Chapter 15

Global governance of fair labour: consequences of institutional change

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Abstract

The policy domain of fair labour is undergoing crucial institutional changes with the advent of private actors and the emergence of new governance mechanisms and instruments. This chapter addresses the main changes of the past decades in the field of international regulation of fair labour rights and working conditions, and also evaluates the consequences of private standards setting in terms of responsibility, accountability, and power (re)distribution. This chapter proposes that the institutional changes do not only embody a shift from public to private responsibility for the development and enforcement of labour laws and regulations, but also imply a new division of powers between governments, businesses, and civil society. It concludes that the complementary shift from private responsibility to private accountability has yet to occur.

15.1   Introduction

From the 1990s onwards, an unprecedented surge has taken place in the renewal of policy practices, as state-centered international regimes were unable or unwilling to address many of the most pressing global problems, such as global climate change and ecosystem degradation. This stimulated the development of new institutions, partnerships, and governance mechanisms (Lemos & Agrawal, 2006). The concept of global governance has come to denote the various forms of steering by state and non-state actors (such as business and NGOs) that regulate (or attempt to regulate) actions or events that transcend national frontiers concerning individuals, states, corporations, or other groups. As regards sustainable development, governance refers to processes of socio-political governance to the extent that these relate to steering societal development along more sustainable lines (Meadowcroft, 2007). A case in point is the advancement of labour rights in global governance. Several institutional changes are taking place in this policy domain, including the advent of new actors that play new roles, and the emergence of new governance mechanisms and instruments. In this chapter we define institutional change as the modification or renewal of regulatory practices from one set of institutionalised arrangements to another.

   The changing institutional landscape not only raises questions of how developments are actually taking shape in practice, but also raises normative concerns. Central to this chapter are the normative issues of responsibility (which is about taking ownership over issues), accountability (which is about being liable for one's actions), and power (re)distribution (which is about the spread of control and authority). At the heart of this inquiry lies not only a functional approach to the manageability of the issue at stake, but also concerns about the desirability of the consequences of the institutional change. This chapter firstly addresses the main changes of the past decades in the field of international regulations on fair labour rights and working conditions, and secondly evaluates the consequences in terms of responsibility, accountability, and power (re)distribution.

15.2 Institutionalisation of international labour laws and regulations

The creation of the International Labour Organisation (ILO) was part of the Treaty of Versailles that ended World War I in 1919. It was the first and most important regulatory institution that went beyond national borders for the regulation of labour. After the demise of the League of Nations by the end of the Second World War, the ILO became the first United Nations (UN) agency. Presently, the ILO has 185 member countries and until this day it continues to be the most authoritative norm and standard setting body on the international level that is dedicated to the promotion of social justice and internationally recognised human and labour rights. Its tripartite governing

structure enables workers and employers to have an equal voice with governments in its deliberations. However, since each member country is represented by two government delegates (an employer delegate and a worker delegate), governments offset worker and employer voting capacity in voting procedures. The labour rights are incorporated in a total of 189 conventions, including core rights such as the prohibition of child labour and forced labour, non-discrimination and equal pay, freedom of association, and collective bargaining. Among the 189 conventions, eight are fundamental conventions that relate to the core rights, and these are binding to all member countries. The remainder of the conventions become binding upon ratification by the member countries. The ILO's supervisory system is responsible for ensuring the implementation of conventions through social dialogue and technical assistance. In the absence of an international court of labour rights, the legal enforcement depends on the jurisdiction of domestic courts. As a result of the principle of non-intervention in nation-state sovereignty and the influence of national self-interests on the ILO, the organisation does not impose sanctions on governments (Scherer & Smid, 2000). Conventions are far from being fully institutionalised in many parts of the world, and because of this even core labour rights continue to be breached in many parts of the world (Helfen & Sydow, 2013). The lack of enforcement mechanisms is a serious shortcoming in the power of the ILO.

The problem of unfair labour practices transcends national borders, as we live in a world that is globalised through transnational production and procurement processes and consumption patterns. Not infrequently, large companies source from networks of global suppliers without legal obligations (Barrientos & Smith, 2007) and commodities are produced in long value chains where labour costs are often incurred from the workers at the end of the chain. In the wake of the controversy surrounding sweatshop practices and concern regarding labour conditions in developing nations, private initiatives have attempted to fill this regulatory gap in the field of fair labour.

