

# Transnationalism in the Regulation of Labor Relations: International Regimes and Transnational Advocacy Networks

David M. Trubek, Jim Mosher, and Jeffrey S. Rothstein

*This paper examines prospects for transnational advocacy and regimes as a way to buttress national labor laws and institutions in an interlocking mosaic and thus ensure the continuation of strong systems of industrial relations under conditions of increasing economic integration. We argue that there is a role for transnational solutions as a supplement to national systems, and we assess the conditions necessary to make this approach effective. We look at a variety of possible actors and arenas that could foster transnationalism and provide illustrations of transnational advocacy and regime building. We conclude that elements of a multilevel, public-private transnational regime are present in some parts of the world and that these elements can occasionally be knit together. We find that prospects for an effective and sustainable system of transnational multi-level regulation are greater when regional integration pacts such as the EU and NAFTA create transnational*

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David M. Trubek is dean of international studies and Voss-Bascom professor of law at the University of Wisconsin-Madison. Jim Mosher is a Ph.D. candidate in the UW Department of Political Science and will be Jean Monnet Fellow at the European University Institute in Spring 2001. Jeffrey S. Rothstein is the staff coordinator for the Labor and the Global Economy Research Circle of the UW-Madison International Institute and a Ph.D. candidate in sociology. The authors acknowledge the assistance of the many people who helped us with this project. We benefited from participation in UW's Research Circle on Labor and the Global Economy. We particularly acknowledge the assistance of Harry Arthurs, whose pioneering work on legal pluralism and transnationalism in labor law inspired our project. We learned a great deal from Kathy Stone, Jonathan Zeitlin, Maria Lorena Cook, Gay Seidman, and Virginia Leary. Comments by participants in a workshop at the Graduate School of International Studies in Geneva, organized by Professor Leary, and by the students of the Yale Law School 1999 Workplace Policy Seminar directed by Vicki Schultz were helpful.

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As the century begins, the rate at which national economies are integrated into larger economic structures continues to increase. Integration may come about through public policy, as in the case of regional economic schemes like the European Union (EU) or North American Free Trade Agreement (NAFTA), or as a result of the complex of microeconomic forces sometimes referred to as "globalization." Either way, integration affects industrial relations by exposing national labor markets to global competition, making it harder for states to control labor conditions within their borders. States found it easier to manage industrial relations when national economic space was relatively autonomous. As autonomy declines, the capacity of existing systems is challenged.

Many fear that globalization will undermine national industrial relations systems, erode protections won by workers over many decades, increase conflict and instability, and encourage predatory behavior by firms (Kapstein 1996). If you believe, as we do, that economies are more likely to produce the optimal mix of equity and efficiency when labor, management, and the state interact within an established "web of rules" to produce a strong industrial relations system, then you must be concerned about the potential hollowing out of national systems of industrial relations in advanced countries and the failure to create effective ones in the developing world.

But what can proponents of strong industrial relations systems do? For some, the answer is to roll back globalization.<sup>1</sup> But for many, integration is a fact and rollback a chimera, so other solutions must be sought. One would be to buttress national systems through effective international labor standards established by a multilateral treaty and enforced by trade sanctions (Candland 1997). Chances for such a single global solution, however, are remote. Proponents of this approach pinned their hopes on the creation of an alliance between the International Labor Organization (ILO) and the World Trade Organization (WTO) (Ehrenberg 1996; de Wet 1995; and Langille 1998). The ILO would provide the normative structure for a system of global labor standards that would be enforced by trade sanctions authorized under a "social clause" to be appended to the General Agreement on Tariffs and Trade (GATT). The proposed social clause, which was limited to a few "core" labor standards and had weak enforcement provisions, fell far short of a global code for labor regulation: Nonetheless, it has met stiff resistance within both the WTO and the ILO.

1. Recently, the campaign against globalization has gathered steam, and in the United States, politicians on the left and right have picked up this flag.

The collapse of early hopes for an effective global labor pact has led to a search for other options. One answer is to restructure national industrial relations systems to reinvigorate them in light of global economic forces. The recent development of "social pacts" in many European nations is seen as a potential example of such revitalization, although the extent that they provide real protection for workers is in dispute (Rhodes 1998; Ebbinghaus and Hassel forthcoming). Another path being explored is "transnationalism." In lieu of simplistic models that rely on the restoration of a pure national autonomy, or utopian dreams of sweeping global regulation, some have begun to explore prospects to strengthen and supplement national norms through a multilayered approach (Boyer 1996; Trubek 1996). In this approach, multiple transnational public and private actors would operate not only at the national level but also in public and private arenas within and beyond national borders. Such actions could create a mosaic of normative orders and norms that would, taken together, establish a multilevel, public-private, cascading transnational regime for labor regulation.

This paper examines prospects for transnational advocacy and regimes as a way to buttress national labor laws and institutions in an interlocking mosaic and thus ensure the continuation of strong systems of industrial relations under conditions of increasing economic integration. We argue that there is a role for transnational solutions, and we assess the conditions necessary to make this approach effective. We look at a variety of possible actors and arenas that could foster transnationalism and provide illustrations of transnational advocacy and regime building. We conclude that elements of a multilevel, public-private transnational regime are present in some parts of the world and that these elements can occasionally be knit together. We find that prospects for an effective and sustainable system of transnational multilevel regulation are greater when regional integration pacts such as the EU and NAFTA create transnational norms or forums. But, based on preliminary analysis of transnational advocacy and regulation in these two areas, we also conclude that no fully effective system has yet emerged.

