

Introduction to Special Issue

Improving Private Regulation of Labor in Global Supply Chains: Theory and Evidence¹

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As we write this introductory essay on private regulation in global supply chains, we are in the midst of the devastation caused by the novel Corona virus. Beyond the terrible toll of hospitalizations and deaths, the economic disruption is devastating. Millions of workers in global supply chains are losing their jobs as global companies cut production in response to declining demand. This is especially true of the apparel supply chain, which is the key focus of the articles in this special issue. As Mark Anner's timely survey in March 2020 suggests, over 70% of apparel workers furloughed or laid off in Bangladesh were sent home without pay, and less than 20% were paid their severance pay—a violation of the basic private regulation principles laid down in the codes of conducts of most apparel retailers (Anner 2020). Similar stories emanate from other apparel exporting countries such as Cambodia, Indonesia, and Ethiopia.² Throughout the globe, economic shocks transmitted through global supply chains are wreaking havoc on vulnerable workers who lack basic protections.

The current crisis brings into sharp relief the inability of both transnational and national institutions to protect millions of workers in jobs tied to the global economy through supply

¹ This series of papers emerged out of a conference funded by MIT Sloan and the New Conversations Project at Cornell University. Early versions of some of the papers were presented at the 70th Annual LERA Conference in Baltimore.

² <https://betterwork.org/1-better-work-response-to-covid19/>. Accessed April 15, 2020.

chains. Private voluntary regulation grew out of an effort to find alternative ways to improve labor conditions for these workers. As is well known, activists leveraged the reputational concerns of large firms and placed pressure on them to regulate the labor practices of their suppliers. In response, leading firms in the apparel industry adopted private regulatory systems with three elements. The first element was the inclusion of standards for supplier labor practices in their corporate codes of conduct. Monitoring by buyers or auditing companies, to determine if suppliers are complying with the codes and what steps they need to take to improve, was the second element. The third element in the private regulation model was the inclusion of incentives to stimulate improvement in their suppliers' practices through a "carrot" approach (giving suppliers who show improvement more orders), or a "stick" approach (axing noncompliant suppliers from the supply chain).

Private regulation has proliferated widely throughout industries with reputation sensitive lead firms, yet there is substantial skepticism about the model's effectiveness in improving labor conditions. A consensus has emerged in the literature that private regulation as practiced is an inadequate solution to the regulatory challenge in global supply chains (Bartley 2018; Locke 2013). Widespread violations continue in suppliers that are that subject to private regulation (Esbenshade 2004; Nova and Wegemer 2016). Reports and exposes by civil society organizations, such as Oxfam and Labor Behind the Label, repeatedly point out the failures of private regulatory systems. And critical events, such as the factory disasters in Bangladesh and Pakistan, have brought the inadequacy of private regulation into full public view.

There is not, however, a consensus on what to do about the flaws in private regulation. The papers in this special issue advance debates by identifying the scope for improvement in

private regulation at three different levels. At the micro level, they contribute by showing how the core components of private regulation—monitoring, creating incentives through commercial relationships, and diffusing practices—work, or do not work, in practice. At the meso level, they show how specific attributes of institutional contexts enable or constrain private regulation. And at the macro level, they show how new structures and institutions in private regulation emerge and evolve. A commonality amongst the papers in this special issue is that they are the result of years of effort by the authors to obtain novel data. All of these papers have overcome the difficult challenge of doing grounded research on private regulation, given that most companies and multi-stakeholder institutions in the eco-system do not share data publicly regarding their private regulation efforts, or provide researchers access. By doing so, they shed new empirical light on fundamental questions that have remained elusive to researchers and policy makers.

Processes Internal to Private Regulation

Three articles in this volume address central problems in the internal processes of private regulation that must be addressed to improve it.

The private regulation model requires that buyers create incentives for suppliers to improve compliance by rewarding more compliant suppliers with more orders. Two assumptions underlie this idea. The first is that buyers align their purchasing practices with their compliance approaches. The second is that buyers can quickly and easily move production between suppliers, i.e., that supply chains are extremely nimble. *Amengual, Distelhorst and Tobin's* (this volume) question both assumptions. They analyze purchasing data matched with compliance records. A key finding is that while the compliance department was engaging with supplier factories regarding ways to improve compliance, they nonetheless failed to connect these efforts with sourcing practices. In many instances, the value of orders increased to suppliers that had

relatively higher numbers of violations, and decreased in factories that improved their compliance.

