

VIII. WORKERS' DEMOCRATIC RIGHTS IN THE GLOBAL WORKPLACE: PIPE DREAMS OR MISSION TO MARS?

The Role of National Governments in International Labor Standards

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Introduction

The debate around international labor standards appears to be stymied by the lack of progress on several key fronts. The failure of the last WTO round and the lack of consensus on social dimensions of the Free Trade of the Americas Agreement (FTAA) have further signaled the need for making progress on the question of improving labor standards internationally. In this paper, we consider one of the most important stumbling blocks: the role of national governments (and by extension, sub-national governments such as state or provincial governments). Recent debates and developments surrounding international labor standards raise the question of the role of national governments in this process. A number of private developments such as corporate codes of conduct, international standards such as the SA8000 promoted by Social Accountability International, and various certification schemes (e.g., the Fair Labor Association [FLA]) and reporting schemes (e.g., Global Reporting Initiative) suggest a somewhat limited role for national and sub-national governments. Even trade treaties, bilateral and multinational, to which national

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governments are signatories tend to limit national sovereignty in significant ways. These developments require us to re-visit the role of national governments in the process of developing an international regime for labor regulation. What role, beyond the traditional role of governance and enforcement, could or should national governments play in international attempts to improve labor standards? We need to keep in mind that to begin with, the debate on labor standards started because of the failure of national governments to fulfill their traditional roles. Hence, it is appropriate to ask what else can national governments do to achieve better labor standards?

We briefly examine the context for national government participation in two areas. The first hurdle is the North-South divide on the issue of international labor standards. Although there are some differences within the North and South camps, most large players on the two sides see the labor standards issue differently. Until we find a way to bring the interests of industrialized and developing countries closer together, the role of national governments will not become clearer or more constructive. The second issue is that of regulatory reach within various segments of the workforce. We argue that national (and sub-national) governments have a potential reach that far exceeds the reach of international agencies or private initiatives. To solve these problems and to maximize impact, we argue, national governments need to add an activist role to their traditional role of regulation and governance.

Current Initiatives and National Governments

A brief review of several current initiatives shows that each of the existing approaches has certain limitations in terms of making a significant impact on labor standards. This analysis points to a possible new role for national governments in improving the effectiveness of current efforts.

As one of the most prominent current initiatives, the International Labour Organization's (ILO) core labor standards—a set of conventions that encompass five basic principles—are a significant step towards engaging national governments (ILO 1999). By establishing and promoting these standards, the ILO has set a process in motion that could, by degrees, lead to better labor standards globally. However, the ILO's effective reach ends with adoption of these labor conventions. The implementation of these conventions is left up to each national government. At the global level, the ILO does not have the resources to monitor and enforce standards. To be effective, this approach requires worldwide action by national and sub-national governments. Within their traditional role of regulation and governance, national governments cannot respond quickly and adequately enough to the challenge thrown to them by the ILO. In addition, history has shown that many national governments have failed to implement or enforce existing labor legislation in their countries.

Yet another approach to national government involvement can be seen in the various regional initiatives such as the NAFTA labor side agreement, the North American Agreement on Labor Cooperation (NAALC), accompanying NAFTA. After nearly ten years of the agreement being in effect, it is safe to conclude that NAALC has not had a huge impact on labor conditions in the member countries. Critics point to its narrow scope and limited powers to argue that this approach, while useful in educating the parties and publicizing the violations, is unlikely to make an appreciable impact on a large scale (EPI 2001; Compa 1999). On the other hand, through the basic principle of harmonization of labor legislation, one can make an argument that labor standards and labor conditions have gradually improved in many countries.

Private initiatives such as corporate codes of conduct have made some progress in improving labor standards, but their reach is limited and it is unclear if they can make a significant impact without the help of national governments. These efforts are likely to benefit only a small segment of the target workforce (OECD 2000a, 2000b; Scherrer and Greven 2001). Corporate codes have made some progress within the niche of internationally traded consumer goods. Codes were first established in consumer goods sectors such as toys, clothing, shoes, and rugs. The U.S.-based FLA; the Ethical Trading Initiative (ETI), a UK-based group; and the Clean Clothes Campaign (CCC), another European initiative, are all examples of corporate codes in the consumer goods industry.

The success of corporate codes is premised on a robust consumer preference in high-income countries for "ethically made" goods. They will succeed as long as consumers are willing to pay a premium to ensure that the goods they buy are not made in sweatshops (Blank and Freeman 1994; Freeman 1994, 1998) or if they are unwilling to buy brands that do not follow basic labor standards. Thus, the impact of corporate codes may be ascribed at least in part to the presence of two factors: consumer goods and consumer preference. In the absence of these constraints, there would be little or no pressure to improve labor standards. This pressure can arguably be attributed as the basis for most corporate code movements such as the FLA, the CCC, and the ETI. It is not clear what will happen if this consumer preference diminishes or disappears over time. What we do know is that corporate codes have diffused much more slowly in industry sectors whose goods are not sold directly to the consuming public. Thus, if corporate codes have to be extended to non-consumer sectors, we would need to find other drivers to play the role that consumer preference plays in the consumer goods sector. This is one area in which national governments could play a bigger role.

Engaging National Governments

One hurdle to better engagement of national governments in issues of trade and labor standards is the emergence of an unfortunate divide between rich and poor countries. The industrialized countries insist that they are taking the moral high ground when they push for higher labor standards for workers. Lower standards, it is argued, create an unfair advantage in trade. The developing countries find the insistence on better labor standards to be largely a form of protectionism at work. Their position is supported by some empirical research that does not find a relationship between lower labor standards and competitive advantage in the marketplace (Raynauld and Vidal 1998; Gunderson 1998; Campbell and Sengenberger 1994).