# 1. Constructing National Autonomy: Postwar Industrial Relations and International Regimes

In the period after World War II, national industrial relations systems operated in a context of what might be called *internationally constructed national autonomy*. They worked in part because the autonomy of national economic space was protected by an *international* regime (Ruggie 1983). And international "lawmaking" in the area of industrial relations was focused primarily on efforts to strengthen *national* legal systems. The international system for regulation of industrial relations in the period following World War II relied on national laws and national enforcement for effective

regulation. Major elements of this international regime were the Bretton Woods system and the International Labor Organization. The international monetary and trade rules that emerged out of World War II ensured that national governments desiring effective industrial relations systems and generous social welfare programs could do so free of excessive risk that they would be destabilized by international economic forces. The architects of Bretton Woods recognized that such forces had destabilized national economies during the interwar period, and they sought to create a regime that would modulate such shocks. The postwar rules of the game gave nations powers to control capital movements and limit imports that would seriously destabilize national markets. This allowed substantial control over actors within national economic space.

At the same time, international efforts to improve industrial relations focused on the establishment of rules and procedures for the operation of national systems. While the primary activity of the ILO was the drafting and approval of international treaties, these agreements were designed to create norms that would be promulgated and enforced at the *national* level (Langille 1998; Leary 1996). The ILO itself had no effective power to enforce international norms. Nor, in an era of national autonomy, did it seem necessary for it to do so.

The autonomy enjoyed by advanced capitalist nations in the postwar period was not simply the result of international regimes and legal rules. The general economic and political *conjuncture* was even more important. Relative to the present, firms were more likely to operate primarily within national borders, tariffs were still a significant barrier to trade, industry was largely located within the richer countries of the north, trade was heavily weighted to intra-industry exchanges, and capital markets were weak and not well integrated across national boundaries. Strong national political forces both favored a major role for unions and supported government regulation of industrial relations. Systems varied from country to country and in effectiveness. But most advanced countries developed basic rules and institutions that protected workers, established a social safety net, and ensured some degree of participation for labor in the expanding postwar economic pie.

## 2. Good-Bye to All That: Changes in Economies, Politics, and Institutions

In the past 20 years, a vast number of changes have undermined the postwar system. Dramatic increases in economic interdependence and expansion of other links between peoples and nations have undermined the "relatively" insulated worlds that existed in the postwar period. Many commentators sweep all these changes together under the rubric "globalization"

(Rodrik 1997; Tilly 1995; Boyer and Drache 1996; and Hirst and Thompson 1996).

Economic globalization is not really new, but the current wave of globalization creates new issues never before encountered. By some measures the advanced countries were more fully integrated economically at the end of the nineteenth century than they are today (Hirst and Thompson 1996; Williamson 1998). But events of the twentieth century, from World War I on, led to a partial dismantling of the nineteenth century's regime of free trade and labor and capital mobility. In the meantime, the nature of the state and its role in the economy changed. Shielded from unrestricted international economic forces and under increasing pressure from organized workers and mass constituencies, states began to play a major role in the economy, to insure citizens against economic hazards, and to support institutionalized systems of industrial relations. In comparison with the *laissez-faire* regimes of the nineteenth century, these changes represented historic achievements. Now that the pendulum of economic integration is moving back, and some indexes of world economic integration are nearing or even exceeding nineteenth-century levels, new issues never faced before are presented, and these gains for labor and democracy are put at risk by the resurgence of globalization. Institutionalized systems of industrial relations that grew up under the shelter of partially closed economies are now facing global economic forces for the first time in history.

To understand how to deal with the risks created by this late-twentieth-century return to an integrated global economy, we must first understand the forces that impel it. Some portray globalization as a fate before which all must bow, while others see it as a plot crafted by a cabal of global capitalists. These are gross oversimplifications. There is no single process called globalization and no single set of actors managing these changes. Rather, we confront many basic and partially independent changes in the economic, political, and institutional spheres. Some are caused by fundamental changes in technology, cost structures, and similar microeconomic parameters. Others are the result of policy decisions. Among the most important for industrial relations are transformations in industrial production, the new geography of industry and capital markets, and changing attitudes toward the role of the state in the economy. Taken together, these changes help explain why we may be facing a "hollowing out" of nationally based industrial relations systems.

*Industry.* Productive methods and industrial organization have shifted. New approaches to marketing and the organization of production have arisen. New technologies have made it both possible and desirable for firms to serve global markets while dispersing production across national borders to secure the lowest cost of production and be close to different segments of the global market. This trend has created strong support for various degrees

of economic integration, from simple lowering of tariff barriers to deeper integration of national economies.

*Geography.* Industrial changes contribute to a geographic shift. Thirty years ago, most goods consumed in advanced industrial nations were manufactured at home or imported from a country at a similar economic level. What little manufacturing went on in the "developing" world was for home consumption in highly protected markets. Today, an increasing portion of goods consumed in Europe, North America, and Japan are manufactured in developing and newly industrialized countries. This shift was made possible by changes in technology as well as policy. It is facilitated by the emergence of a global capital market that makes it easier to raise capital for productive investments outside the advanced nations. Firms can shift production from advanced to developing countries, and workers in the advanced countries of the "north" are directly affected by developments in the developing nations of the "south."

*Regulation.* Concomitantly, attitudes have changed toward government and the role of government in industrial relations and the economy more generally. Concerns over the growing costs of the welfare state and disillusion with social engineering have undermined the faith in the industrial relations vision. "Neoliberal" views, favoring privatization and the free play of market forces, have emerged to offer an attractive alternative to the social democratic and corporatist ideas that flourished in the postwar era.

These factors weaken support for regulation of industrial relations, while making such regulation less effective when it exists. The neoliberal critique has convinced some that labor standards and government-mandated collective bargaining do more harm than good. Geographic shifts in production and the always present possibility of moving production deter even those who continue to believe in the desirability of "strong" industrial relations systems based on legally enforced standards and procedures. At the same time, the actual dispersion of industrial production makes companies less dependent on facilities in any one country and more able to deal with strike threats. These factors have made regulators less likely to enforce existing standards or create new ones, and made unions less willing to demand such actions.

