2002) Similarly, NGOs focused on the labour rights issue found it a challenge

to work with trade unions; the involvement of these “outsiders” creates the risk of “crowding out” union involvement. (Egels-Zandén and Hyllman 2006)

According to some scholars, businesses have no responsibility to follow human rights guidelines, such as the Universal Declaration of Human Rights or International Labour Organization (ILO) Conventions. International legal principles cannot bind businesses, “with the possible exception of certain war crimes and crimes against humanity.” (Ruggie 2006)

Where possible, the paper will use discourse analysis to illustrate the dominance of the neo-liberal framing of issues with its concomitant emphasis on market solutions and denigration of state action.

In the struggle to attain reasonable enforcement of domestic labour law protections, then, “the fate of labour norms depends directly upon the social forces advocating their adoption and internalization”. (O’Brien 2004) Just as the International Labour Organization proved “incapable” of addressing the Fascists’ mid-century violations of key labour freedoms (ibid), in the globalized era, governments may often ignore abuses as abhorrent as indentured servitude and human trafficking.

The paper will present evidence that labour rights are a lower-echelon concern for developing-country policy makers, reflecting the biases of international financial institutions and foreign donors. While “good governance” has been the chief objective of reforms, evidence indicates that the high-performing Asian economies enjoy spectacular growth rates with sub-par governance performance: “Through the Philippines fares better than Vietnam in terms of the conventional measure of governance, the former has virtually economically stagnated and the latter is fast ‘booming out of the poverty trap.’” (Quibria 2006 citing research by Pritchett 2003)

High praise was accorded to those countries which handed over economic decision-making to technocrats and “governance” measures were generally restricted to treasury, trade and commerce ministries. As Alejandro Alvarez (2004) has written, “Mexico is deeply reliant on state actions to construct its new global economic regime. The state has not stepped back from economic activity...[the] state functions as the main facilitator for entrenching the second generation of neo-liberal structural reforms.”

Meanwhile, state sectors dealing with workers’ protection issues have atrophied or remained inert. Researchers in Taiwan found less than one percent of businesses in compliance with the Labour Standards Act (LSA) requirement to have an annual conference between workers and management. (Chen et al 2003) This data was recorded in 2001, a year after labour disputes numbered 8,026 - an all-time high.

The gap between reality and the rhetoric of rule-of-law, good governance and legal reform initiatives, then, is wide and appears to be growing. At least one legal scholar has seen an opportunity in the workers’ plight, though the remediation program is overtly market-friendly. “Labour law is important to Teubner for another reason as well.

Reflexive law rests on an attempt to, "...achieve salutary egalitarian purposes by institutionalizing appropriate incentives, norms and guidelines while incorporating flexibility." (Scheuerman 2001).

The uncertain legal underpinning of collective bargaining served as an inspiration for much of Teubner's theoretical work on charting a middle path between formal law and substantive law. (ibid) Formal law appeals to those legal theorists critical of the welfare state's more particularized and goal-oriented substantive law. The "materialization of law lamented by liberal legal scholars from Max Weber to Friedrich Hayek" included vague and moralistic standards, such as "in the public interest." (ibid) Scheuerman attempts to graft Teubner's reflexive law approach onto a dysfunctional global political economy where the "have-nots" are in desperate need of the "reflexive" procedural device of "reducing power asymmetries," (ibid) - just as collective bargaining is designed to diminish the inequality between workers and capital owners.

Simple enforcement, I will argue, seems to be a better avenue to addressing power disparities. Widespread non-compliance with minimum wage legislation in Indonesia, for example, went unnoticed until a survey amongst factory workers at 200 enterprises near Jakarta compelled an embarrassed government to respond with a press campaign. Further, the patently unfair and insufficient wage itself came under scrutiny as the non-enforcement issue became a public debate. What is notable in this instance of global civil society pressure ("compliance-promotion") is that the Indonesian authorities eschewed the use of labour inspectors from the Ministry of Manpower, thus raising the issues of "capacity deficits" and the attendant possibility of "utilizing NGOs and local social pressure... [to] develop a 'regulatory society' model bypassing the regulatory state". (Braithwaite 2006) On the whole, however, the restorative justice and responsive regulation ideas come up short. This paper will argue that the idea that rampant worker abuse is best "checked by a complex plurality of many separated powers - many semi-autonomous modes of networked governance" (ibid) serves to draw attention away from corrupt and autocratic regimes in the very area where pressure for basic law enforcement should be encouraged.

Some of the precepts of responsive regulation have salience in the developing world. Researchers and activists in the Dominican Republic are presently evaluating a labour law enforcement strategy that places more emphasis on tutelary interventions, as opposed to common law-based "command and control" procedures. (Schrank 2005) A wholly different approach can be observed in Cambodia, where the garment industry - at the state's urging - takes part in an experimental "contracting out" of labor inspection activities to a competent (by most accounts) and independent office of the International Labour Organization. Besides a handful of somewhat promising experiments related to state enforcement of labor laws - mostly confined to the garment sector - the developing world's workers remain virtually unprotected