

The Paradox of Partnership: Assessing New Forms of NGO Advocacy on Labor Rights

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Book a flight on British Airways and the airline will calculate the carbon emissions of your journey. Pick up a chicken for dinner, and its label will tell you the amount of living space that the bird enjoyed before it landed in your supermarket. But buy a T-shirt at many high street retailers, and you will learn nothing about the person who produced it. We now know more about the living conditions of the animals that we eat than the humans who clothe us.¹

Nongovernmental organizations (NGOs) involved in rule making on labor rights are as varied as the companies they seek to influence. Many of these NGOs consist of little more than a handful of staff cramped in a small office in New York or London, armed with an Internet connection, a list of contacts in developing countries, and a limited budget. Others have bigger budgets, more staff, wider networks of contacts, and greater public renown. Some focus only on the labor rights practices of a single corporation, while others seek to engage companies across a whole industry sector, country, or region. Regardless of their differences, NGOs involved in rule making on labor rights share a willingness to work astride a series of divides: the divide separating the for-profit and not-for-profit sectors; separating governmental and nongovernmental entities; and separating the production of goods with “public” characteristics (such as environmental protection or public health) from the production of private goods (such as consumer durables).

Labor rights NGOs straddle these numerous divides because the problems they seek to address are intrinsically multidimensional, and because they have multiple

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interests. For example, the problem of child labor requires expert auditing both to identify underage workers on-site in a factory and to ferret out irregularities in company records that mask underage hiring. Addressing child labor in the workplace also requires practical knowledge of social services so that children removed from factories can be connected with appropriate sources of support. No one NGO can accomplish everything—so there is a natural division of labor among groups with different types of skills and with interests in different aspects of complex problems, such as child labor. Labor rights NGOs thus craft their missions and their organizational structures distinctly. Some groups leave the NGO sector entirely, forgoing the traditional 501(c)(3) nonprofit tax status under U.S. law in order to be able to gain revenue from the promotion of strategies to enhance corporate responsibility.² Others have hybrid forms of organizing that defy traditional categorization, such as labor unions involved in “social movement unionism”—a form of grassroots organizing involving dues-paying members alongside community residents³—or the creation of “worker centers,” which function as nodes of organizing and as providers of community services.⁴

One common trend among labor rights advocacy organizations is the emergence of public-private partnerships (PPPs), defined here as relationships that groups in the nongovernmental/nonprofit sector establish with groups in the private, for-profit sector in the interest of promoting labor rights.⁵ Most such relationships are collegial, although some evolve only after pitched confrontation. This article argues that labor rights PPPs are a growing phenomenon in corporate governance, and explains the contemporary context in which labor rights PPPs have arisen, explores the domains in which they are prevalent, and analyzes several of the governance challenges typical of rule-making arrangements of this type. It further argues that while they are a limited tool that can, at times, be used instrumentally by business for reputational reasons, and while in many cases PPPs ultimately fail to transform fundamentally the system of production they seek to redress, they nevertheless are a dynamic new form of rule making that merits close attention.

THE CONTEMPORARY CONTEXT

One of the overarching features of contemporary labor rights regulation is its heterogeneity. Labor rights are officially regulated at varying levels: national, regional, and international. There is a wide range of national regulations covering multiple aspects of workers’ rights and labor standards (for example, wages, working hours,

health and safety, freedom of association, and collective bargaining). But national regulations differ significantly by country in terms of scope and content, and they can vary within countries by geographic subregion or industry sector.

Regional mechanisms exist for regulating labor rights as well. One example is the North American Agreement on Labor Cooperation (NAALC), colloquially referred to as the “labor side accord” to the North American Free Trade Agreement. The European Economic Community’s Charter of Fundamental Social Rights (the European “Social Charter”) is another. But not all regions of the world have such agreements. At the international level, the mandate of the World Trade Organization (WTO) does not allow for the explicit integration of labor rights within global trade rules, and the global labor standards promulgated by the International Labour Organization (ILO) are difficult to enforce owing to significant limits on the organization’s sanctioning power.⁶

As a consequence not only of the heterogeneity of “official” (that is, state-led) mechanisms but also of concerns over their effectiveness, there has been an increasing trend over the past decade toward “voluntary” enforcement of labor standards through public-private partnerships.⁷ Many voluntary initiatives are sector-specific. Two prime examples include the Fair Labor Association (FLA) and the Workers Rights Consortium (WRC), both of which monitor labor rights in collegiate apparel manufacturing.⁸ A third example involves soccer ball production standards aimed at eliminating the use of child labor in that sector, developed by the International Football Association.⁹ Other voluntary initiatives center around more broadly based management-systems audit approaches, such as those pioneered by the International Standards Organization (ISO) through its ISO 9000 quality standard and ISO 14000 environmental standard, as well as the more recent SA8000 human rights auditing standard developed by Social Accountability International.¹⁰

In part, the trend toward voluntary standards stems from a concern on the part of corporations that bottom-line profits can be harmed by public relations scandals related to labor rights problems, particularly as it is now common for the media to report on abuses in factories around the world, thus changing the perceptions of consumers, who heretofore would have remained unaware of such situations. Private corporations have been increasingly willing to enter into PPPs focused on monitoring labor rights because they wager that the risk of not doing so outweighs the cost.¹¹