While scholars have always suspected that companies do a poor job of aligning their sourcing practices with their compliance practices, this is perhaps the first paper to demonstrate this empirically. The article also advances novel explanations for why such an alignment is difficult, especially given that default explanation –that the firm was not simply rewarding suppliers with lower prices –did not account for the lack of alignment. Their analysis of the inner workings of the purchasing practices of a mid-size firm, allow them to question that assumption that nimble supply chains can either drive the race to the bottom or reward a race to the top. An implication of their work is that the structure of supply chains can create real limits on the use of incentives. To overcome these limits, firms may have to create more flexible supply chains and must improve coordination between compliance and sourcing.

If Amengual and his colleagues identify a key problem with one element of the private regulation model, *Kuruvilla, Li, Liu, and Chen* (this volume) attempt to explain why private regulation as a whole might not be having its' intended impacts. Although several scholars have suggested that private regulation policies of firms are decoupled from outcomes, Kuruvilla and colleagues argue that there is a distinct type of practice-outcome decoupling and provide an explanation for how it comes about. The value of their analysis is in using a variety of difficult-to-obtain data to show that decoupling derives from opacity in the private regulation/labor standards institutional field. Field opacity is the product of three elements: behavioral invisibility (the inability to accurately measure supplier behavior due to falsification of audit data), practice multiplicity (where different firms sourcing from the same supplier use vastly different auditing and rating techniques) and causal complexity (the inability to generalize causes of compliance

improvement from one setting to another given that compliance is a function of complex factors). Combined, these factors prevent the identification of best practice: what does and does not, work. Their use of an institutional lens helps them articulate an alternate and plausible “field level” explanation for the failure of private regulation to generate adequate improvements for workers -- even in cases of companies that have been practicing private regulation for over two decades.

Short, Toffel and Hugill's (this volume) contribution also takes a theoretical perspective that highlights the role of decoupling of policies and outcomes. They ask which factors reduce decoupling by tracking the improvement in suppliers' compliance with labor standards. The article challenges the view that reducing compliance is all about incentives. Instead, they build on past work that suggests that transferring knowledge and training is a key element of making suppliers improve, and they develop and test new hypotheses using a novel dataset of thousands of audits conducted in the supply chains of a large number of buying firms. An important contribution of their work is in showing how auditing processes can be improved to generate better compliance outcomes for workers.

Institutional Contexts that Condition Effectiveness of Private Regulation

Prior research has suggested that compliance with codes of conduct is generally better in host countries with stronger protective and effective labor law enforcement, (Distelhorst, Locke, Pal and Samel 2015; Koçer and Fransen 2009; Toffel, Short and Ouellet 2015), and particularly in states where there are labor laws promoting freedom of association and collective bargaining (Barrientos, Mayer, Pickles and Posthuma 2011). Building on this work, Short and colleagues argue and demonstrate that supplier factories evidence greater improvement when located in

institutional environments where there is greater potential for civil society monitoring mechanisms, such as a relatively free press and a denser network of NGOs.

Robertson, (this volume), similarly argues that pressures that arise from institutional contexts can augment compliance, through an analysis of data from Better Factories Cambodia (BFC), which was introduced under the aegis of the US-Cambodia bilateral textile trade agreement in 1999. A key element of BFC was the requirement that factory level assessment information be made public on the program website. This transparency requirement ended in 2006, but was re-introduced in 2014. Robertson's finding that the return to the transparency requirement was associated with increases in compliance is an important one given the popularity of current demands by civil society actors for increased transparency regarding global supply chain practices.

The Construction of New Institutions to Regulate Supply Chains

Since the initiation of various private regulatory regimes, there has been institutional diversity in the ways in which labor standards are regulated (O'Rourke 2003). One of the most remarkable developments in the institutional field of private regulation is the Accord on Fire and Building Safety in Bangladesh, following the Rana Plaza tragedy in 2013. Remarkable features of the Accord include the role of worker organizations in its' governance structure and the legally-binding commitment it required from the brands to financially support remediation of unsafe factories as well as to source from them during the duration of the Accord.