The main goal of improving labour conditions was primarily advanced by the creation of codes of conduct and corresponding monitoring practices. By creating voluntary, transnational regulations, these initiatives sought to function along the lines of outsourced production, striving for more companies to have value chains with better protection of labour rights. Some of these arrangements are intra-sectoral and solely have partners from civil society or the market domain. Others are multi-stakeholder, including actors form both domains, also referred to as intersectoral partnerships (Bitzer, Glasbergen, & Leroy, 2012), cross-sector partnerships (Selsky & Parker, 2005), or co-regulation (Steurer, 2013). At present, there are various private arrangements that are engaged with setting transnational fair labour standards (see Table 15.1). Most of these organisations also monitor compliance and disseminate information and training programmes to businesses. In the meantime, numerous organisations have arisen that either serve as a platform for businesses to share knowledge and as

management tools on value chain information, adopting a regional focus, or take on fair labour conditions as a joint or additional objective to their organisational purposes.

Table 15.1 List of transnational fair labour arrangements

Arrangement	Abbreviation	Year of initiation
Business Social Compliance Initiative	BSCI	2003
Clean Clothes Campaign	CCC	1989[13]
Electronic Industry Citizenship Coalition	EICC	2004
Ethical Trading Initiative	ETI	1998
Fair Labor Association	FLA	1999[14]
Fair Wear Foundation	FWF	1999
Global Social Compliance Programme	GSCP	2006
Social Accountability International	SAI	1997[15]
Worldwide Responsible Accredited Production	WRAP	2000
Worker Rights Consortium	WRC	2001

The institutional landscape for fair labour has thus undergone important changes in the last two decades. In the past, international conventions, national and local laws had no rivals, with mainly labour unions functioning as pressure groups to bargain for better labour rights and conditions. At present, NGOs and business initiatives have become more and more influential in setting labour standards. The voluntary nature offered by the initiatives has transformed the nature of existing regulations (O'Rourke, 2003). The fact that initiatives try to gain a competitive edge and market share (Derkx & Glasbergen, 2014) models the institutionalisation processes along the lines of market mechanisms.

15.3 Consequences in terms of responsibility, accountability, and power (re)distribution

The renewal of institutional structures is a process shaped by the interactions of the actors involved in regulatory activities. Through their organisational and normative strategic responses to the issue, and relational responses to each other, the actors induce change in the institutional characteristics of the field. The inclusion of civil society and businesses offers crucial advantages but also causes limitations. Here we take stock of the consequences of private standard setting in terms of responsibility, accountability, and power (re)distribution.

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[13] While established in 1989, the CCC issued its code of labour practices in 1998.
[14] The FLA was a spinoff of the Apparel Industry Partnership (AIP) convened in 1996.
[15] SAI was created in 1997 as the Council on Economic Priorities Accreditation Agency (CEPAA) and was renamed the Social Accountability Initiative (SAI) as of 2000.

Responsibility - Private governance actors take responsibility by assuming ownership of the alleviation of labour violations by creating regulatory mechanisms that advance rights developments and detect breaches to existing laws and regulations. Even though both civil society and businesses lack parliamentary representatives and hence the claim to legitimacy through electoral representation, they do embody citizen participation through self-organisation and market mechanisms. Responsibility taken by civil society (e.g. NGOs, active citizens) is crucial in the sense that it is a critical domain that can provide impartial information on controversial issues such as human rights violations. It is particularly the role they adopt as monitoring and watchdog organisations that is valuable in terms of the dissemination of impartial information compared to the information that can be expected from government agencies or businesses (Marschall, 2002). In the last decade, large numbers of partnerships between civil society groups and businesses in the field of labour have arisen, and many companies have acceded to various fair labour arrangements that monitor business behaviour against a code of conduct, in return for membership fees.

Whereas civil responsibility is based on the social rationale, the core logic of businesses rests on economic principles (Van Huijstee, Pollock, Glasbergen, & Leroy, 2011). Responsibility taken by businesses, commonly referred to as Corporate Social Responsibility (CSR), is the self-regulation of businesses through active compliance with laws and ethical standards that is integrated into the business model. While socially responsible behaviour is crucial, the core logic of businesses does not permit responsibility to offset economic motives, so to that extent it is incongruent with its own existence.

In our study on standard setting by civil society groups operating at a transnational level for fair labour (Pekdemir, Glasbergen, & Cörvers, 2015), it was found that these private standard setting arrangements place final responsibility for solving unfair labour conduct with businesses and states, and not with themselves. The civil society groups act as intermediaries, mediating between state regulation and business conduct. The organisations placed responsibility for labour violations at business level, as it is considered to be a direct consequence of their conduct, and considered solutions founded on business motivations and principles to be more successful in addressing unfair labour. Final responsibility was in turn placed at state level as the failure of businesses to comply with law was deemed to be part of the regulatory domain through the force of (hard) law. States and international institutions such as the ILO were considered to be losing out due to the transnational organisation of value chains. While the organisations take responsibility to address unfair labour through governing activities and soft law mechanisms, they do not regard themselves as the ones bearing the greatest responsibility for the problem.

