

Patient hope beyond the private regulation of rights - A review of 'Rules without Rights – Labor, Land and Private Authority in the Global Economy' by Tim Bartley

The “hope of transcendence” is not only mythical; it is counterproductive.¹

How do global private norms and rules of sustainable forestry and fair labour make a difference on the ground? In *Rules without Rights*, Tim Bartley takes us on a journey ‘1,000 feet up’ over sprawling plantations and heaving garment factories in newly democratic Indonesia and authoritarian China. From this hovering perspective, he examines the rise and significance of global private regulations and authority over land and labour rights flowing through Global Production Networks (GPNs). The book’s originality lies in the interdisciplinary political and organizational perspective and the four rich case studies that underpin Bartley’s critique and alternative to the sweeping and contextually blind gaze of the neoliberal transnational governance model rooted in an imagery of ‘governance gaps’ and ‘hope of transcendence’.

Rules without Rights provides a stark account of the flaws of offloading governance onto the private sector to resolve pressing concerns about land and labour rights in the fast and cheap sourcing model of Global Production Networks (GPNs) and the underlying ‘impatient’ global economic system. To explain these failures, Bartley develops a substantive theory of transnational governance (Chapter 2). He rejects the view that transcendent (private) norms can seamlessly extricate factories, farms and forests from low governance contexts, and fill in these outwardly ‘empty’ and ‘institutionally void’ spaces with global standards of best conduct. Instead, drawing on a wide range of quantitative and qualitative sources, he foregrounds their analytical significance in four narrative case studies of fair sustainable certification (i.e. Forest Stewardship Council) (Chapters 3 and 4) and labour auditing standards (i.e. SA8000) (Chapters 5 and 6) in the Indonesian and Chinese forestry and garment sectors. The case studies enable Bartley to populate these spaces of implementation, and to compare the distinctive and unexpected ways transnational rules intertwine with the state and civil society in the burgeoning democracy and the authoritarian regime. They highlight the critical, though commonly overlooked, roles that local political, civil and organizational actors, and their purportedly ‘backward’, ‘ineffective’, ‘corrupt’ and ‘illegitimate’ agendas and rules play in framing, shaping, enhancing, co-opting or undermining the implementation of transnational private regulation in these two countries. Furthermore, Bartley illustrates how while local laws and their enforcement may be weak, contradictory and contrary to the transformative goals,

¹ Tim Bartley, *Rules without Rights – Land, Labor and Private Authority in the Global Economy*, (Oxford: Oxford University Press, 2018), 261.

hopes and attempts of transnational ‘reformers’ or ‘retail-rescuers’, they can obstruct their reach in GPNs and transform their capacity on the ground.

This is well-exemplified in companies’ contentious assurances of supporting freedom of association in both countries. For instance, in China where this fundamental workers’ right is prohibited and thus impossible to guarantee, garment brands tend to skirt the issue and substitute managerialist systems of workers’ representation to comply with global certification requirements (Chapter 5). In Indonesia, although both the law and brands’ codes of conduct support freedom of association, these assurances do not seem to provide leverage to trade unions. Bartley shows how this is due to a mismatch between the logic of private regulation focused on changes within factories when the locus of union power is greater outside factories (Chapter 6). Combined with the voluntary nature of code of conducts, the notorious contradiction between sourcing practices and ethical compliance, and the precarity of the garment sector in the country, this discrepancy means that fair labour standards and compliance with labour laws have remained elusive.

From the case studies, Bartley derives eight generalizable principles that inform his alternative theory regarding the flows of rules and assurances through GPNs, their intersection with domestic governance and politics of production, and the contents of diverse corporate social responsibility, sustainability and human rights rules. These principles help explain the successes and shortcomings of private sustainability and fair labour governance, as they are implemented in and intersect with Indonesian and Chinese domestic governance structures and with the politics of production and organization in the forestry and garment sectors. They also highlight significant barriers and glaring distinctions in the governance of land and labour. They theorize 1/ how auditing relies on reported managerial processes over companies’ substantive performance in assessing labour rights and sustainability; 2/ how the possibility of reform is linked to the domestic context as well as conditions in GPNs through which rules flow; 3/ how the construction of compliance is influenced by political contexts e.g. stronger in locations where civil society is active and autonomous, minimalist where it is weak and repressed; 4/ how domestic governance is given primacy over transnational standards when they clash and 5/ how it retains primacy over transnational rules when these concern issues that are more strongly tied to the state, including territory and rights or a combination of both (i.e. respecting the land rights of individuals and communities); 6/ how market-coordinating rules are more vigorously enforced than market-restricting rules, including environmental, labour, and product safety standards; 7/ how environmental standards are more vigorously enforced than those of labour; and 8/ how private rules are more rigorously enforced when the

