

A COMMENT ON “CORPORATE SOCIAL RESPONSIBILITY AND WORKERS’ RIGHTS”

Aaron K. Chatterji[†] and Siona Listokin^{††}

I. INTRODUCTION

Corporate codes of conduct play an increasingly important role in establishing, implementing, and monitoring international labor standards. Today, private business regulations govern firm actions in both theory and practice—frequently under the rubric of corporate social responsibility (CSR)—and are expanding their reach into areas previously dictated by governments and international law.¹ In this paper, we briefly respond to Lance Compa’s article in this issue on the success of corporate codes of conduct and recommend the cited articles below for further reading on this important topic.

Our central point is that despite their increased use, it is not yet clear that corporate codes of conduct are actually improving labor conditions. In fact, academics and practitioners are still struggling over fundamental issues of evaluation.² First, the proliferation of codes of conducts within particular domains makes assessment very difficult. Further, it potentially dilutes the value of each code itself, since firms can choose the code they wish to abide by and the acronyms are nearly interchangeable.³ We discuss the unfortunate implications of this proliferation below.

Next, we review recent evaluations of apparel and labor codes that assess international labor initiatives since their growth in the

[†] Fuqua School of Business, Duke University.

^{††} School of Public Policy, George Mason University.

1. Dara O’Rourke, *Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring*, 31 POL’Y STUD. J. 1 (2003); Tim Bartley, *Corporate Accountability and the Privatization of Labor Standards: Struggles Over Codes of Conduct in the Apparel Industry*, 14 RES. IN POL. SOC. 211 (2005).

2. Michael J. Lenox & Jennifer Nash, *Industry Self-Regulation and Adverse Selection: A Comparison Across Four Trade Association Programs*, 12 BUS. STRATEGY & ENV’T 343 (2003).

3. Aaron Chatterji & David Levine, *Breaking Down the Wall of Codes: Evaluating Non-Financial Performance Measurement*, 48 CAL. MGMT. REV. 29 (2006); Aaron Chatterji & Siona Listokin, *Corporate Social Irresponsibility*, DEMOCRACY: A JOURNAL OF IDEAS 52 (Winter 2007).

1990s. We view the empirical evidence on this subject as mixed, and identify a few of the conceptual and methodological issues below that must be considered before proclaiming these codes a success.

Finally, while corporate codes of conduct may have improved labor standards in some countries and factories, as an institution they are often insufficient and/or ineffectively enforced.⁴ Moreover, there is a great deal of inconsistency across codes, and at least initial evidence suggests that private codes may be displacing public regulatory change.⁵ The open question thus persists: Are CSR initiatives good for international labor conditions? We remain reluctantly skeptical.

II. WHICH CODES?

All corporate codes are not created equal, and it is a disservice to discuss private initiatives as a monolithic institution. Some of the most prominent codes (and the ones mentioned in Lance Compa's piece in this issue) include the Fair Labor Association (FLA), Worker Rights Consortium (WRC), Social Accountability International (SAI), Ethical Trading Initiative (ETI), Clean Clothes Campaign (CCC), and Worldwide Responsible Apparel Production (WRAP). In fact, there are far more voluntary codes that encompass international labor standards, including the United Nations Global Compact (UNGC) (which devotes four of its ten core principles to labor standards) and the Global Reporting Initiative (GRI).⁶

While many of the key components of these codes are similar (frequently based on ILO fundamental principles), compliance and monitoring systems can vary by country (headquarter country and supplier), company, and/or factory.⁷ For example, the FLA relies on both internal monitoring and external monitoring for 30% of a member company's facilities. SAI uses a different system, where individual factories self-select for compliance and retailers say they will only use suppliers with certification. WRAP relies more heavily on internal monitoring with external review. There are even greater differences between the codes in public disclosure requirements.

Moreover, the FLA, WRC, and WRAP differ on their requirements for wages, the right to organize, and the independence

4. O'Rourke, *supra* note 1.

5. Bartley, *supra* note 1.

6. It should be noted that neither the UNGC or the GRI have robust monitoring requirements

7. JOHN BRAITHWAITE & PETER DRAHOS, GLOBAL BUSINESS REGULATION (2000).

of monitors.⁸ While consumers and other stakeholders may not be able to tell the difference between the codes, a “prevailing wage” (as originally advocated by FLA) and a “living wage” may be very different in most developing nations. The presence of truly independent monitors (as prescribed by WRC), not paid by the company, who are empowered to make unannounced monitoring visits, is an important differentiating characteristic as well. Finally, the codes differ on how the information collected by monitors should be distributed, with industry influenced codes like WRAP favoring more privacy and WRC pushing for public disclosure.⁹ We doubt that many of these crucial differences are transparent to consumers, particularly at the point of sale. By design, the voluntary codes of conduct regime is vulnerable to being overcrowded with competing standards, leaving stakeholders confused and labor standards uneven.

III. THE CHALLENGE OF EVALUATION

These differences between codes are not trivial, and make CSR assessments particularly difficult. Consider the logical sequence of questions necessary to evaluate one of the apparel codes: First, are WRAP’s standards sufficient? Second, are WRAP members complying with the code’s standards? Third, are factories changing their behavior because of WRAP, or selecting into the code? (i.e., do the best performing companies select into the code making any “treatment effect” deceiving?) Fourth, is WRAP detracting from efforts to obtain more universal, stringent, and effective standards?

