

Rules without Rights:
Land, Labor, and Private Authority in the Global Economy

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Chapter 1: Transnational Standards and Empty Spaces

The teak plantations of Java, established by Dutch colonial authorities and taken over by the Indonesian state, were to become a model of sustainability and social responsibility. In 1990, the U.S.-based Rainforest Alliance made the pioneering move of certifying them as such, granting its approval to the state forestry company, Perum Perhutani, and giving furniture manufacturers and their buyers in Europe and North America an alternative to timber harvested through the clear-cutting and burning of forests. Perum Perhutani's agroforestry practices had been designed to sustain the land, and by allowing residents to engage in small-scale farming, the company was said to be "oriented towards the social and economic needs of local communities."¹

But as this project expanded into a global system for certifying "well-managed forests" under the auspices of the Forest Stewardship Council, the situation at Perum Perhutani worsened. Javanese forests had long been managed through what Nancy Peluso has called a "custodial-paramilitary approach," and by 2001, violent clashes between Perhutani's armed guards and Javanese villagers could no longer be ignored.² Citing intractable problems, the Rainforest Alliance suspended Perhutani's certificates. The company's attempts to get re-certified dragged on, as auditors grappled with the killing of another villager and the danger of the Forest Stewardship Council's name being used for "greenwashing." Several Perhutani forests were eventually re-certified, after the company disarmed forest guards and introduced a new production-sharing program. But villagers continued to have little control over land, and certification could hardly wipe away the fact that, as one practitioner noted, Perhutani "has a history—[as] a company that's killed a lot of illegal loggers."³

In a different setting, similar forms of scrutiny, recognition, and reform were being applied to labor standards. The world's largest manufacturer of athletic footwear, Yue Yuen, churns out hundreds of millions of shoes per year for Nike, Adidas, and Reebok among others, combining low prices and high quality with what a sympathetic portrait of Nike called "management by terror and browbeating."⁴ Anti-sweatshop campaigns in the mid-1990s made this highly visible, revealing, for instance, a factory in Vietnam where workers were forced to run laps until many fainted in the sweltering sun.⁵ Footwear brands and the Fair Labor Association began sending auditors to assess compliance with their codes of conduct. At Yue Yuen's massive factory-dormitory complex in south China, managers initially

¹ Donovan 2001

² Peluso 1992

³ Interview with NGO representative, 9/21/2010

⁴ Katz 1994:157

⁵ Vietnam Labor Watch 1997; Herbert 1997. The factory was owned by Yue Yuen's parent company, Pou Chen.

responded by falsifying records and coaching workers to give “correct” answers, but with continued scrutiny, factory managers began making reforms. They replaced toxic adhesives with safer alternatives, for instance, and replaced “terror and browbeating” with “emotion management” assistance for supervisors and “counselling rooms” for aggrieved workers.

In 2014, more than a decade into Yue Yuen’s apparent moral turn, protests at its complex in south China quickly spiraled into the largest strike in China’s recent history, halting production by more than 40,000 workers for ten days.⁶ The company, workers discovered, had not been making its legally required contributions to the social insurance fund. Some strikers also began to demand their own representation, a strong departure from the practice of the state-controlled All China Confederation of Trade Unions—and a demand that led some activists to be detained by police. Yue Yuen had received accolades in the “beyond compliance” world of corporate social responsibility, but it had not attained basic legal compliance.

In these examples, we see fragments of an increasingly prominent model of transnational governance, as well as hints of its contexts and limits. The model makes global supply chains into infrastructures for the flow of rules—that is, standards for sustainability, fairness, human rights, and safety. It imposes some degree of regulation on factories, forests, and farms around the world by relying not on governments, the traditional arbiters of rules and rights, but rather on the reputational investments of transnational corporations, the moral authority of international non-governmental organizations (NGOs), and the assessment capacities of auditing and certification bodies.