But why do NGOs engage in PPPs? In part, they do so because of what the literature has long recognized as the principled interest that the staff and supporters of NGOs have in creating a “better world” through often incremental efforts.¹² Labor rights PPPs often involve people on the NGO side who seek to achieve their victories one step at a time—factory by factory, firm by firm, sector by sector, country by country. They are motivated by the urgency of stopping ongoing human rights abuses and are willing to leverage corporate sensitivity to reputational risk. Paradoxically, however, while they partner with business, they are engaged in a struggle against what could be considered a natural product of contemporary capitalism—namely, the “race to the bottom” in labor standards as capital seeks out cheaper labor in a highly internationalized global marketplace.¹³ It could thus be argued that the NGOs involved in labor rights PPPs are working around the margins without attacking the root causes of abuse. Nevertheless, their strategy of engagement with the private sector creates a wedge that they can employ to widen the nature of their demands for reform over time.

Equally paradoxically, it could be argued that the relationships among groups involved in labor rights PPPs reflect the broader inequalities of the global economic system: for the most part, it is the manufacturers or retailers based in industrialized countries that negotiate the codes governing how production takes place in sites within developing countries. Because the lead NGOs involved in brokering PPPs are disproportionately based in industrialized countries, in most cases the workers themselves are not centrally involved in these discussions, unless they are represented by unions. Yet unions are not the drivers in many PPPs.¹⁴ In part, the lack of union participation in PPPs is a function of the sharp decline in overall rates of unionization worldwide over the last half century. Further, China’s emergence as the dominant player in global manufacturing and its continued prohibition on independent labor union organizing has meant that NGOs have been forced to work directly with corporations on monitoring labor rights in that country, instead of through unions—a practice that has carried over to other country contexts.¹⁵

The cynic could thus dismiss the NGOs involved in such collaborative monitoring ventures with corporations as either naïve or complicit in the very problems they are ostensibly seeking to solve. However, instead of demanding that corporations shutter their doors, groups involved in labor-rights-monitoring PPPs seek to transform the nature of business practice by invoking a claim that William DeMars and Dennis Dijkzeul identify as integral to NGO activism, namely, “the claim of circumscribed causality—that the NGO’s operations or presence will have no side

effects on the target country's politics or society."¹⁶ For the NGOs involved in labor rights PPPs, the claim of circumscribed causality typically does not entail promising no side effects at all; rather, it means pushing for improved labor standards without threatening the profit-making *raison d'être* of the company itself.

For example, NGOs involved in monitoring the production of garments embellished with college and university logos recognize that this slice of the apparel sector represents but a small fraction (roughly 2–3 percent) of global apparel production.¹⁷ Thus, these NGOs realize they have limited leverage over the system-wide imbalances inherent in the current global trade regime that generate the pressure for low wages and low working standards in the apparel sector. However, they also know that logo-bearing apparel has cachet both for the person wearing the garment and for the manufacturer who can tap into this market niche. So labor rights NGOs that monitor the production of collegiate apparel have made social responsibility part of the “cost” of doing business in this sector, by establishing the Workers Rights Consortium (WRC) and the Fair Labor Association (FLA) to monitor production standards.

PPPs such as these are by no means a panacea for labor rights enforcement. Even the parties involved in contemporary voluntary monitoring arrangements recognize that the inherently imperfect nature of monitoring itself means there is a perennial risk of missing key infractions—and, consequently, the risk of consumer backlash. Others caution against the unintended consequences of blunt instruments, such as country-specific boycotts, which can ensue once monitoring data becomes public and may end up causing greater harm to the workers whose rights they were seeking to protect.¹⁸ Still others caution against a “lowest-common-denominator” effect of setting labor rights standards when a large number of actors within a given economic sector are involved—a classic collective action problem.¹⁹ In the case of collegiate apparel, for example, the creation of more than one monitoring organization (the FLA and WRC) stemmed from early disagreements over how best to define core standards and how to monitor them most effectively. A key sticking point was how amply to define provisions related to unionization. Some players involved in early negotiations in this sector worried that the bar would be set too low and thus pushed for the creation of a separate monitoring organization (the WRC) in which labor unions would be strongly represented.

In addition, PPPs are often the target of criticism from developing country-based activists and scholars, who argue that labor standards impose an undue

burden on poor countries.²⁰ They note that Britain, the United States, and other advanced industrial countries developed two centuries ago during the Industrial Revolution without labor standards; why then should developing countries be handicapped by such standards today? Developing country governments argue that calls for labor rights standards in international trade agreements are just another form of protectionism. Moreover, they charge that wealthy countries emphasize labor standards while refusing to address not only the persistence of structural barriers to trade (for example, U.S. and European trade subsidies to agriculture, steel, and other strategically important sectors) but also the lopsided nature of current institutional frameworks—particularly the WTO, but often PPPs as well—which favor the interests of industrialized country-based actors.