Rigorous attempts to answer these questions offer mixed conclusions.¹⁰ Nearly all acknowledge the difficulty of assessing corporate codes of conduct. The emerging consensus appears to be that the labor standards contained in most corporate codes are sufficient, especially if universally implemented.¹¹ There is far greater

8. Chatterji & Levine, *supra* note 3.

9. *Id.*

10. R. Liubicic, *Corporate Codes of Conduct and Product Labeling Schemes: The Limits and Possibilities of Promoting International Labor Rights through Private Initiatives*, 30 L. & POL’Y IN INT’L. BUS. 111 (1998); Ans Kolk & Rob van Tulder, *The Effectiveness of Self-Regulation: Corporate Codes of Conduct and Child Labour*, 20 EUR. MGMT. J. 260 (2002); Sasha Courville, *Social Accountability Audits: Challenges or Defending Democratic Governance?*, 25 L. & POL’Y 269 (2003); O’Rourke, *supra* note 1; Elliot J. Schrage, *Judging Corporate Accountability in the Global Economy*, 42 COLUM. J. TRANSNAT’L L. 153 (2003); M.W. Toffel, *Resolving Information Asymmetries in Markets: The Role of Certified Management Programs* (Harvard Business School, Working Paper No. 07-023, 2006).

11. Ans Kolk & Rob van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholder Codes*, 36 J. BUS. ETHICS 291 (2002); O’Rourke, *supra* note 1.

debate on whether members actually comply with the codes in practice. In a series of studies on child labor and corporate codes, Kolk and Van Tulder conclude that voluntary standards can be effective, provided they are well-monitored and consider side-effects of the codes.¹² Other scholars are less certain.¹³ This is due in part to the variability of data available to assess participants' compliance, but it is also complicated by the issue of differential selection into voluntary codes.

The possibility that suppliers and retailers select themselves into different voluntary programs is a matter of great debate. If companies or factories choose corporate codes based on their current behavior ("selection effect"), then CSR standards are useful as signaling devices but not as regulatory regimes intended to change activities ("treatment effect"). Toffel notes that the empirical literature offers evidence that voluntary codes (specifically, environmental codes) without external verification programs attract participants with worse performance records.¹⁴ On the other hand, codes with strict monitoring may attract better performing suppliers and companies. This type of dynamic can have important implications for international labor standards, especially in light of the differences between the more prominent codes in monitoring mentioned above. Once again, the proliferation of codes—with both self and outside monitoring—makes selection a probable outcome, limiting the improvements corporate codes can generate in international labor conditions.

Furthermore, proper evaluation of codes of conduct requires a thoughtful consideration of what the counterfactual would be if these codes were not in place. For example, is it possible that voluntary codes of conduct could actually displace traditional legal regulation of business? Some scholars have explored this "displacement hypothesis" and found that public regulation could have been undermined by private governance.¹⁵ After all, activists often worry that firms can use codes of conduct to deflect calls for government regulation without significantly improving labor conditions. This claim is very difficult to test empirically, because it would be extremely challenging to conduct a randomized experiment where

12. Kolk & van Tulder, *supra* note 10; Kolk & van Tulder, *supra* note 11.

13. Janelle Diller, *A social conscience in the global marketplace? Labour dimensions and codes of conduct, social labeling and investor initiatives*, 138 INT'L L. REV. 99 (1999); Andrew A. King & Michael J. Lenox, *Industry Self-Regulation without Sanctions: The Chemical Industry's Responsible Care Program*, 43 ACADEMY OF MGMT. J. 698 (2000).

14. Toeffel, *supra* note 10.

15. Kolk & van Tulder, *supra* note 10; Bartley, *supra* note 1.

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some fraction of otherwise homogenous companies are forced to abide by codes of conduct while others are governed by government regulation. Still, the displacement hypothesis must be considered when assessing codes of conduct, especially if we have reason to believe that voluntary codes are much cheaper for companies to comply with than the public regulatory alternative, thus creating incentives for companies to push for private governance over public in their non-market strategies.

IV. CONCLUSION

To be clear, there are multiple examples of private codes and cooperatives facilitating successes in labor standards. Compa notes KukDong and Jaqalanka Ltd. as examples of labor victories in organizing, changing work conditions, and wage agreements, in large part due to the efforts of corporate monitors and affiliated NGOs. Yet these examples are notable for the extraordinary public attention afforded to them. In its case study of Kukdong, the Herring Center for International Labor Relations at UC Berkeley notes that “[Poor work conditions] is, of course, not an uncommon story in Mexico . . . What was unusual about Kukdong was the tremendous outpouring of international support, primarily from American students, that the strike generated.” CSR initiatives were fundamental to these success stories, but are not proof of CSR effectiveness.

We await further research, as we also attempt to evaluate many aspects of CSR initiatives in our own work. At the present time, however, we are less confident than Compa that the current mainstream codes of conduct will have a significant and sustainable impact on labor rights without alternative institutional support, either in the form of serious monitoring or government intervention. We hope that the points addressed in this comment will be taken up by other scholars and that more empirical evidence will be forthcoming to shed light on this important academic and policy debate.