### 3. Is There an Emerging Transnational "Vision"?

As national systems undergo stress in the face of economic and political forces, and efforts to create an effective global labor code prove utopian, some have looked to the "transnational arena" as a third way between the national and the global (Turner 1996; Frundt 1996). Increasingly, labor issues are being dealt with in transnational structures such as the Social Chapter of the European Union and the North American Agreement on

Labor Cooperation (NAALC) (on the EU, see Addison and Siebert 1997; and Streeck 1996; on NAFTA, see Diamond 1996). Unions have started to coordinate and even organize across borders. Government agencies from different countries administering labor laws are consulting each other. NGOs and other labor rights advocates are engaged in cross-border advocacy, often involving the use of several legal systems simultaneously.

We believe that by combining information about actions being undertaken with insights drawn from the academic literature, it is possible to sketch an emerging transnational "vision" for regulation of industrial relations. This vision rejects the idea that regulatory possibilities are confined to the binary choice between the national and the global and asserts that a complex regime can be constructed by weaving together normative arenas at many levels and across borders, deploying private rules, local practices, national laws, supranational forums, and international law in the interest of effective protection of workers and their rights. While the transnational vision is emerging from the world of practice, it can be refined and developed by drawing on a number of intellectual traditions. We can construct a more robust version of the vision using insights from industrial relations, which stresses the interaction of labor, management, and the state in the formation of working rules (Dunlop 1958/1993); legal pluralism, which stresses the need to understand how multiple and overlapping normative orders affect various semiautonomous social fields (Arthurs 1996); and international regime and transnational advocacy theory (on regimes, see Krasner 1983; on transnational advocacy theory, see Keck and Sikkink 1998).

To be complete, such an approach should rest on four basic assumptions. First, do not give up on national systems. National systems remain the foundation for industrial relations. But to be fully effective today, they should be buttressed both by the involvement of transnational actors in national arenas and by genuinely transnational norms that either affect or supersede domestic regulation. Second, do not rely exclusively on public action. We must remember that industrial relations "systems" should be—and always have been—created in part through various forms of private ordering. This includes exploring bottom-up forms of normative ordering arising out of private action such as external pressures on corporations to create codes of conduct covering labor conditions. Third, don't look for one unitary source of normative order; a working transnational industrial relations regime can only be built by weaving together a variety of public and private normative sources at different levels. Finally, pay attention to transnational actors and advocacy networks. They are needed to mobilize norms from different systems to create a regulatory web that transcends the purely national.

#### 4. Transnational Dynamics: The Interrelationship between Transnational Regimes and Advocacy Networks

At the core of the vision is the idea that transnational "regimes" can be constructed to buttress national systems of industrial relations and strengthen workers' rights. In international relations theory, a "regime" is a set of institutions in international space that establishes and enforces norms or rules of the game for public and private actors (Krasner 1983). A transnational industrial relations "regime" would be a set of structures and norms operating across national borders to buttress national law and practices either by reinforcing national norms or superseding them.

While the concept of *regime* is necessary to understand the theoretical framework of the transnational vision, it is not sufficient. Regime theory focuses primarily on structure and rules, while the transnational vision also rests on actors and agency. To portray the dynamics of transnationalism fully, we need to add another concept drawn from the field of international relations—the "*transnational advocacy network*." A transnational advocacy network (TAN) as defined by Margaret Keck and Kathryn Sikkink (1998) is made up of actors in such organizations as NGOs, social movement organizations, national governments, international organizations, and foundations linked together in a voluntary network that operates across national borders on behalf of such principled issues as human rights, women's rights, or environmental protection. These networks may cut across geographic borders, include actors from the public and private sector and from multiple levels of government, and operate simultaneously in various political arenas and legal forums (for a discussion of transnational advocacy concerning labor in North America, see Cook 1997; Kidder n.d.; Frundt 1996).

The vision rests on the idea that transnational advocacy networks can construct and cement a regime by creating and mobilizing norms from a variety of sources. Transnational actors don't just enforce supranational norms like the labor law of the European Union. In addition, they can mobilize *separate norms from different national and international arenas* to create effective regulation. Working across borders and in multiple sites, they can mount campaigns that use international, supranational, regional, national, and local laws as well as private norms and political action to affect outcomes in one or more countries. The real key to the transnational vision is the belief that through the continued operation of networks linking various actors across borders, a number of overlapping normative arenas can be mobilized to create an effective regulatory mosaic.

#### 5. Observing Transnational Systems and Measuring Their Effectiveness

Any final assessment of this vision will have to face such questions as these: How effective and sustainable are the networks? How strong is the resulting regime? We can imagine effective networks that can be sustained over time. But we can also envision networks that are large enough to bring together all the key players necessary to develop effective norms but that can't be held together for long periods, or sustainable alliances that can't engage all the necessary actors. We can envision very strong regimes that combine clear and comprehensive norms with effective enforcement machinery. But it is also possible to imagine regimes based on broad and detailed normative agreement but with weak enforcement powers, as well as systems that have some teeth but only affect a small part of the industrial relations *problematique*.

The basic questions to ask in any final assessment of the transnational vision, therefore, are whether there are available normative orders that, when mobilized by networks, will provide effective protections? What kinds of networks exist, how effective are they, and can they be sustained over time? If the normative structure itself is inadequate, can it be strengthened? If networks exist but are transitory, can they be rendered sustainable? And where no such structures and agents currently appear, what are the prospects for their emergence?

Full assessment of what is occurring in the transnational arena will require more research. And even the best informed judgments at this stage would be premature: "transnationalism" in industrial relations is a relatively new phenomenon, and it is too early to determine what its long-term prospects may be. What we hope to do in this paper is sketch the basic outlines of the transnational vision, show there are actors that operate in transnational industrial relations space and arenas in which transnational norm building does occur, and provide a few illustrations of transnationalism in the construction of structures and the development of protection for workers through linkage of the rules of several jurisdictions. Section 6 provides a preliminary mapping of actors and arenas; section 7 reports on a few examples of transnational networking, arena linkage, and norm construction.

#### 6. Actors and Arenas in Transnational Space

Industrial relations systems consist of three actors: labor, capital, and government. They interact within a framework of legal and cultural norms, the "web of rules," established at the national level (Dunlop 1958/1993). These rules are influenced by the ideology of society, the actors themselves,

and the environmental context in which they arise. Globalization dramatically alters that environmental context and may weaken the "web of rules."