For large brands and retailers—from Nike, Apple, and H&M to Ikea, Nestlé, and The Home Depot—adopting rules for suppliers is a way to respond to activists’ “naming and shaming” campaigns, to build a reputation for sustainability and responsibility, and to appeal to socially responsible investment funds and conscientious consumers. This was once novel, but by 2014, every one of the world’s 25 most valuable brands had rules pertaining to labor conditions and/or environmental management in their supply chains.⁷ Some call for compliance with rules established by multi-stakeholder initiatives where NGOs have a seat at the table, such as the Forest Stewardship Council, Social Accountability International, and Roundtable on Sustainable Palm Oil.⁸ NGOs such as WWF and Oxfam have committed to “market transformation” projects that both push and partner with

⁶ Committee for a Workers’ International 2014; Borromeo 2014

⁷ This is based on searching the websites of the 25 most valuable brands as ranked by Interbrand in 2014. Google initially lacked such standards, but once it became involved in hardware manufacturing, it developed a “responsible manufacturing” code. Even brands primarily in business-to-business markets, such as Oracle and SAP, have supply chain standards.

⁸ See Cashore, Auld and Newsom 2004; Auld 2014; Vogel 2005; Ponte 2014

companies, while certification and testing firms such as SGS and Bureau Veritas have seen their businesses triple in size as they have taken the “audit society” global.⁹ Taken together, the result is a form of “transnational private regulation” that has become essential not only for labor and environmental standards in global industries, but also for financial flows, product quality, and food safety.¹⁰

This is the sort of governance that is often posited but rarely examined closely in theoretical accounts of globalization and transnationalism. In Saskia Sassen’s (2006) account, there has been a historic reconfiguration of territory, authority, and rights. These three domains were bundled together under the guise of the nation-state system, but they are being unbundled in various ways by global commerce, migration, and new forms of regulation. Tracing histories of trade, finance, and citizenship, she highlights the rise of private, de-territorialized forms of authority and a de-nationalized state that has “incorporate[ed] the global project of its own shrinking role.”¹¹ “The new privatized institutional order for governing the corporate global economy has governance capabilities and a type of specialized and partial normative authority,” she argues. It springs in part from the actions of states, but it rejects “*raison d’etat*” as the “master normativity of modern times.”¹²

Others point to a master trend of global standardization. A vast “world of standards” has emerged in tandem with the global economy, generating both the technical standardization needed for global business and a formalized expression of moral order.¹³ While critical political economy scholars see this as a project to solidify the dominance of transnational corporations and professionalized NGOs from the global North, neo-institutionalists such as John Meyer and colleagues in the “world society” school see the same trends as reflecting a vision of scientific progress and individual rights that has gained tremendous legitimacy throughout the world.¹⁴ They have argued that global norms about the environment and human rights are “surprisingly consensual” and have spread less through coercion than through governments’—and now corporations’—attempts to legitimate themselves.¹⁵

⁹ This is based on Compustat Global data on employees and revenues. From 1999 to 2014, SGS went from approximately 31,000 to 84,000 employees and 1.4 to 4.8 billion Euros in revenues. Bureau Veritas went from approximately 17,000 to 66,000 employees and 1.3 to 4.2 billion Euros in revenues from 2003 to 2014.

¹⁰ Cafaggi 2012; Scott 2012; Havinga 2006; Büthe and Mattli 2011; Porter 2014

¹¹ Sassen 2006:231. For earlier statements see Jessop 1997 and the literature collected in Cutler, Hauffer and Porter 1999 and Hall and Biersteker 2002.

¹² Sassen 2006:412

¹³ Brunsson and Jacobsson 2000

¹⁴ Banerjee 2008; Rodríguez Garavito and Santos 2005; Meyer, Boli, Thomas and Ramirez 1997

¹⁵ Meyer, Boli, Thomas and Ramirez 1997; Meyer, Pope and Isaacson 2015. Other neo-institutionalists have highlighted more circumscribed and contentious fields of transnational governance, but still with an emphasis on formalization and legitimation on the global stage. Djelic and Sahlin-Andersson (2006) argue that “models and blueprints spread around the world and

Transnational private regulation fits easily into these frames. It is a de-territorialized form of authority, whose backers hope it can transcend the limits of territorial nation states. It emerged, as we will see, as governments offloaded regulation to the private sector to promote a neoliberal model of governance, and it generally accepts rather than challenges the power of northern transnational corporations and NGOs. Trends toward standardization and homogenization have made formalized auditing, accreditation, certification, and “multi-stakeholder” representation common across fields centered on sustainability, labor, and human rights.