Developing states also argue that calls for labor standards ignore the structural changes in key industries brought about by late-twentieth-century technological advances, such as the advent of bar-code inventory, real-time communications and financial technologies, and containerized shipping. All of these factors increase competitive pressures within low-wage manufacturing industries, which can practically move their facilities overnight if manufacturers find it “uncompetitive” to work in a particular country—that is, if workers or governments demand too much of them in terms of labor or environmental standards. In addition, they note that calls for labor rights ignore the nature of the contemporary global trade in cheaply produced goods, which undergirds Northern consumer spending.²¹ Consumers’ constant hunt for bargains comes at a human cost. Until consumers in the North are willing to pay what labor is worth, the argument runs, exploitation will continue. (It should be noted, however, that this argument glosses over the weakness of existing national legislation on labor rights and corresponding governmental monitoring systems, which are often stretched to the breaking point in terms of human resources and capacity, and are prone to corruption.)

A central critique of voluntary labor rights monitoring is that it has led to a surfeit of rules, which ultimately confuse more than enlighten at the factory level. Factories based in developing countries often act as suppliers of goods produced for export under contract with European, American, and other manufacturers and retailers. Each manufacturer or retailer, in turn, may have its own corporate code of conduct. For developing country suppliers, adherence to a manufacturer or retailer’s code of conduct is a condition of doing business. Suppliers often juggle multiple contracts with multiple manufacturers, and thus must adhere to multiple codes, regardless of potential conflicts among the actual requirements of the codes.

For example, corporate codes of conduct differ widely on how “child labor” is defined, and there are varying child-labor benchmarks in international law.²² The ILO Convention 138 on Minimum Age stipulates three different possible minimum ages—twelve, fourteen, and fifteen years—which a ratifying country can choose from to set national law, based on the country’s own level of development. Particular types of work, in turn, are entirely prohibited under ILO Convention 182 on Worst Forms of Child Labour (that is, child slavery, illicit work, prostitution/sale of children, and hazardous work).

Corporate codes thus include a confusing array of benchmarks. They can prohibit work at various ages and/or they can prohibit different forms of work. Presented with complex and conflicting regulations, the factory manager in Bangladesh or Honduras or China will often become confused. The manager will post the codes received from manufacturers and retailers on the factory wall, but they are frequently printed in English and often include little to no clear language on how workers can report violations. In the end, this diminishes a company’s willingness to do anything more than observe the minimum floor, at best.²³ At worst, the proliferation of standards increases the incentive for local factories to shirk by rigging monitoring, coaching employees to lie about their ages, or to hide when manufacturers’ representatives make factory visits to assess compliance with a code of conduct.

At a theoretical level, the risk of conflicting labor standards is integrally related to the broader challenges of managing key aspects of international governance through PPPs that Marco Schaferhoff, Sabine Campe, and Christopher Kaan have discussed at length. They warn against the risk of fragmentation and lack of coordination among “a multitude of state and nonstate actors” involved in rule making through PPPs, which can “distort (inter-)state policies.”²⁴ Enforcement of child labor standards offers a case in point. The proliferation of codes of conduct can lead to nonenforcement not only of voluntary standards (that is, the codes themselves) but also of national labor laws already on the books, if it creates a generalized climate of “shirking” on the part of corporations. PPPs are “intended to supplement rather than replace traditional intergovernmental organizations,” as Schaferhoff, Campe, and Kaan argue.²⁵ But the push toward voluntary enforcement of codes by labor rights PPPs has often come at the expense of clarity of baseline standards, and at the expense of attention to formal international standards-setting and implementation bodies, such as the ILO’s International Programme on the Elimination of Child Labour (IPEC). This program was created explicitly to

foster coordination among states and a range of social partners—business, labor, employers associations, NGOs, and others. IPEC is currently the ILO’s largest single operational program, working in 88 countries to provide not only technical support in the monitoring and design of projects but also assistance to children removed from abusive workplaces as well as to their families.²⁶ PPPs that ignore IPEC compromise their effectiveness in working toward a solution to the problem of child labor.

Despite these caveats, the PPPs involved in labor rights monitoring are here to stay. The number of NGOs involved in PPPs in the areas of monitoring, information sharing, and direct advocacy is growing, and data show that an increasing number of U.S.-based business schools are incorporating the topic of corporate social responsibility into undergraduate and graduate curricula. Indeed, there are already detailed surveys of the rich empirical universe of PPPs in the area of labor rights and corporate social responsibility more generally.²⁷

DOMAINS OF PPPs

A typology of the three distinct domains in which labor rights PPPs are found and an analysis of their related governance challenges can highlight some of the promises and limits of public-private partnerships. Two of the domains entail relatively collegial interaction between NGOs and business, whereas the third often involves sharp confrontation between the parties. Notably, conflict in the third domain can lead to the forging of working relationships, but this is by no means a given.

The overarching characteristics of the three domains are as follows:

- The first domain involves direct rule making and enforcement through voluntary monitoring initiatives aimed at enhancing compliance with worker rights and labor standards.
- The second domain involves indirect influence on rule making through the creation of information on corporate compliance with related standards.
- The third domain involves indirect influence on compliance through protest and other forms of action involving confrontation with companies.