Although much has been written about the Accord's achievements in remediating factories with regard to safety and health, *Bair, Anner, and Blasi* (this volume), make two

significant contributions that allow us to further understand institutional responses to high-profile failings to protect workers. First, they offer one of the first explicit comparisons of a private regulatory response with a state response created to address the same problem—in this case, factory safety. Under pressure following the Rana Plaza tragedy, the Bangladeshi state created a public regulatory initiative known as the “Compact for continuous improvements in labour rights and factory safety in the ready-made garment and knitwear industry.” This initiative existed in parallel with the Accord and was, by Bair and colleagues’ account, much less successful.

Second, the authors evaluate the actions of the Bangladesh State and BGMEA (Bangladesh Garment Manufacturers and Exporters Association) towards the end of the Accord’s five-year mandate. While previous research has asked how private regulation influences state regulation in producing countries (Amengual and Chirot 2016), to date there has been very little investigation of the role of producing states in allowing new private regulatory initiatives to consolidate. A key contribution of their work is the ways in which the state and factory owners served to undermine the Accord’s efforts to empower workers. In so doing, their analysis highlights the fleeting nature of even revolutionary private governance arrangements, and why the alignment of interests of key actors immediately after Rana Plaza dissipated after five years of the Accord’s operation.

Pike (this volume) also focuses on the staying power of private regulatory initiatives by examining Better Work (the joint ILO-IFC program of which BFC is also a part). Her inquiry is important because Better Work has been held up as one of the most effective responses to regulating labor standards in global supply chains, as it combines the power of large brands, with the tripartite structure, legitimacy, and expertise of the ILO. Pike’s paper recounts the trajectory

of Better Work in Lesotho, drawing on rich qualitative evidence gathered before the program was launched, during its functioning, and after it was retracted. She finds that Better Work's effort to improve worker voice significantly was transitory. Pike's key contribution is in providing yet another example of the difficulty in sustaining the gains of private regulation.

Finally, *Ashwin, Oka, Schuessler, Alexander, and Lohmeyer* (this volume), analyze a notable contemporary development in private governance -- the emergence of the Action, Collaboration Transformation Living Wages Initiative (ACT). Like the Accord, ACT is also a transnational industrial relations agreement between 15 global brands and a global union federation (IndustriALL). ACT aims to promote living wages by establishing industry wide collective bargaining agreements in selected garment exporting countries, coupled with improved purchasing practices of buyers. Situated against the background of contemporary private regulation, ACT represents a radical departure from past practice, in part because it allows for multi-level coordination among firms and labor unions. Whether such an agreement is sustainable or not remains an open question.

Ashwin and colleagues' contribution is to inquire into how and why such a development has emerged. Their key contribution to the private regulation literature lies in articulating new catalysts for the emergence of radical cooperative initiatives, other than pressure from civil society or disasters like Rana Plaza. A key implication of their work is that prior relationships matter especially in union inclusive governance institutions, which have sponsored other transnational industrial relations arrangements, such as framework agreements). Although ACT has yet to make progress, its emergence suggests the importance of governance of multi-stakeholder initiatives (MSI's), and whether MSI's without unions such as the Fair Labor

Association or Business Social Compliance Initiative, which are dominated by corporations, can solve the problem of collective action amongst key actors in private regulation.

Improving Private Regulation

A common theme underlying all of the seven articles in this special issue is that they contain implications for improvement, although in different ways. The need for consistent incentives is one key mechanism: Robertson points to how transparency and public disclosure can stimulate improvement by increasing the costs of non-compliance. Amengual and colleagues point to benefits of integrating distinct divisions of buying firms—specifically sourcing and compliance functions -- implying that CEO action may be key to for corporate departments to better align their interests. The apparent success of the Accord in improving building safety unfortunately also removed the incentives for all parties (especially the BGMEA) to stay in alignment, as Bair and colleagues demonstrate. And Kuruvilla and colleagues show how the lack of incentives and mechanisms for buyers sourcing from the same supplier to collaborate, results in a multiplicity of private regulation approaches that are decoupled from supplier practices, and how the creation of niche institutions could provide the incentive and mechanism for the parties to align interests.