governance structure of multi-stakeholder initiatives gives more power to non-industry groups, when industrial operations are immobile, long-term and visible, and when rules resonate and are not contested by the main constituents and watchdogs. Finally, Chapter 7 considers and elaborates on the possibilities and conditions needed to improve the transnational governance of land and labour. It advances a ‘place-conscious’ approach whereby legality is reinforced through the re-centering of the state and requirements of accountability beyond the boundaries of firms to enforce the implementation and respect of standards in GPNs. Bartley concludes on a cautiously hopeful note pointing at a number of initiatives. He discusses the transnational timber legality regime, as an example of a turn towards a re-centering of the state that overcomes the hope of transcendence. The emergence and consolidation of an equivalent transnational labour legality regime, however, appears much less certain. It would require an unusual confluence of factors, not least that politically powerful companies in large consumer markets support coalitions in favour of laws that penalize the sale of illegally produced goods and that GPNs evolve towards ‘patient sourcing’, so that struggles and reforms towards sustainability, fair labour and human rights are given the time to happen.

Rules without Rights focuses on transnational sustainability and labour private governance standards that have been diversely implemented and tested in both Indonesia and China in over two decades. However, it only too briefly considers the recent UN Business and Human Rights (BHR) governance framework. Even though Pillars 1 and 3 also re-centre states in global governance by reaffirming their obligations to protect human rights and their role in developing and enforcing regulation against corporate ‘adverse impacts’, Bartley finds this attempt and its (human rights) due diligence approach lacking. They start from the flawed goal of addressing gaps in governance through the hope of private norm transcendence. As such, like other new legislations that seeks to tackle forced labour and human trafficking through business disclosure of compliance activities, he finds them overly focused on rule-making instead of addressing fundamental issues in the enforcement of existing regulation. They repeat the same failures of the current governance architecture that sets soft-goals rather than legally enforceable performance standards. These critiques are grounded in a solid alternative theory of transnational governance and echo common arguments in the field of BHR that problematize

the emphasis on disclosure of compliance processes² while calling for enhanced legality through an international corporate human rights accountability treaty.³

The suggestions Bartley derives from his concluding analysis of the transnational timber legality regime and its possible implementation in laggard and reluctant labour-intensive industries could inform the construction of a transnational business and human rights legality regime. For instance, the call for a place-conscious approach to transnational governance could focus efforts on making domestic laws the relevant standards, so the transnational regime resonates with local rights-consciousness. Besides, it could seek to reinforce laws in large markets and the prohibition of the trade of and investment in items and services that violate the laws in the country of origin. A legality regime would also need to build on discourses of illegality and law enforcement, facilitating attention to violations of human rights rather than ‘adverse impacts’, as currently framed under the UN BHR governance regime. A more provocative idea yet, which Bartley regrettably does not elaborate in more depth and in which BHR scholarship has not yet ventured, is that meaningful improvements towards sustainability, fair labour, and human rights necessitates a radically different global economy that allows the emergence of ‘patient sourcing’. It is unclear, however, how these ideas could be practically implemented through a re-centering of the state in a political economic context where both states and businesses have long resisted such reforms, and when many governments are busy producing weak National Action Plans on BHR⁴ and stalling endeavours towards an international business and human rights treaty.

Rules without Rights makes a significant contribution to the growing body of research on the implementation of transnational private regulation and is an engaging and essential read for BHR scholars. While the concluding ideas and alternative suggestions are insufficiently elaborated and developed in the limited space of the last chapter, they are highly relevant and open new research avenues in this field. The study’s 1,000 feet up approach, especially, could enrich BHR’s theoretical and methodological toolkit. It calls our attention to the need to open

² Karin Buhmann, ‘Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU’s Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action’, (2018) 3:1 *Business and Human Rights Journal*, 23-45; Justine Nolan & Gregory Bott, Global supply chains and human rights: spotlight on forced labour and modern slavery practices, (2018) *Australian Journal of Human Rights*, 24:1, 44-69.

³ David Bilchitz, ‘The Necessity for a Business and Human Rights Treaty’ (2016) 1:2 *Business and Human Rights Journal*, 203-227.

⁴ Claire Methven O’Brien, Amol Mehra, Sara Blackwell & Cathrine Bloch Poulsen-Hansen, ‘National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool’ (2016) 1(1), *Business and Human Rights Journal*, 117-126.

BHR legal, business ethics and management perspectives to the political economy of norm-making and enforcement. Most critically, it demands that BHR research and practice be contextualised and account for the local agency and messy dynamics and intersections of transnational, domestic, and organizational governance.