The first domain involves NGOs working directly with corporations in drafting a list of acceptable and unacceptable forms of conduct, which may take the form of a company-specific code of conduct, a sector-wide code or industry standard, or an

auditing standard. The baselines for different types of action specified within such codes or standards may vary, but certain tendencies are clear. Typically, companies agree to default to the national law of the countries in which they do business or to international labor standards, “whichever is higher.” ILO conventions offer a set of internationally negotiated thresholds for conduct, as do major UN conventions, such as the UN Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.²⁸ Corporate codes of conduct often refer to these documents as justifying the specific benchmarks included in the codes.²⁹

The very fact that companies willingly evoke UN treaty language in their codes could be an indication of the belief that the standards will ultimately have little “bite.” Indeed, there is a vast literature that demonstrates empirically the lack of state enforcement of UN treaties,³⁰ so there is no reason to expect that corporations would behave differently. This opens up the possibility that the NGOs involved in brokering such arrangements are simply being used in the interest of enhancing corporate image. As DeMars and Dijkzeul point out: “It is important for scholars to recognize that powerful actors seek to instrumentalize international organizations in several contradictory ways: as agents to accomplish an explicit goal; or as impotent sham agents to create the illusion of effective action; or for some extraneous purpose apart from either success or failure in its explicit goal.”³¹

Yet the nongovernmental organizations involved in PPPs willingly act in a mediating role, engaging companies in the process of developing voluntary rules that often echo international law, regardless of the level of credibility of the latter. Their rationale for doing so is that in the absence of formal laws at the national level (or because of inadequate enforcement thereof), an imperfect voluntary monitoring standard may be better than the status quo. In negotiating codes and standards through PPPs, they are mindful of the gulf between what different parties at the table consider the minimum acceptable standards. Thus, their strategy is often to broker a series of relative optimums—forging consensus piecemeal, essentially integrating key aspects of each of the negotiating parties’ preferred solutions. NGOs thus “learn complex scripts to keep their partners in the game by not totally discouraging partners’ hopes for attaining latent agendas.”³²

The NGOs involved in crafting and monitoring labor rights through PPPs thus walk a fine line between principle and pragmatism. They are willing to partner with corporations in the interest of controlling the gravest of human

rights abuses, such as forced disappearances, forced labor, and extrajudicial killings—all of which are violations of clearly defined non-derogable human rights.³³ Examples of PPPs developed to address violations of this type include the Kimberley Process Certification Scheme for diamond production, and the Extractive Industries Transparency Initiative, involving companies in the oil, gas, and mining industries.³⁴ NGOs are also willing to engage in PPPs even when the human rights benchmarks at stake are less clearly defined—precisely because they want a role in specifying acceptable terms of conduct. For example, the issue of “living wage” is fiercely debated among NGOs and businesses, with little agreement on how to set comparable baselines for wages across countries at varying levels of development. Yet NGOs involved in PPPs continue to raise the subject in negotiations of individual corporate codes and industry standards.

The second domain involves the efforts of NGOs to influence corporate conduct indirectly, by making data on labor rights performance readily available to the general public, and to members of the investment community in particular. The advent of “socially responsible investing” over the past three decades has led to a growth industry among NGOs involved in producing data on corporate performance in a wide range of areas, including labor rights.³⁵ NGOs may release data in a variety of forms, including detailed corporate case studies, ordinal performance rankings against standardized benchmarks, and indexed corporate performance.

The power of NGOs in this domain is rooted in the quality of the information they produce (or relay) about corporate conduct. They risk compromising their ability to influence corporate conduct if the quality of their information is suspect. A central challenge for NGOs involved in this second domain is to maintain a level of objectivity regarding the data they elicit from companies in order for them to preserve the credibility and validity of their assessments. Creating a transparent and robust assessment methodology is one step; carefully controlling the release of corporate performance assessments is another; targeting the information to maximally influence corporate practice is yet another challenge.

There is a range of rubrics for evaluating corporate performance in relation to particular substantive norms on labor rights. The assessment of corporate performance in this area, in turn, is central to determining an overall level of “corporate accountability.” In some instances, corporations report on their social and environmental compliance with various standards by producing corporate accountability reporting of their own. In other instances, NGOs ferret out data

and produce independent reports on corporate practice. In still other cases, corporations contract with third-party auditors, which assess company practices and produce independent, publicly available reports.

There are numerous indicators associated with corporate accountability. Some indicators are produced for public consumption; others are produced by for-profit or quasi-private entities (such as money management firms or consulting groups) and are available only for purchase.³⁶ Examples of nongovernmental organizations that produce publicly available data include the Global Reporting Initiative and the Business & Human Rights Resource Centre,³⁷ both of which are involved in assessing various aspects of corporate accountability—the former by developing standardized performance indices across a wide range of categories (including but not restricted to labor rights), the latter by compiling news and information on violations as well as examples of corporate best practices on environmental management and human rights.