Labor standards initiatives will have to bridge this divide if they are to help a large number of workers around the world. New regulations need to be seen as friendly to the interests of both developing and industrialized countries. To accomplish this feat, the movement for better labor standards will have to shed its profile as an initiative originating in high-wage countries and exported to low-wage countries. As long as new regulations are seen as “external” initiatives, there will be resistance within developing countries to adopting them. What is needed is a process that will bring the issue of better labor standards into the internal debates within each country. In order for that to happen, national governments need to be engaged and their engagement needs to go beyond their traditional roles.

Looking Ahead: A New Role for National Governments

The foregoing discussion highlights several weaknesses in our current approaches to international labor standards. While the search for better solutions will continue in all directions, we consider here the role of national governments, given the enormous potential for making an impact. The primary role of national governments is regulation and governance. In the area of labor standards, this role takes the form of enacting legislation and monitoring and enforcing standards. The system that comes out of this role of the government can be referred to as the national system of labor standards (NSLS). It is in the exercise of this role that many national governments have been unable to fulfill their mandate for a variety of reasons.

In the search for solutions, it has been suggested that we blend “hard” regulation (i.e., the system of laws, monitoring, and enforcement) with “soft” regulation (i.e., creating change through education, awareness, and moral suasion), with the intention of reshaping market forces and embedding them into a regulatory framework that protects core labor rights (Stone 1999). We argue that while governments need to keep pushing in the area of better leg-

islation and enforcement, this formal "hard law" approach alone will not be enough to make progress in the near term. To improve labor standards, national governments can develop an activist program to engage employers, unions, and community groups in a dialogue over labor standards. This will develop a momentum around private initiatives and help create the climate for more rapid social and political change. While a "soft law" approach has not always attracted support from all advocates of labor standards, we view this role of national governments as the missing link between the current private initiatives on the one hand and the future "hard law" regimes that are expected to take shape globally on the other hand.

Moreover, to bridge the North-South divide, it is vitally important to internalize the labor standards debate at the national level within each country. This approach would address some of the key problems of making progress in the past. In many ways, the UN's Global Compact is a similar idea at the international level.¹ This process, if begun at the global level, could cut across all industry sectors. The hope behind the Global Compact is that the largest corporations' voluntary compliance would lead to a snowball effect in which other companies, including suppliers, would follow. This expectation is not entirely unrealistic, if the largest five hundred firms were to comply. These firms would become eager, in turn, to see that the others comply with similar standards. It would be in their self-interest as well others' to see the standards extended as far and wide as possible.

In our view, at the national level, each government would initiate a process similar to the Global Compact at the national level.² The process could be initiated at a meeting of business, labor, and government leaders at the national level. The parties would be charged with developing a set of standards for firms for both their domestic and international operations. These standards would establish a "floor" below which the signatories would undertake not to operate. Given that most of the participating firms may already be above the floor, it would not be costly for them to agree to a minimum standard. If the experience of other industry groups is indicative, it would be possible to arrive at a set of standards to which the largest five hundred firms could agree.

The national pattern could be replicated within various industry sectors. Initially, we see the process involving the largest businesses because they would have the resources to commit to this process. However, over time it can be gradually extended in stages to their own suppliers and other smaller firms that did not participate at the initial stages.

There are several advantages of repeating this process at the national level. A national-level adoption of core labor standards through a voluntary effort would cover a much larger segment of the domestic formal sector than under any other private initiative. The international private efforts can con-

tinue because they would have synergy with the transnational movement. Together, they would greatly expand the reach of corporate codes of conduct as we now know them today.

Furthermore, the activist role of national governments could help move attention away from the North-South controversies. The unproductive divide between rich and poor nations would likely abate because *all* governments would participate, not just the rich or just the poor ones. When the labor standards debate becomes more prominent domestically, it is less likely to be seen as an external imposition by developing countries. If the process is still debatable, it would be debated by the labor, management, and government sectors within each country. Our proposition is that if more countries, both rich and poor, adopted an activist government role, the process would appear more equitable to everyone.

The activist process could begin with any of the three actors. However, its best advocate is the government. By urging for better labor standards, governments can appear to be leading the way. National governments can lead the way for businesses and labor to follow. As more national governments sign on to this process, it will be easier for additional governments to persuade their firms and unions to join in the process.

The approach suggested here is not without its problems. A few key issues need to be addressed here. First, what is necessary to prod national governments (which have not been too effective at implementing protective labor legislation) to take on this new activist role? Second, what mechanism or incentives can the national government use (beyond moral suasion) to encourage large employers to adopt the kinds of standards and practices that we are suggesting? Third, what mechanisms will there be to ensure that large employers who agree to adopt these standards are actually practicing them? Finally, this paper is essentially suggesting a trickle down effect from large employers to smaller and medium size employers. There are obvious obstacles to such trickle down processes. Is there a way for governments to encourage smaller employers to adopt these practices as well?

One option, for a government wanting to be seen as more “activist,” is perhaps to provide a tax incentive—for example, a percentage reduction of business or corporate taxes for those firms who adopt and comply with such practices. This is likely to increase adoption, as the cost of adopting core labor standards may not be as high as the reduction in taxes.

Notes

1. Of the nine principles, two concern human rights, four address labor issues, and the remaining three relate to environmental issues. The four labor principles are drawn from the ILO’s Fundamental Principles of Rights at Work. They are the right to freedom of as-

sociation and the elimination of forced labor, child labor, and discrimination in employment. The Secretary-General, Kofi Annan, challenged world business leaders to voluntarily sign the UN's Global Compact, which requires signatories to comply with the nine principles, including the four concerning labor (Ruggie 2000; Courchene 2001).

2. This discussion builds on an earlier articulation of this issue in Verma (forthcoming).

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