But sweeping accounts of authority and standardization do little to explain what these rules accomplish. From “10,000 feet up,” one can see only blurry structures—that is, broad contours of rule-making, legitimation, and convergence. But one cannot see how managers of firms targeted by these rules respond, how auditors judge compliance, or how workers or residents complicate or seek to co-opt corporate responsibility and sustainability agendas. As seen in the case of Yue Yuen, some practices may be more open to reform than others. And as the Perum Perhutani case suggests, de-territorialized authority may struggle with territory on the ground. Nor can a distant and sweeping account explain why private regulation seems to be stronger in some fields and locations than in others. As we will see, sustainability and labor standards are similar in form but divergent in performance. And ironically, high standards may be proving easier to implement in more repressive environments.

To understand the prospects for sustainable development and decent work in the global economy, we must dispense with the seductive idea that rules for corporate responsibility and sustainability can somehow bypass or transcend existing forms of domestic governance. This book will ask how private rules are shaped by domestic governance at the point of implementation, what reforms tend to follow, and why some rules have proven more meaningful than others. It is true, as Göran Ahrne and colleagues write, that “the space for standard-based organizations is . . . great at the global level, where they do not have to compete with state rules and state agencies.”¹⁶ But the implementation of standards always occurs in particular places. Seeing corruption, weak institutions, and low rule of law, many scholars of transnational governance have portrayed poor and middle-income countries as little more than “empty spaces” to be filled by globalizing norms.¹⁷ They are severe “regulatory voids” and “areas of limited statehood” into which transnational rules may bring some semblance of order.¹⁸ Partially as a

generate partial homogenization of governance forms and activities across sectors, levels and territorial boundaries” (p.18), but “fields of transnational governance are also battlefields” (p. 23).

¹⁶ Ahrne, Brunsson and Garsten 2000:66.

¹⁷ See, for instance, Abbott and Snidal 2009b, Sabel et al. 2000, and Meyer et al. 1997, as discussed further below.

¹⁸ Börzel and Risse 2010; Risse 2013; Thauer 2014; Braithwaite 2006

result, attention has largely been focused elsewhere—on agenda-setting by international NGOs, the adoption of standards by transnational corporations, the design of voluntary initiatives, and the legitimacy of private authority as a form of global governance.

If theorists downplay the places of implementation, many corporate social responsibility and sustainability projects seem to actively *deny* them. They are animated by the idea that pushing standards through supply chains can transform markets by, in effect, pulling factories, forests, and farms out of their local contexts and up to global best practices. I call this the “hope of transcendence.” It rests on one hand on a view of local socio-political contexts as backwards, repressive, and incapable of effective regulation and on the other hand on a view of global markets as extricating firms from their local contexts. Thus, a forest, factory, or farm can be brought up to global best practices, regardless of where it is located, if only its buyers demand it. “100 companies control 25% of the trade of all 15 of the most significant commodities on the planet,” said WWF’s Jason Clay, explaining the group’s “market transformation” approach. “300-500 companies control 70% or more of the trade . . . If we work with those, if we change those companies and the way they do business, *then the rest will happen automatically.*”¹⁹ When the UN released its Guiding Principles on Business and Human Rights in 2011, it echoed this idea in a different way, giving governments the duty to “protect” human rights but charging transnational corporations with the responsibility to “respect” human rights as “a global standard of expected conduct for all business enterprises wherever they operate . . . independently of States’ abilities and/or willingness to fulfil their own human rights obligations.”²⁰

Through a comparative look at land and labor in Indonesia and China, this book suggests that the hope of transcendence is misplaced. Rather than a rising tide of standards and a declining significance of place, we will see that the imprints of transnational structures, while not trivial, are colored by domestic circumstances. The book will trace assurances of sustainable and responsible global business to a range of sites—including the endangered and contested forests of Indonesian Borneo (Kalimantan), the rapidly expanding timber plantations of southwestern China, the export processing zones and industrial districts of greater Jakarta, and the apparel and footwear factories that made south China the “factory to the world.” It is here that managers make or resist reforms and auditors construct compliance. We will see a variety of actors, including indigenous rights activists and insurgent labor unions, who have sought to make seemingly symbolic corporate

¹⁹ Jason Clay, “How Big Brands Can Help Save Biodiversity.” TED Talk, August 2010, https://www.ted.com/talks/jason_clay_how_big_brands_can_save_biodiversity/transcript?language=en, accessed Nov. 20, 2015. Emphasis added.