At the same time, globalization has ushered in new actors and fresh opportunities to establish labor standards. Capital, labor, and government maintain their primary role of navigating domestic industrial relation systems. However, they are joined by new actors, NGOs, social movements, and regional and international organizations, which have become engaged in this area in response to issues unique to the global economy. As Tarrow (1999) has pointed out, such action may involve coordination across borders to influence decisions taken in international forums (e.g., the WTO or the European Union), bring voices from many nations to bear on national decisions, or both. It may also involve transnational coordination of action aimed at private agents. The various actors working to establish labor-standard norms pursue their goals in five broad and overlapping arenas: national, regional, international, corporate, and industrywide.

#### A. Actors

**Labor.** While labor unions maintain their traditional focus on the national level, they increasingly engage in solidaristic partnerships with their counterparts in other countries. For instance, telecommunications unions in the United States, Mexico, and Canada have formed an alliance for coordination of action and mutual assistance. Similarly, the unions at BMW facilities in Germany, Brazil, and the United States recently announced their intention to pursue contracts that expire simultaneously to prevent the automaker from shifting production during contract negotiations. International labor federations, which for years served mainly symbolic roles, are increasingly important in the global economy. The European Trade Union Congress (ETUC) has been granted a policymaking role in the European Union (EU). The International Confederation of Free Trade Unions (ICFTU) has expanded its work in global industrial relations. This does not mean that unions have embraced globalization. Quite the contrary: One goal of transnational union activity is to halt or slow down the globalization express in order to gain leverage at national and international levels. This was apparent in Seattle at the 1999 WTO Ministerial Meeting.

**Capital.** While the mobility of capital is widely blamed for weakening labor standards and degrading industrial relations systems in developed countries and exploiting workers, multinational firms can also be credited with spreading employment, technology, production methods, and enhancing as well as undermining labor standards. In some cases, corporations have become instrumental in establishing labor norms transnationally.

**National governments.** National governments remain the primary regulators of industrial relations. Additionally, the nation state is the ultimate

source from which international bodies such as the IMF and the WTO gain their power and authority and thus are the source of their policies affecting labor.

**NGOs.** Among new actors responding to the globalization of the economy, NGOs have been the most active proponents of international labor standards. They have framed questions concerning the treatment of workers by corporations, particularly in the developing world, not just as industrial relations questions, but also as human rights issues. Human rights groups such as Human Rights Watch have adopted labor standards as an issue, and labor-oriented organizations like the Coalition for Justice in the Maquiladoras and the International Labor Rights Fund (ILRF) have taken up the human rights banner.

**Social movements.** Concerns over labor conditions are on the agenda of new social movements. Widespread relocation of assembly facilities from developed to developing countries, particularly in the garment industry, has attracted the attention of women's movements concerned with gender discrimination, sexual abuse, exploitation, and exposure to hazardous materials. Similar concerns over labor conditions have been voiced by indigenous peoples' movements.

**Regional and international organizations.** Finally, though no global agency is charged with enforcing labor standards, numerous international organizations play a role in establishing such norms. The ILO is the primary source of internationally acceptable conditions of employment. Although it really does not have enforcement powers, the ILO has played a major role in getting governments around the world to strengthen industrial relations. Both the EU and the NAALC include units that address labor standards, though that of the NAALC has little more than administrative functions. Other international organizations have direct and indirect effects on labor standards. Organizations like the OECD, IMF, and IBRD articulate, and in some cases enforce, policies on labor markets that directly affect labor standards. And these agencies and the WTO shape the basic rules of the international game. These rules have accelerated global economic integration and affected labor conditions worldwide.

#### B. Arenas

**The national arena.** The demise of the nation-state has been much exaggerated, and national systems remain central to industrial relations. Indeed, much "transnational" activity focuses on reinforcing national industrial relations systems. International coalitions of labor unions have sprung up to assist each other in navigating their respective domestic "web of rules."

The national arena, however, also includes unilateral actions by national governments to pressure other countries to raise their labor standards. This may involve the use of trade policy and judicial opinions applying national labor law extraterritorially. U.S. law conditions tariff preferences for developing countries on their compliance with internationally recognized labor standards, and the EU offers tariff incentives to developing nations when they enhance their standards.

*The regional arena.* The advent of regional "free trade zones" or "economic communities" raises the prospect that states within these economic spaces might be forced to compete with one another for trade and investment based on capital-friendly industrial systems or lax enforcement of labor law and standards. This possibility has led both the European Union and NAFTA to address the need for some kind of regional-level industrial relations arrangements. The more developed of these systems is the structure of industrial relations law and institutions created by the European Union. The EU is committed to harmonization of some labor standards. In addition, the social partners (capital and labor) may negotiate standards for the whole EU and then have these agreements transformed into EU law. The North American Agreement for Labor Cooperation (NAALC), the labor side agreement to NAFTA, explicitly renounces harmonization as a goal and creates no regional-level law-making capacity. Instead, each country pledges to enforce its own labor law and advance 11 labor "principles." Compliance is supposed to be assured by mutual monitoring and consultation; real sanctions are available only in a few limited areas.

*The international arena.* International politics and law may have direct and indirect effects on labor conditions and form an additional arena for transnational activity. The ILO remains a major source of normative guidance, and its treaties often create (or lead to) binding law at the national level that can be used by transnational networks as well as purely domestic actors. The WTO's actions affect labor conditions for better or worse, as do the policies of the IMF, IBRD, and other international financial institutions. Even though the WTO social-clause project failed, and the international financial institutions resist efforts to link lending to observation of labor standards, this remains an arena with potential.