Similarly, the importance of learning and knowledge transfer is highlighted in several papers. Short and colleagues highlight the potential of the pedagogical side of auditing in stimulating the diffusion of best practices. Ashwin and colleagues suggest that learning among communities of actors can accelerate the diffusion of new forms of transnational industrial relations agreements. And Kuruvilla and colleagues' entire argument is based on the notion that best practices cannot be identified in opaque institutional fields, inhibiting field level learning.

Finally, although the papers analyze the development of private regulation at various levels, several point to the continued need to press for institutional change to make private regulation work better. Short and colleagues highlight the potential benefits of improving the ability for civil society groups to operate and to expose labor standards violations. Pike suggests the need for national institutional environment change in order to sustain fragile developments in workplace voice arrangements. And Bair and colleagues make an important contribution regarding how the creation of new institutions needs to overcome efforts by states to block changes. The need for new institutions at different—country, region, province and supplier levels -- that could facilitate brand to brand collaboration with respect to labor standards generally or with regard to particular labor issues, such as wages is a theme found in Kuruvilla and colleagues' contribution as well.

We conclude by recognizing a fundamental tension in the research on private regulation in global supply chains and suggesting a way forward. Regulatory institutions have not kept up with the expansion of global supply chains. Private regulation alone is now broadly understood to be inadequate. Yet, private regulation has developed an extensive and elaborate eco-system that continues to expand and evolve. Research can help improve these practices and shape debates on how private regulation should be reformed. Notwithstanding the continued need to understand private regulation, we cannot turn a blind eye to other institutions—including trade agreements and state regulatory agencies—and actors. Hence the tension—we cannot ignore private regulation, but as we focus on it, we risk ignoring developments in other institutional arenas or, equally dangerously, idealizing them and presuming that they are effective in all of the ways that private regulation is not. Resolving this tension requires empirically grounded studies that places private regulation in context—taking into account both the inner workings of private

regulation and its institutional context. We hope that the papers in this special issue jointly provide a springboard for such a research agenda.

References

- Amengual, Matthew, and Laura Chirot. 2016. "Reinforcing the State: Transnational and State Labor Regulation in Indonesia." *Industrial and Labor Relations Review* 69(5):1056-80.
- Anner, Mark. 2020. "Abandoned? The Impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains." Penn State Center for Global Workers' Rights.
- Barrientos, Stephanie, Frederick Mayer, John Pickles, and Anne Posthuma. 2011. "Decent work in global production networks: Framing the policy debate." *International Labour Review* 150:297-317.
- Bartley, Tim. 2018. *Rules Without Rights: Land, Labor, and Private Authority in the Global Economy*. Oxford University Press.
- Distelhorst, Greg, Richard M. Locke, Timea Pal, and Hiram M. Samel. 2015. "Production Goes Global, Standards Stay Local: Private Regulation in the Global Electronics Industry." *Regulation & Governance*.
- Esbenshade, Jill. 2004. *Monitoring sweatshops : workers, consumers, and the global apparel industry*. Philadelphia (Pa.): Temple University Press.
- Koçer, Rüya, and Luc Fransen. 2009. "Codes of Conduct and the Promise of a Change of Climate in Worker Organization." *European Journal of Industrial Relations* 15(3):237-56.
- Locke, Richard. 2013. *The Promise and limits of private power: promoting labor standards in a global economy*. Cambridge: Cambridge University Press.
- Nova, Scott, and Chris Wegemer. 2016. "Outsourcing Horror: Why Apparel Workers Are Still Dying, One Hundred Years after Triangle Shirtwaist." Pp. lx, 330 pages in *Achieving workers' rights in the global economy*, edited by Richard P. Appelbaum and Nelson Lichtenstein. Ithaca ; London: ILR Press, an imprint of Cornell University Press.
- O'Rourke, Dara. 2003. "Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring." *Policy Studies Journal* 31:1-29.
- Toffel, Michael W., Jodi L. Short, and Melissa Ouellet. 2015. "Codes in context: How states, markets, and civil society shape adherence to global labor standards." *Regulation & Governance* 9(3):205-23.