²⁰ United Nations Office of the High Commissioner on Human Rights 2011:13. Even the standard definition of corporate social responsibility as “beyond compliance” activity imagines a kind of rising above, while dismissing compliance with national law as an insufficient baseline.

commitments more real in their consequences. Indonesia and China are important locations for both fair labor and sustainable forestry projects, but the difference in their political regimes—since democratization in Indonesia—provides a chance to examine how the same forms of transnational governance operate in different domestic contexts. We will see that private rules have traveled far and wide through global supply chains, but they have been channeled, constrained, and even reconfigured by domestic governance, sometimes in perverse ways.

Based on interviews, documentary evidence, and some quantitative analyses, the case studies at the core of the book shed rare light on the concrete implications of private rules and the contexts of implementation. They reveal—and attempt to resolve—several specific puzzles. Why, for instance, were so few forests in Indonesia certified despite the pioneering certification of Perum Perhutani and ongoing controversies over deforestation? And why did Forest Stewardship Council certification grow quickly, albeit shakily, under the heavy hand of the state in China? How have factories in China been constructed as complying with “freedom of association” rules in codes of conduct and SA8000 factory certification standard, while the burgeoning trade union movement in Indonesia struggled to use these codes as leverage?

Despite variation across locations and industries, private rules for land and labor have mostly failed to produce meaningful forms of sustainability and fairness. The rules that flow through global supply chains are more than empty “myth and ceremony” but much less than a transformation of capitalism, or even a reliable impetus for improvement. Through contextualized portraits of private rules in practice, we will see why private rules have so often failed—not only, I will argue, because of the widely acknowledged problems of voluntarism, evasion, and “checklist” auditing, but because of the “hope of transcendence” itself.

More broadly, this book develops a *critical, contextual, and substantive theory of transnational governance*—that is, a theory that clarifies the accomplishments and failures of private rules, the ways in which they intersect with domestic governance, and their fit with different industries and issues. The theory provides an alternative to sweeping gazes and empty spaces in studies of globalization and transnationalism, provides testable propositions about political authority beyond the nation-state, and crystalizes emerging insights about corporate responsibility and sustainability. Like research on the “translation” of global standards, the theory acknowledges that global norms are altered as they travel to different locations, but it seeks to specify precisely *how* this works for private rules.²¹ In tune with theories of political and organizational “fields,” this account reveals an array of actors vying for the power to control loosely structured arenas, but against formalistic and content-free tendencies in organizational theory,

²¹ See Merry 2006; Halliday and Carruthers 2009; Quack 2007.

I will argue that the *substance* of a reform project matters.²² Finally, this account extends the growing body of research on corporate social responsibility, sustainability, and human rights standards, but it seeks to make sense of implementation *across* different industries and issues rather than being limited to one.²³ This chapter introduces the topic, and the next chapter develops the theoretical account, including propositions about the content of rules, their modal consequences, and their ability to reshape territory, authority, and rights.

RETAILERS TO THE RESCUE: THE RISE OF TRANSNATIONAL PRIVATE REGULATION

Private regulation refers to a structure of oversight in which non-state actors—whether for-profit companies, non-profit organizations, or a mix of the two—adopt and to some degree enforce rules for other organizations, such as their suppliers or clients. This can be called *transnational* private regulation if any of this activity operates across national borders. This includes arrangements in which retailers and brands set standards for their global supply chains—whether pertaining to product safety, sustainability, or labor conditions—as well as initiatives that certify or otherwise recognize companies that are complying with a given set of rules, assuming this occurs in more than one country. In traditional forms of self-regulation, companies cooperate to create standards and oversight for their own conduct, usually through “soft” norms that gain force through informal discussions, structured comparisons, and a growing sense that these organizations inhabit a “community of fate.”²⁴ Private regulatory rules, in contrast, are intended to apply to *other* organizations and—perhaps as a result—are often specific, “hard” rules rather than broad norms.²⁵

Private regulation is not entirely new. In the early 20th century, certification by the Underwriters’ Laboratory, created by American insurers, became a widespread assurance of electrical safety.²⁶ Around the same time, the National Consumers’ League “White Label” program was certifying garments “made under clean and healthful conditions,” melding concern for workers’ rights with xenophobic fears of “diseased” tenement sweatshops.²⁷ The reliability of “kosher” food designations was greatly increased by a private regulatory system that took

²² See Fligstein and McAdam 2012; Rao, Morrill, and Zald 2000.