The third domain involves NGOs that seek to influence corporate conduct through protest and other forms of indirect action. This is by far the most radical form of NGO engagement with rule making. In contrast to NGOs in the other two domains, NGOs in this domain aggressively seek to force a change in corporate conduct. They call attention to the problems generated when corporations fail to uphold either national law or voluntary standards governing labor rights, and then use the infractions as leverage in negotiating higher labor standard-setting. NGOs in this domain function less as collaborative partners than as members of a “fire brigade.”³⁸ They are the radical flank that increases the leverage of NGOs negotiating rules in the first domain, and that enhances the likelihood of corporations releasing information to ratings groups in the second domain.

Far from making claims of “circumscribed causality,” NGOs in the third domain challenge both the profit-making imperative of business and the proprietary nature of corporate information. They tend to straddle the North-South divide more easily than their counterparts in the other two domains, because they embrace a wider critique of contemporary forms of capitalism. The International Labor Rights Forum, the National Labor Committee, and United Students Against Sweatshops are all examples of “fire brigade” types of NGOs based in the United States. Examples from other regions include the Netherlands-based Clean Clothes Campaign—a network of over 250 affiliated NGOs worldwide that spurs consumer activism on labor rights issues—and the Third World Network, a Malaysia-based

policy advocacy organization with a long history of activism on multinational corporate conduct.³⁹

Another form of NGO activity typical of this domain is shareholder activism, a process through which NGOs mobilize institutions with large holdings of corporate stock to pressure corporations for reforms of key business practices.⁴⁰ The annual shareholders meeting is thus the arena for such struggle: NGOs work well in advance to influence the content of the proxy voting process. They may also stage the involvement of representatives of institutions that hold considerable blocks of a company's stock in their pension and/or investment funds, such as religious denominations, unions, or universities. Or they may invite people adversely affected by a corporation's practices to be present during such meetings.

The U.S.-based Interfaith Center for Corporate Responsibility has been involved in shareholder activism for four decades, and is credited with influencing corporate policy shifts on issues as wide-ranging as divestiture from South Africa during apartheid and the adoption of standards for infant formula marketing in the developing world.⁴¹ Shareholder activism has also been instrumental to the unionization of manufacturing plants in challenging contexts, such as along the U.S.-Mexico border.⁴² For example, institutional investors and religious organizations, such as the American Friends Service Committee, have partnered with Mexican grassroots organizations (for example, the Comité Fronterizo de Obreras) to bring the voices of workers into shareholder meetings, where they have advocated for independent unionization of an Alcoa factory in the Mexican state of Coahuila.⁴³

This account of three separate domains of labor rights advocacy admittedly builds a stylized typology. There are undoubtedly groups that have moved from one domain to the other over the course of their institutional lifetimes. For example, the Council on Economic Priorities (CEP) was founded in 1969 as a 501(c)(3) nonprofit organization with the mission of rating the corporate responsibility of the Fortune 500 (the largest publicly traded companies in the United States), along with selected companies that are not publicly traded. CEP produced *Shopping for a Better World*, its hallmark guide, which cross-referenced retail brands with their parent companies and offered consumers a report card on individual corporate practices. The goal was to encourage responsible shopping by consumers empowered through enhanced access to information—a classic example of an NGO involved in the second domain.

Over time, however, CEP began to grapple with the need to assess how U.S. companies were managing their supply chains—that is, the contracting of production through suppliers in far-flung locales across the developing world. Though CEP integrated information on codes of conduct into its ratings criteria in the late 1990s, its founders opted to influence corporate conduct by moving out of the second domain and into the first: they created a standard for use in auditing human rights practices in actual factories. A separate nonprofit entity, Social Accountability International, was thus created in 1997, which developed the SA8000 standard for assessing human rights in the workplace. Eventually, the original CEP shuttered its doors, shifting several of its key information-generating projects to other NGOs.⁴⁴

As this vignette demonstrates, the three domains are illustrative of the range of activities NGOs can undertake to promote and protect labor rights through PPPs. NGOs can opt to participate in PPPs focused on direct rule making and standards enforcement, or they can seek to influence corporate activity indirectly through the creation of information on corporate compliance with related standards. They can also opt for protest and other forms of action involving confrontation with companies, or for some combination of activity across the three domains as the NGO itself evolves over time. The decision to operate in one domain or another depends on the NGO's mission, political orientation, skills, and strategic opportunities. What is far more complex is gauging whether PPPs in any of these domains ultimately effect change in the nature of the global economic relationships that give rise to labor rights violations.

THE CHALLENGES OF GOVERNANCE

In a very general sense, NGOs—regardless of whether they focus on labor rights or not—face the perennial challenge of negotiating power. They do so among their own staff members and vis-à-vis counterpart organizations within the NGO sector.⁴⁵ NGOs also negotiate the distribution of resources they control as well as the agenda-setting power vis-à-vis the local populations on whose behalf they advocate or which they serve directly. In addition, NGOs negotiate with the governments, businesses, or other social forces they target in pursuit of their goals. NGOs operate in a realm in which norms are their principal currency. For those nongovernmental groups involved in PPPs on labor rights, the appeal to

norms is central to their efforts to constrain corporate action through rule making, information generation, or protest.