*The multinational corporation as an arena.* As multinational corporations globalize, the labor standards they apply to their own operations, and those of their contractors, help establish transnational labor norms. Corporations operating in many countries may find advantages to standardizing labor practices across borders even if these are not mandated by law or imposed by external pressure. For example, Levi Strauss took the initiative to adopt a code of conduct for employment conditions of their subcontractors worldwide. This code bars the use of child or prison labor, discrimination, and

corporal punishment and demands a safe work environment and adherence to prevailing minimum wages and work hours.

*The industrywide arena.* Similar codes may be established for an entire industry, setting norms for manufacturing facilities of participating firms and their contractors. Firms using the Rugmark label guarantee that they employ no child laborers. The international football federation code (FIFA) bans child labor and requires "fair wages" and respect for workers' rights to join unions in companies producing official soccer balls. Under pressure from outside groups and the U.S. government, elements of the U.S. apparel industry have sought to create a "Workplace Code of Conduct" for apparel manufacturers, which would establish rules governing most working conditions. University students, concerned about the inadequacies of the apparel manufacturers' code of conduct, have formed United Students Against Sweatshops, and they advocate their own code and monitoring regime.

## 7. Examples of Transnational Norm Construction and Norm Mobilization

Central to the transnational vision is the idea that multiple actors can create and mobilize norms in different arenas and that these efforts can be combined to create effective transnational regulation. Transnationalism has two dimensions: The first is action to create new transnational structures and norms affecting workers' rights; the second is the mobilization of these and other norms by transnational networks. In this section, we present five examples of transnational action. The first two show how actors, recognizing the weakening of the national level of regulation, successfully pushed for the creation of new transnational regulatory structures. The other three show how transnational networks and other actors operating in various arenas have attempted to mobilize these new transnational regulatory structures and other legal sources in multiarena transnational campaigns.

### A. Creating Structures

The first two examples deal with the process of constructing transnational forums in regional economic zones. They show how actors have recognized the need for such forums and struggled to make them effective.

*Social dialogue at the EU level.* In the process of European integration, the European Union has gradually developed limited competence to legislate on labor matters in ways that affect all its member states. As a result, there is a body of European labor law that can be mobilized by transnational actors. In addition to a modest corpus of laws and other forms of regulation, the EU has created a novel institutional structure called the Social Dialogue, a new arena in which actors can pursue the development of further



transnational regulation. The successful construction of the Social Dialogue is a prime example of transnational action.

The idea of social dialogue as a way of creating labor standards was well known to most of the Union's member states. In countries like Sweden, Austria, Germany, the Netherlands, and Denmark, labor and capital directly establish legally binding rules in areas such as working conditions, working time, dispute settlement, and rates of pay. In the 1980s, the European Commission, under the leadership of Jacques Delors, began to press for a similar system that would operate at the European level. This effort was supported by unions in many countries. Delors's efforts initially bore fruit in the form of a series of informal discussions between capital and labor known as the Val Duchesse discussions. They were enshrined as an EU aspiration in article 118(b) of the Single European Act (SEA) of 1987, which includes a statement that the Commission was to "endeavor to develop the dialogue between management and labour at the European level." Although article 118(b) did not immediately produce concrete results, its adoption by the member states was a signal that national political leaders, motivated by a desire to make the EU seem more relevant to its citizens, were open to institutionalization of this concept.

As a result, the European Trade Union Council continued to push for the implementation of the dialogue. Initially, however, European business, led by UNICE, resisted. The issue came to a head in the negotiations over the Maastricht Treaty of 1992. The Commission convened meetings between labor and management to explore the feasibility of an effective social dialogue at the European level through which they could negotiate binding EU-level agreements. Labor and the Commission favored such an arrangement, while management representatives were opposed. However, when it became apparent that member states supported the idea of social legislation at the European level, the representatives of management changed their tune and supported the social dialogue. They felt that this system of negotiated agreements would be more flexible and predictable than direct EU legislation.

As a result, the Maastricht Treaty created a formal process through which representatives of labor and management at the European level may negotiate standards that can become law through directives approved by the Council of Ministers.<sup>2</sup> To be sure, the capacity of the resulting Social Dialogue is limited. The formal authority of the EU to pass directives generated

2. The pertinent provisions are set forth in articles 138 and 139 of the Treaty establishing the European Community. Originally, Britain excluded itself from the Social Agreement appended to the Maastricht Treaty, which had established the social dialogue process. As a result, directives produced through the Social Agreement were not applicable in Britain. After the election of Blair, Britain agreed to be covered by the Social Agreement, and the provisions of Social Agreement were transferred into the body of the Treaty establishing the European Community.

by the Social Dialogue is limited to specific areas, with jurisdiction over major topics like pay and the rights of association, strike, and lockout all being excluded. Further, even when Directives are passed, they usually only set minimal levels and allow member states substantial flexibility in implementation. Finally, the political balance in the Dialogue process is such that labor only seems to be able to secure management agreement to new regulations when the employers' groups fear that otherwise the EU will legislate directly on the matter.

Nonetheless, the creation of the Social Dialogue has changed the context for transnational advocacy in Europe, creating a new arena that labor and management directly control. It provides a focus to organize labor on a European scale. The Dialogue has already been mobilized to produce three important pieces of European-level legislation: it has led to directives guaranteeing parental leave, providing equivalent benefits to part-time workers, and providing equivalent benefits for fixed-term workers that have become part of EU law and are shaping national labor regimes.<sup>3</sup>

*The North American Agreement on Labor Cooperation.* While the European Union has gone the farthest in developing a deep and comprehensive regional trading order, through NAFTA the United States, Canada, and Mexico have also accelerated the integration of their economies and provided for regional governance of certain economic issues. When initially negotiated in the early 1990s, NAFTA exclusively addressed issues of trade and investment, and no harmonization or coordinated regulation of labor policy was envisioned. However, labor activists in the United States were able to successfully fight for a provision for labor standards, thus creating a new transnational arena for protection of workers' rights.