²³ See, for instance, Seidman 2007 and Locke 2013 on labor, or Cashore, Auld, and Newsom 2004, Potoski and Prakash 2006b, and Ponte 2014 on environment and sustainability.

²⁴ Rees 1994; Gunningham and Grabosky 1998

²⁵ This is not to imply that private regulation is necessarily strict; to the contrary, one can have relatively permissive rules and/or lax enforcement and still have a system of private regulation, so long as there are some demands being made of targets.

²⁶ Cheit 1990

²⁷ Sklar 1998; Wolfe 1975

shape in the 1960s.²⁸ And by the 1970s, organic agriculture was evolving from a movement to a market, with certification bodies charged with enforcing standards.²⁹

The globalizing economy of the 1980s and 1990s greatly expanded the scope and scale of private regulation. For one, there was an explosion of standards intended to harmonize national differences in accounting, quality grading, and technical specifications, including those issued by the International Organization for Standardization (ISO). Global commerce created a demand for standards, while the capacities of competing national constituencies determined whose standards got globalized.³⁰ In addition, exposés of exploitation and environmental degradation inspired numerous projects to improve conditions in global industries. Only a handful existed in the mid-1990s, as organic and Fair Trade certification were growing, ISO was expanding into environmental management with the ISO 14001 standard, and Rugmark was certifying carpets as made without child labor. A decade later, there were dozens of initiatives working to certify sustainable forests, fisheries, or farms; to improve working conditions in apparel, footwear, toy, electronics, and home furnishings factories; or to protect human rights in oil and mineral extraction areas.³¹ One study found 22 initiatives focused on sustainable agriculture alone.³² A seemingly endless array of new initiatives has continued to emerge, focused on electronic waste, environmental degradation and child labor in cocoa production, and pollution and forced labor in the shrimp industry, to name just a few.³³

Considering the fields that are central to this study, from its founding in 1993 until 2001, Forest Stewardship Council (FSC) certification grew to cover 292 forest management enterprises on 22 million hectares of land, amounting to roughly 1% of all forest land worldwide that was designated for production or multiple use.³⁴ By 2012, more than 160 million hectares, or approximately 7.5% of eligible land, had been certified to the FSC's standards.³⁵ The Home Depot, B&Q/Kingfisher, Ikea, and French furniture retailer Maisons du Monde were promoting FSC certification in their supply chains, as were the Office Depot, Staples, Kimberly-Clark, and other paper retailers and manufacturers, sometimes in

²⁸ Lytton 2013

²⁹ Guthman 2004

³⁰ Bütthe and Mattli 2011; Quark 2013; Murphy and Yates 2009

³¹ For an overview, see Vogel 2005; RESOLVE 2012; Bartley, Koos, Samel, Setrini and Summers 2015.

³² Fransen, Schalk and Auld 2016

³³ See Renckens 2015; Barrientos 2016; Bush, Belton, Hall, Vandergeest, Murray, Ponte, Oosterveer, Islam, Mol and Hatanaka 2013.

³⁴ FSC certification list, March 31, 2001; Food and Agriculture Organization (FAO) 2006

³⁵ Forest Stewardship Council, "Global FSC certificates: type and distribution," September 2012, <https://ic.fsc.org/preview.facts-and-figures-september-2012.a-1038.pdf>; Food and Agriculture Organization (FAO) 2010

response to “market campaigns” waged by environmental NGOs.³⁶ Other companies adopted timber sourcing policies with preferences for certification by a competing initiative, the Programme for the Endorsement of Forest Certification (PEFC), an umbrella group of “homegrown” initiatives spawned by industry associations, landowners, and sometimes governments.³⁷ This group had certified roughly 11% of eligible land by 2012.³⁸ But the FSC was able to convert opposition to support in some settings, and the competition led to increased stringency in the industry-based systems rather than a race to the lowest common denominator.³⁹