But the paradox of labor rights PPPs is that corporations are not directly bound by the human rights norms so routinely invoked in the context of rule making on labor rights. Instead, they are indirectly bound: *states* are the parties to human rights treaties, not corporations. States sign and ratify treaties, and in so doing commit themselves to respect, protect, and fulfill the rights included therein. Corporations are bound principally by national regulations in the countries in which they are chartered and in which they carry out their business activities. States create and enforce those regulations in the interest of protecting human rights—that is, in the interest of ensuring that nonstate actors (such as corporations) do not violate rights. States also create an enabling environment for the fulfillment of rights by setting tax policies that directly affect how businesses operate.⁴⁶

But states can and often do trade away rights in the interest of encouraging economic growth. States routinely fail to adequately enforce labor rights regulation, either because of lack of capacity or of political will. They often set tax policies that benefit corporations at the expense of workers. Yet the NGOs involved in PPPs disproportionately focus their efforts on pressuring companies—not states—for reform.⁴⁷ In doing so, they direct their energies toward remedies for harm without addressing the root causes of labor rights violations: the economic and political structures that shape the governance of labor rights more broadly.

NGOs involved in the first domain of labor rights PPPs illustrate this dilemma of “constrained governance” most clearly. These NGOs typically help forge the voluntary standards that govern labor rights, but generally not the formal legal rules—laws. For NGOs that directly negotiate or monitor voluntary labor standards (such as corporate codes of conduct), the risk of setting the bar too low is ever present precisely because NGOs are not “inside” a corporation and thus suffer from information shortfalls regarding the true scope of what the corporation could concede in terms of wages, hours, benefits, and so forth. NGOs in the first domain of labor rights PPPs have limited ability to sanction corporate conduct: violations of voluntary standards may generate NGO criticism, but it does not come at the expense of corporate profits. And, as mentioned earlier, corporations maintain the power of exit, simply moving production from one location to another if NGOs or local governments demand too much of them in terms of labor rights compliance.⁴⁸ Hence, NGOs involved in direct negotiations over worker rights

and labor standards may be forced to make concessions on benchmarks in the interest of maintaining production in a given locale, region, or sector.

Nongovernmental groups involved in the second domain face other challenges. Those involved in generating information on corporate conduct—whether for the socially responsible investment community or for consumers more generally—cannot entirely control the final use of the data they produce. For example, investors might choose to dump the stock of a company charged with using child labor, even though the NGOs that produced the rating may deem it better for the children involved if the company stays and works out a program of reform and remediation. Such investor pressure may result in a company's decision to “cut and run,” such that the unintended consequence of an NGO's actions may be to worsen the livelihood prospects of workers in the affected communities.⁴⁹ Again, the threat of corporate exit looms large.

Those NGOs involved in “fire brigade” activities in the third domain risk yet another challenge: that of being dismissed by their targets as simply too extreme to be taken seriously. This is not surprising, because these are the groups that most forcefully challenge the structural underpinnings of labor rights abuse. Their willingness to speak truth to power is why they opt for action in the third domain, on the radical flank of the PPP spectrum. Their outsider status is simultaneously their principal tool and their greatest limitation: they create the pressure that makes possible negotiation over rules in the first domain and information generation in the second one, but they often do so at great cost institutionally. They may face threats of lawsuits for libel by corporations they “name and shame”; their members and supporters may risk arrest for unauthorized protests on private property, such as in front of factories or corporate headquarters; or their staff may risk arrest for trespassing in their efforts to gather data on behind-the-scenes factory practices. NGOs in this third domain must grapple constantly with the question of whether the risks they take are commensurate with the costs when achieving their goals is such a long-term prospect.

CONCLUSION

At first glance, the prospects for labor rights PPPs may seem gloomy. The constraints on NGOs operating in all three domains are significant. The impact of their efforts to improve labor rights is weakened by the very nature of the human rights norms they invoke to justify their cause. Those norms bind states—not

companies—to respect, protect, and fulfill labor rights. Thus, NGOs must work indirectly to influence corporate conduct, often through voluntary standard setting. While NGOs may exercise influence in this manner, corporations can and often do choose to close up shop (or to drive abuses underground) when the costs of compliance are too high. Many of the NGOs involved in labor rights advocacy are so busy with their ongoing activities or face such uphill battles in influencing lawmakers directly that they have yet to make the shift toward greater engagement with the states that set and implement the formal rules of the national, regional, and international labor rights and trade regimes. Consequently, their influence over structural conditions that give rise to abuse in the first place remains limited.

Yet labor rights activists are among the most determined people in the non-governmental sector. The challenges created by proliferating standards are not lost on them, nor are the challenges created by the threat of corporate exit from a given country, or by the risks to NGO staff and the workers who report abuses, attempt to unionize, or engage in protest. Nor are they unaware of the hierarchies that persist among groups engaged in advocacy themselves.