NAFTA became a divisive issue during the 1992 U.S. presidential election. President Bush enthusiastically supported the agreement. Ross Perot was firmly opposed. Fearful of losing the support of the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), a vocal opponent of NAFTA, then Democratic presidential nominee Bill Clinton sought a compromise. He supported NAFTA because he thought it would expand markets for U.S. goods, grow the economy, and create high-wage, high-skill jobs. However, he agreed with opponents that the pact's failure to address labor and environmental standards was a serious flaw. His solution

3. Another crucial piece of structure-creating legislation is the European Works Council Directive (EWC), which requires large trans-European companies to set up a committee of workers who must be informed of, and consulted about, important decisions facing the company. The EWC Directive lays the groundwork for greater transnational labor links within companies, but its true long-term impact on working conditions, pay and bargaining strategies, etc. is not yet known. The Commission attempted to have its proposed European Works Council Directive passed through the Social Dialogue procedure, but this attempt faltered due to the general opposition of the employers and the unwillingness of labor to weaken the proposals to satisfy employers. In the end, the Council of Ministers passed the directive without the approval of both social partners.



was to support NAFTA but require the addition of side agreements on labor and the environment.

This position was sufficient to maintain labor's support, and with Clinton's election, labor standards became a recognized trade issue in North America. During the negotiations with Mexico and Canada, the original proposals for a labor side agreement to NAFTA proved quite controversial and generated significant opposition in the U.S. business community, which was able to get them watered down. Finally, in 1993 the governments of Mexico, Canada, and the United States agreed to an addendum to NAFTA, the North American Agreement on Labor Cooperation (NAALC). The addition of the NAALC and the environmental standards to NAFTA provided the margin necessary to secure congressional approval.

Unlike the European Union, the NAALC specifically repudiates the establishment of uniform labor standards in Canada, the United States, and Mexico by "recognizing the right of each Party to establish its own domestic labor standards" (NAALC, art. 2) and maintaining "due regard for the economic, social, cultural and legislative differences between them" (NAALC, art. 11 [3]). Instead the NAALC outlines 11 labor "principles," ranging from freedom of association to various occupational health and safety standards, which the signatory countries agree to promote.

Each country monitors its counterparts' administration of labor law by establishing a National Administrative Office (NAO) for "the submission and receipt . . . of public communications on labor law matters arising in the territory of another Party," (NAALC, art. 16 [3]). These submissions allow individuals or organizations to file complaints with their own government concerning labor violations in one of the other countries. The NAO is required to investigate whether the other government has persistently failed to enforce its domestic labor law, and to recommend further action. Action is usually limited to consultations between labor ministers, but may include fines or loss of NAFTA benefits in rare cases principally involving a limited set of technical norms.

There is significant controversy over the effectiveness of the NAALC. For some, including the AFL-CIO, the NAALC is "toothless." For others, it is a useful and original mechanism with long-term potential to raise labor standards, giving labor activists a new forum within which they can raise concerns over workers' rights (Compa 1997). To date, the NAALC has only a limited track record. There have been fewer than 10 submissions, mostly in the United States. Most submissions deal with rights of association, and the NAALC has primarily been used to help independent Mexican unions gain recognition by Mexican authorities. Since the NAALC provides no sanctions for failure to honor associational rights, all that the process can do is cast a spotlight on questionable practices. Some evidence indicates that this process has made a difference in a few cases, but no one

could claim that the NAALC has radically transformed labor relations in any of three NAFTA signatory nations. However, whatever its shortcomings, the NAALC can increase the visibility of failures to enforce existing national labor laws and has been used as part of broader transnational campaigns as one tool in the armory of transnational labor advocates in North America. The creation of the NAALC is an example of how labor activists in the United States, Mexico, and Canada were able to lobby successfully to ensure a role for labor issues and activists in the North American trade bloc.

## B. Transnational Advocacy

The next three examples illustrate how transnational networks involving unions, NGOs, and other actors have mobilized norms in several arenas to increase the chances that workers' rights will be protected.

*Han Young: Mexican law, corporate codes, U.S. politics, and NAFTA.* A campaign to defend workers at an assembly plant in Mexico illustrates how multiple labor activists can coalesce into a transnational advocacy network operating simultaneously in several arenas. The workers at Han Young, an assembler of truck chassis for Hyundai Corporation, voted on 6 October 1997 to oust their "official" union in favor of the independent October 6 Union for Industry and Commerce, originally, but no longer, affiliated with the independent Authentic Workers Front (FAT). However, Han Young and the Mexican government have resisted all efforts by the independent union to negotiate a contract. The government refused to certify results of two elections. When it finally certified a third election in January 1998 following a 26-day hunger strike by Hyundai unionists, it did not take measures required under Mexican law to bring the parties together for negotiations. Since the workers began their ongoing strike after the expiration of their labor contract in May 1998, labor authorities have treated the strike as illegal despite Mexican court orders to the contrary, thus denying the strikers protections provided by Mexican law that would prevent the facility from operating for the duration of the industrial action. Han Young, in turn, refuses to engage in collective bargaining, hires strike breakers, and reopened the shop under a different name in a different location in Tijuana.

The case attracted the attention of labor unions and activists on both sides of the border. Building on contacts made in the campaign over the NAALC and in other NAFTA-related activities, various groups began to work together in official and private arenas both in Mexico and the United States. Activists organized by the Support Committee for Maquiladora Workers (SCMW) targeted Han Young's corporate parent, seeking to have Hyundai adopt a corporate code of conduct protecting the right of association. Aided by notices distributed through "Labor Alerts" email network of the Campaign for Labor Rights' (CLR), activists demonstrated in front of

Hyundai Precision America's offices in San Diego. A letter-writing campaign was buttressed by a consumer boycott and demonstrations at Hyundai dealerships throughout the United States and Canada. The CLR distributed "Hyundai action packets" to protesters participating in "Han Young Days of Action" in 17 communities throughout the United States as well as others in Mexico, Canada, Brazil, Bangladesh, and Spain.