Accountability – Whereas responsibility involves taking ownership, accountability is about being liable or providing answerability for one's actions. Multinational businesses

are accountable to their stockholders and creditors, and even though there are demands that they should be more accountable to society at large, this is regularly avoided by businesses in practice (Keohane, 2008). Unlike public officials working for governments, civil society groups are, not accountable to an electorate. This limits their mandate to a claim of overall representation, but this independence does provide freedom and flexibility. They are accountable to, for instance, donors, beneficiaries, supporters, and governments within the context of providing legal and regulatory frameworks. However, these are not as direct, contractual, and time-bound as we may find with accountability of public officials and corporate managers (Marschall, 2002). As regards increasing accountability connections, it has been claimed that self-regulatory NGO initiatives are mostly engaged with upward connections with donors and governments, to the neglect of downward accountability to beneficiaries (Lloyd, 2005).

That there are deficiencies in clear accountability structures for standard setting by civil society groups on the issue of fair labour can be demonstrated by recent disasters. The fire at a Pakistani manufacturing site in 2012 and the collapse of the Rana Plaza in Bangladesh in 2013, both events with a high death toll, exemplify the case, as the fair labour organisations do not certify products and correspondingly do not fear damage to their reputation from defectively certified products. However, at both manufacturing sites, some factories were accredited by agencies that are also used by two civil society arrangements (Pekdemir, Glasbergen, & Cörvers, 2015). In the aftermath of the disasters, much attention went to strengthening compliance with international norms and rules and outcries for more involvement of governments and businesses. Civil society groups were at the front of supporting this cause, but the accountability linkages between the above-mentioned civil society groups and the disasters received almost no attention. Generally, the gap civil society groups face with regard to accountability is said to be best filled by full transparency and high standards of performance (Marschall, 2002), which in this field particularly applies to those civil society groups that claim to implement auditing and certifying practices in fair labour.

Power (re)distribution – Private sustainability governance has enabled private actors to gain substantial agency. Whereas this was once the sole jurisdiction of governments, they now have, among other powers, the ability to steer and control the governance of global value chains. Civil society groups with few or no business stakeholders often aim to compensate for perceived lack of governmental regulation, whereas self-regulation by businesses usually aims to ease or pre-empt not only actual or threatened hard governmental regulation but also the pressure of civil society groups (Abbott, 2012; Steurer, 2013). Civil society groups with sole industry representation can also be classified as functioning along the same lines as self-regulation by businesses. Even where arrangements are collaborative, business offsets the influence of "green" participants, which in turn limits benefits to sustainability (Newig & Fritsch, 2009).

The nature and consequences of this shift to private authority, particularly regarding the role of businesses, causes many scholars to underscore potential "win-win" outcomes, but causes other scholars to be deeply concerned (Abbott, 2012). Some regard it as a manifestation of the longstanding powers of businesses, albeit in new forms (e.g. Buthe, 2010), whereas other scholars see it as integral to a broad ideological shift towards the market, developed and legitimised by elites across all domains (e.g. Levy & Newell, 2002).

That regulatory power has been redistributed from public to private authority will here be exemplified by two cases in point. First, an analysis of the different codes of conduct by the civil society groups makes it clear that there is not only diversity among the standards, but the codes of the least stringent standards even water down ILO core rights by either omission or ambiguous phrasing of core provisions (Pekdemir, Glasbergen, & Cörvers, 2015). As such, these provisions challenge the authority of ILO conventions as an authoritative model code.

Secondly, even though most of these civil society groups are collaborative, the industry is overall more firmly represented across the governance boards of the fair labour governance arrangements. Out of the 10 arrangements, 2 are intra-sectoral and only have civil society representatives, including NGOs, universities and colleges, and individuals with no formal ties to the industry. The other 8 arrangements have industry representatives in their governance boards. Out of these 8 arrangements, 2 are intra-sectoral and only have industry representatives, and 6 are intersectoral and also have civil society representatives. Out of these 6 intersectoral arrangements, only 2 have union representatives in their governance boards. Hence, direct representation of workers by unions in the governance boards is marginal. Hence, workers' rights are currently more proposed by industry stakeholders and the corporate world than by unions.

15.4 Conclusion

Institutional change in the field of fair labour embodies a shift from public to private responsibility for the development and enforcement of labour laws and regulations. The regulatory reconfiguration from governments to global governance implies a new division of powers between governments, businesses, and civil society. However, the complementary shift from private responsibility to private accountability has yet to occur. The presumed checks and balances between governments, businesses, and civil society might turn out to be mere contests for power as regards ways to realise the changes necessary for the protection and improvement (Pekdemir, Glasbergen, & Cörvers, 2015) of labour rights and working conditions. Whether the introduction of private standard setting arrangements is enough to minimise the regulatory gap left by the ILO and other governmental and intergovernmental institutions remains to be seen, but normative concerns are gaining prominence in light of continued labour violations.

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