Despite all of these challenges, these NGOs take on corporate targets thousands of times their size, and through their efforts at rule making, information sharing, and protest they force the world to “see” the people who make the products and deliver the services—often under poor conditions—that we consume on a daily basis. The success of labor rights PPPs rests, in large part, on making visible these largely “invisible” people. Casting light on abuse is central to shifting the terms of debate over how and under what conditions globalized trade and commerce will continue to unfold. Labor rights PPPs thus continue to prick the consciences of business leaders and to shame the comfortable into action by insisting that decent working conditions become part of the price of doing business in the twenty-first century.

NOTES

¹ Alexandra Harney, “Primark Shows the Hidden Price of Cheap Fashion,” *Times (London)*, June 20, 2008; available at www.timesonline.co.uk/tol/comment/columnists/guest_contributors/article4174985.ece.

² There is a whole universe of fee-for-service-type organizations that conduct research on corporate social responsibility. Examples include Ethical Consumer, Accountability, and Maplecroft, as well as mainstream consulting organizations, such as KPMG and Deloitte LLP, which have developed business auditing practices around corporate responsibility principles.

³ Dan Clawson, *The Next Upsurge: Labor and the New Social Movements* (Ithaca, N.Y.: ILR/Cornell University Press, 2003); and Bill Fletcher, Jr. and Fernando Gapasin, *Solidarity Divided* (Berkeley, Calif.: University of California Press, 2008).

⁴ Janice Fine, *Worker Centers: Organizing Communities on the Edge of a Dream* (Ithaca, N.Y.: ILR/Cornell University Press, 2006); and Michelle Camou, “Synchronizing Meanings and Other Day Laborer Organizing Strategies: Lessons from Denver,” *Labor Studies Journal* 34, no. 1 (March 2009), pp. 39–64.