At the same time, participants from inside and outside Mexico continued to pressure the Mexican government to enforce its labor laws. Representatives of NGOs and unions in Canada and the United States traveled to Mexico to witness the original union vote and wrote letters to President Ernesto Zedillo. Activists from all three countries held local protests in Mexico and marched on Mexico City. The Han Young strikers took the issue of the legality of their strike to the Mexican judiciary, eventually winning a favorable opinion from the First Collegial Court of the Fifteenth District, the highest legal authority in Baja California Norte, on 3 May 1999. In addition, the Han Young workers' cause has been cited by the opposition Party of the Democratic Revolution as evidence of the need for political change in Mexico.

The network also sought to bring U.S. pressure to bear. In the political arena, an effort was made to tie the Han Young case to the struggle over renewal of fast-track trade negotiating authority, showing the need for stronger labor protections in trade pacts and bringing the issue to the attention of ranking members of Congress. The International Labor Rights Fund and the National Association of Democratic Attorneys made formal submissions to the U.S. government under the NAALC, alleging a persistent failure to enforce Mexican labor law. Although the U.S. National Administrative Office found sufficient evidence to warrant ministerial consultations, so far the Mexican government has not responded to the U.S. request for a ministerial meeting.

Though the network of activists eventually dissolved due to disagreements between the various groups involved, and the October 6 Union is currently pursuing its cause exclusively through Mexican industrial relations institutions, the Han Young campaign shows that North American labor activists have learned how to create transnational networks, work in multiple arenas, and take advantage of the limited powers of the NAALC. Whether or not the October 6 Union and Han Young eventually sign the first collective bargaining agreement negotiated by an independent union in Mexico's Maquiladora sector is yet to be seen, and certainly the role of the international activist community in achieving that success would be debated. However, the international campaign did help sustain the October 6 Union, and without it their organizing efforts likely would have been defeated long ago.

*Vilvoorde: National and European Union law and politics.* The European Union presents another arena in which transnationalism is developing. With a core of European-level labor legislation and an organized structure for European-level coordination, the EU offers substantial structural support for the operation of networks and the creation of a transnational regime. One incident that shows how actors have begun to use the multiple arenas in the EU is the activity generated by Renault's decision to close a Belgian plant (Lillie 1999).

On 27 February 1997, the French automaker announced the closure of an assembly plant in Vilvoorde, Belgium. The workers and their unions were stunned by the announcement, partly because the plant had been modernized and was profitable. However, labor costs are higher in Belgium than in either France or Spain, where Renault also has plants, while Belgian law is relatively more permissive of layoffs.

The closure of the plant was a heavy blow for Belgium, which was already suffering from high unemployment and other recent high-profile plant closure announcements, and the response by the political authorities in Belgium was swift and angry. The government called the closure announcement "brutal and unacceptable" and sought to pressure the French government, which owned 47% of Renault's stock: Jean-Luc Dehaene, the premier of Belgium, expressed "indignation and stupefaction" to the French premier, Alain Juppe. In addition to public expressions of outrage, the Belgian government announced an exploration of whether Renault had violated Belgian rules on worker consultation, flouted laws based on EU directives governing European Works Councils and Collective Redundancies, and ignored OECD rules.

A major part of the legal struggle centered on laws deriving from the European Works Council directive (EWC), passed in 1994 under provisions of the Social Agreement appended to the Maastricht Treaty. The EWC requires that member states pass national laws mandating that large European multinational firms operating in their countries establish works councils at the company level and ensure that workers are informed about, and consulted on, plant closings and similar issues. The workers and the Belgian government claimed that Renault had failed to conform with these requirements, and the workers filed suit in the French courts under the EWC. A similar case was filed in Belgium under Belgian national law. In addition, the workers at Vilvoorde barricaded the plant, blocking the delivery of about 5,000 cars and halting production.

Soon other actors began to intervene. The European Parliament passed a resolution condemning Renault's action. In an unusual move, the 20 EU commissioners declared that Renault had "failed to respect" both the European Works Councils directive and the EU directive on Collective Redundancies. Finally, the issue became embroiled in the French election

campaign, with Lionel Jospin, the Socialist candidate for premier, saying that, if the left won, the state's representatives on the company's board would be instructed to put pressure on the company to seek other ways of cutting costs.

The closure announcement by Renault struck a chord among workers both at other Renault sites and in the EU. Many member states were suffering from high unemployment and economic stagnation, and Vilvoorde became a symbol for labor protest. Coordinating action through Renault's works council, workers held sympathy strikes in both France and Spain. At the EU level, unions and sympathizers from Germany, Italy, the United Kingdom, the Netherlands, Portugal, Greece, and Austria organized a march through Brussels to oppose the closure. This march, which brought out 40–100,000 protesters, was one of the largest transnational worker protests ever held in Europe and showed the capacity of European labor to organize across borders.

Eventually, a Belgian court ruled against Renault and ordered the company to negotiate with their workers. The next day a French court ruled that Renault had failed to properly consult its European works council over the Vilvoorde closure and ordered consultation. Finally, six months after the closure of the plant, the chairman of Renault was convicted under Belgium national law for failing to sufficiently consult workers and was fined 10 million BFr (\$270,000).

These rulings and the associated political campaigns did not stop Renault from closing the plant. Over time, resistance to the move by workers in other Renault plants waned. While the plant was finally shut down, transnational action did force the company to provide more generous severance arrangements for the laid-off workers in a "social plan" than they would have received without the transnational effort. Under the social plan, workers at least 50 years old were able to retire early. Some workers continued to work at Vilvoorde, but not on car production. Some workers transferred to France to other Renault plants. Other workers received outplacement assistance, although six months after the closure, a third of laid-off workers were still unemployed. Most workers received a lump-sum payment of 1 million BFr (\$27,000), with senior workers receiving more.

*Guatemala: Guatemalan law, corporate codes, and U.S. trade law.* In the Vilvoorde and Han Young cases, the existence of supranational institutions and processes like the EU and the NAALC formed opportunity structures that facilitated transnational action by workers and their allies. While, as Sidney Tarrow (1999) has observed, such structures can be very important for effective transnationalism, they may not always be absolutely necessary. In the next case, we will see that the drive to raise labor standards in Guatemala shows it is possible for transnational networks to operate across borders in situations where there is no regional architecture like the NAALC or

regional-level labor law as in the EU. In this campaign, a coalition gained results by mobilizing and interweaving both the corporate and two national arenas. However, the experience also demonstrates the need to sustain the network and maintain long-term credibility if advocates are to hold on to gains made in the height of a campaign.

In 1987, buoyed by a successful six-year transnational campaign to gain union recognition for 150 workers at a Coca-Cola bottling facility in Guatemala City, a combination of U.S. activists, Guatemalan exiles, and staff of the Amalgamated Clothing and Textiles Workers Union founded the Guatemala Labor Education Project (GLEP). In coordination with Guatemalan trade unionists, GLEP leads campaigns of its member organizations and other partners to raise labor standards through corporate codes of conduct, the scrutiny of U.S. trade law, and reform and enforcement of Guatemalan labor law. Because many of the multinational corporations operating in Guatemala value their brand names and are subject to consumer pressures in U.S. and other developed markets, GLEP has focused much of its efforts on attempts to convince these firms to institute codes of conduct for themselves and their contractors.

One of GLEP's major campaigns was targeted at helping workers at a Philips Van Heusen (PVH) plant gain recognition of their union. Working with the affiliate of the Confederation of Guatemalan Unions organizing the company's workers, GLEP supporters launched demonstrations at Van Heusen outlets in over 30 cities in at least 15 U.S. states as part of a campaign to gain company adherence to Guatemalan labor law in spite of lax enforcement by the Ministry of Labor. The pressure forced Van Heusen to accept the findings of Human Rights Watch that union membership exceeded the 25% density required by Guatemalan labor law to earn bargaining authority and to eventually sign a collective bargaining agreement.

Concurrently with the direct targeting of Van Heusen, efforts were undertaken to mobilize the national arena in the United States. GLEP teamed up with the International Labor Rights Fund and petitioned the U.S. Trade Representative (USTR) to determine whether Guatemala was in violation of the labor standards provisions of U.S. trade law. The USTR initially declined to conduct a review. Later, however, the office finally issued a warning to Guatemala that as a result of labor violations they were in danger of losing trade preferences. This notice had an effect: following the warning, the government reformed its labor code and improved enforcement.

However, in December 1998, after working under a collective bargaining agreement for about 18 months, PVH suddenly shut the plant, citing overcapacity and claiming the decision was not related to the unionization of the workers. This led to the activists again mobilizing both within and outside Guatemala in the hope of reopening the plant. Within Guatemala, workers maintained a vigil outside the closed plant to prevent PVH from

removing equipment. In addition, they demonstrated at the Ministry of Labor and forced a January 6 meeting during which PVH acknowledged violating the collective bargaining agreement by closing the plant without giving 30 days notice and Guatemalan labor law by firing pregnant and nursing women without required compensation.

International supporters renewed their consumer campaign against PVH products and responded to the Guatemalan unionists' requests that the firm be forced to explain why it responded to overproduction by closing their one unionized plant rather than scaling back contracts with numerous sweatshop suppliers. The U.S./Labor Education in the Americas Project, People of Faith Network, and United Students Against Sweatshops responded by producing a detailed report that rebuts PVH's explanation of the closure and outlines the differences in wages and working conditions between the unionized plant and the independent contractors that are now producing the garments. This report was used to pressure both the company and the Clinton administration, whose touted Apparel Industry Partnership includes PVH as a major employer. In addition, stores were picketed and a "Student Week of Action" was held in April 1999.

Though the renewed campaign was unable to force the reopening of PVH's Guatemalan facility, it was successful in pressuring the company to reach a settlement with their former employees.

## 8. Conclusion

This paper has described the emergence of a transnational vision for protection of worker rights. We have provided a map of the arenas and actors engaged in transnational norm building and enforcement, described two successful efforts to create transnational structures, and set forth a few examples of transnational networks in operation. We have emphasized that transnational regulatory structures and transnational networks buttress and supplement, and do not displace, national-level regulation.

Legal strategies play an important role in transnational activism, and national law can be an important part of the transnational mosaic (Stone 1995). Our examples include several forms of transnational legal action. First, legal rules in one nation may have an effect in another: In the Guatemala case, U.S. trade law was used to improve labor law in Guatemala. Second, actors from one nation may seek to use a second nation's laws to protect its workers: Networks in all three cases sought to use the law of Mexico, France and Belgium, and Guatemala to protect workers in those countries. Moreover, the NAALC explicitly authorizes transnational scrutiny. Third, actors from one or more countries in a regional pact may invoke regional-level supranational rules to affect conditions within the trade area as the workers did with the EWC directive in Vilvoorde. Finally, actors

from outside (as well as inside) a country may seek to affect labor conditions in that country by pressuring companies to adopt private codes of conduct: This was a strategy tried in both Han Young and Guatemala. It is worth stressing, however, that although all these legal strategies have been useful at one point or another, they are usually most effective when employed as part of broader campaigns that include political action as well.

No one would pretend that transnationalism is a panacea for the problems facing labor and industrial relations today. There are serious issues of legitimacy and effectiveness. Transnational institutions, arenas, and process can create "opportunity structures" that facilitate cross-border activism, but they also can give undue weight to self-appointed spokesmen for people who lack the capacity to speak for themselves on complex issues in remote arenas. And cross-border efforts work best, if they work at all, in rare places like the EU that have created real transnational structures and laws (Tarrow 1999). Even in Europe the protections available at the EU level are limited and the barriers to transnational advocacy significant. If transnational regimes are weak and advocacy limited in Europe, it is no wonder that they are even weaker in NAFTA, not to mention in the global arena where major questions involving labor conditions in the developing world are dealt with. However, in a globalizing world in which nations remain the central locus of authority in matters affecting labor, national governments no longer have full power over their labor markets, and regional and global institutions have limited powers, transnational solutions remain essential for the effective protection of workers' rights and improvement of labor standards.

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