- ⁵ Schaferhoff, Campe, and Kaan have defined PPPs as “institutionalized transboundary interactions between public and private actors, which aim at the provision of collective goods,” in Marco Schaferhoff, Sabine Campe, and Christopher Kaan, “Transnational Public-Private Partnerships in International Relations: Making Sense of Concepts, Research Frameworks, and Results,” *International Studies Review* 11, no. 3 (September 2009), p. 455. See also Paul A. Samuelson, “The Pure Theory of Public Expenditure,” *Review of Economics and Statistics* 36, no. 4 (1954), pp. 387–89. Samuelson’s definition of public goods as non-rival and non-excludable may be suited to a provision of solutions to environmental problems, and a sizeable number of PPPs do focus on rule making in connection with environmental governance. But NGOs involved in labor-rights-monitoring PPPs have a hybrid character: they engage in activities with joint benefits to the private sector (i.e., the for-profit sector) and to the public sectors (i.e., government, and members of civil society, more generally). Labor rights PPPs thus better fit the subcategory of “joint-product” or “club” goods because they generate uneven benefits to participating companies and have some exclusionary characteristics. For more on “joint-product” or “club” goods, see Todd Sandler and Keith Hartley, “Economics of Alliances: Lessons for Collective Action,” *Journal of Economic Literature* 39, no. 3 (September 2001), pp. 869–96.
- ⁶ On human rights and the WTO, see Susan Ariel Aaronson and Jamie Zimmerman, *Trade Imbalance: The Struggle to Weigh Human Rights Concerns in Trade Policymaking* (New York: Cambridge University Press, 2007), pp. 4, 35. For an impassioned response to charges that the ILO lacks enforcement power, see remarks by Juan Somavia, Director-General of the ILO, excerpted in James Atleson, Lance Compa, Kerry Rittich, Calvin William Sharpe, and Marley S. Weiss, *International Labor Law: Cases and Materials on Workers’ Rights in the Global Economy* (St. Paul, Minn.: Thompson West, The Labor Law Group American Casebook Series, 2008), pp. 88–90.
- ⁷ Shareen Hertel, “Human Rights and the Global Economy: Bringing Labor Rights Back In,” *Maryland Journal of International Law* 24 (2009), pp. 283–95; and Simon Zadek and Alex McGillivray, “Accountability Presents Responsible Competitiveness: Making Sustainability Count in Global Markets,” *Harvard International Review* 30, no. 2 (June 22, 2008), pp. 72–77.
- ⁸ Julie Elkins and Shareen Hertel, “Sweatshirts and Sweatshops: Labor Rights, Student Activism, and the Challenges of Collegiate Apparel Manufacturing,” in William T. Armaline, Davita Silfen-Glasberg, and Bandana Purkayastha, eds., *In Our Own Backyard: Human Rights, Injustice, and Resistance in the United States* (Philadelphia: University of Pennsylvania Press, forthcoming).
- ⁹ United States Department of Labor, Bureau of International Labor Affairs, “Soccer Balls,” n.d.; available at www.dol.gov/ILAB/media/reports/iclp/sweat4/soccer.htm#top6567.
- ¹⁰ Deborah Leipziger, *SA8000: The First Decade—Implementation, Influence and Impact* (Sheffield, U.K.: Greenleaf, 2009).
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- ¹² Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y.: Cornell University Press, 1998).
- ¹³ Ken Silverstein, “Shopping for Sweat: The Human Cost of a Two-Dollar T-Shirt,” *Harper’s* 320, no. 1916 (January 2010), pp. 36–44.
- ¹⁴ Rainer Braun and Judy Gearhart, “Who Should Code Your Conduct? Trade Union and NGO Differences in the Fight for Workers Rights,” *Development in Practice* 14, nos. 1–2 (February 2004), pp. 183–96.
- ¹⁵ For an extensive bibliography on labor union organizing globally, and particular insights on regulations in contemporary China, see Labornet, “Report on Chinese Labor Scholars Collective Bargaining Study Tour to U.S.,” February 25, 2009; available at www.labornet.org/cgi-bin/ib/cgi-bin/ib.cgi?action=read&id=292.
- ¹⁶ William DeMars and Dennis Dijkzeul, “NGOing: Practice, Bridging, and Power,” in William DeMars and Dennis Dijkzeul, eds., *The NGO Challenge for International Theory* (unpublished manuscript, 2009), p. 33.
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- ¹⁸ Gay Seidman, *Beyond the Boycott: Labor Rights, Human Rights, and Transnational Activism* (New York: American Sociological Association/Russell Sage Foundation, 2007); Shareen Hertel, *Unexpected Power: Conflict and Change Among Transnational Activists* (Ithaca, N.Y.: ILR/Cornell University Press, 2006); and Marc Ellenbogen, “Can the Tariff Act Combat Endemic Child Labor Abuses? The Case of Côte d’Ivoire,” *Texas Law Review* 82, no. 5 (April 2004), pp. 1315–47.
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- ³² DeMars and Dijkzeul "NGOing: Practice, Bridging, and Power," p. 36.
- ³³ See the UN Declaration on the Protection of All Persons from Enforced Disappearances; available at [www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.47.133.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.47.133.En?OpenDocument); ILO Conventions 129 and 105 (regarding forced labor); the International Covenant on Civil and Political Rights, art. 8 (regarding forced labor); and the ICCPR arts. 6, 14, and 15 (regarding extrajudicial killing).
- ³⁴ Cynthia A. Williams, "Civil Society Initiatives and 'Soft Law' in the Oil and Gas Industry," *Journal of International Law and Politics* 36, nos. 2–3 (Winter/Spring 2004), pp. 457–502; and Carola Kantz, "The Power of Socialization: Engaging the Diamond Industry in the Kimberley Process," *Business and Politics* 9, no. 3 (December 2007), pp. 1–20.
- ³⁵ Vogel, *The Market for Virtue*.
- ³⁶ Examples of private indices of corporate social responsibility include ratings of corporate performance, such as the FTSE KLD 400 Social Index (colloquially referred to as the Domini Social Index). See www.kld.com/indexes/index.html.
- ³⁷ Detailed information on the mandate of each organization can be accessed, respectively, at Global Reporting Initiative, www.globalreporting.org/AboutGRI/WhatIsGRI/, and the Business & Human Rights Resource Centre, www.business-humanrights.org/Aboutus/Briefdescription.
- ³⁸ McCubbins and Schwartz developed the concept of "fire brigade" monitoring to explain third-party monitoring as a means of congressional oversight, in Mathew McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science* 28, no. 1 (1984), pp. 165–79.
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- ⁴² Joe Bandy, "Paradoxes of Transnational Civil Societies Under Neoliberalism: The Coalition for Justice in the Maquiladoras," *Social Problems* 51, no. 3 (2004), pp. 410–31.
- ⁴³ Discussion of the activism of the Comité Fronterizo de Obreras (CFO) in this case is available in English at www.cfomaquiladoras.org/maquilaworkerscelebratevictory.en.html. See Hertel, *Unexpected Power*, for a broader treatment of the work of the CFO.
- ⁴⁴ This institutional history is related both in Leipziger, *SA8000: The First Decade*, and by Social Accountability International itself; see www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=938&grandparentID=472&parentID=490&nodeID=1.
- ⁴⁵ A recent survey of over 150 transnational NGOs with offices in the United States found that the leadership of these organizations differentiated between "two basic types of collaboration—networks and partnerships. . . . A network connotes an informal relationship or a loose affiliation of individuals or organizations sharing primarily information. *Partnerships are formalized, usually based on a binding or contractual relationship.* . . . [NGO] leaders identify a possible lack of commitment and waste of resources as the main limitations associated with networks, while *the primary challenges in partnerships are unequal power relations and other forms of inequality.*" Jesse D. Lecy, George E. Mitchell, Margaret Hermann, Christiane Page, and Hans Peter Schmitz, "Challenges Facing Leaders of Transnational NGOs: Introducing New Qualitative and Quantitative Datasets" (paper prepared for the 2010 Annual Meeting of the International Studies Association, New Orleans, Louisiana), p. 22, emphasis added.
- ⁴⁶ Hertel, "Human Rights and the Global Economy," pp. 287–88.
- ⁴⁷ Vogel, *The Market for Virtue*; and Seidman, *Beyond the Boycott*.
- ⁴⁸ Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, Mass.: Harvard University Press, 1970).
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