In the case of labor standards, starting with just eight factories in 1998, certification to Social Accountability International’s SA8000 standard reached more than 100 facilities by early 2002.⁴⁰ Ten years later, there were more than 3,000 SA8000-certified facilities, employing roughly 1.8 million people, and by 2014, this had grown to more than 2 million people, amounting to roughly 0.5% to 1% of the total workforce in global production networks.⁴¹ American and European brands and retailers, such as The Gap, Timberland, Disney, Tchibo, and the Otto Group (a German retailer), were among those encouraging SA8000 certification in their supply chains. Other brands, including Nike, Adidas, Liz Claiborne, and H&M had thrown their weight behind the auditing and capacity-building projects of the Fair Labor Association. The UK-based Ethical Trading Initiative took a similar approach, albeit with more support from NGOs and unions. Industry associations spawned additional programs, such as the Business Social Compliance Initiative in Europe and the Worldwide Responsible Apparel Production program in the U.S. Meanwhile, the NGO-sponsored Fair Wear Foundation and Worker Rights Consortium developed small but important presences in particular market niches. This was a crowded, fragmented field, but one in which some degree of rule-making and oversight of suppliers had become nearly ubiquitous.⁴²

Markets, States, and Civil Society in the Rise of Transnational Private Regulation

³⁶ Auld 2014

³⁷ These included the Sustainable Forestry Initiative in the U.S., the Canadian Standards Association’s sustainable forestry standard, PEFC affiliates in Germany and Sweden, the Malaysian Timber Certification Scheme, and the Brazilian Forest Certification Programme (CERFLOR). The history and trajectory of the Indonesian program, Lembaga Ekolabel Indonesia, differs in important ways, as described in chapter 3.

³⁸ PEFC 2012; Food and Agriculture Organization (FAO) 2010

³⁹ Cashore, Auld and Newsom 2004; Cashore, Egan, Auld and Newsom 2007; Overdevest 2010

⁴⁰ SA8000 Certified Facilities as of March 2002,

<http://web.archive.org/web/20020409033551/http://www.cepaa.org/certification.htm>

⁴¹ Corporate Register 2012; SA8000 Certified Facilities as of June 30, 2014. The ILO (2015) estimates that roughly 453 million people work in global production networks, but only around 203 million of them are engaged in the final assembly of products, which is where certification is most likely.

⁴² Fransen 2011; Fransen and Conzelmann 2015; O’Rourke 2003a

The rise of transnational private regulation cannot be credited solely to the globalization of capitalism. Indeed, it is possible for a globalized economy to be governed in a variety of ways by territorially-bound governments and seemingly gridlocked international organizations.⁴³ But a confluence of changes in markets, civil society, and states has led to a remarkable shift, in which retailers, brands, and their NGO partners and watchdogs are taking on roles that have more often been the domain of states—such as guaranteeing rights, protecting natural resources, and ensuring safety.

First, markets became increasingly contentious as the branding and market-control strategies of corporations met the “naming and shaming” strategies of social movements. “Branding” infused corporate images with mythologies, from the empowerment narratives of Nike to the communitarian ethos of Starbucks to the smooth creativity of Apple.⁴⁴ By one estimate, the value of corporations’ intangible assets, including their brand images, increased from roughly 17% to 80% of total market value from 1975 to 2005.⁴⁵ In the retail sector, mega-retailers and “big box” stores captured a growing share of the market, as seen in the rise of Wal-Mart, Target, and Best Buy in the U.S. or Carrefour, Decathlon, and B&Q/Kingfisher in Europe. In addition, the rise of “shareholder value” theories of corporate governance made executives especially sensitive to their images with investors, including increasingly demanding institutional investors.⁴⁶

None of these trends were lost on activist groups, which developed media-savvy campaigns highlighting large, high-profile companies’ links to environmental degradation, labor exploitation, or human rights abuses.⁴⁷ Greenpeace and Amnesty International exposed Shell’s role in the degradation of land and violence against indigenous people in Nigeria, for instance.⁴⁸ The Rainforest Action Network campaigned against Burger King’s use of “rainforest beef,” The Home Depot’s destruction of old growth forests, and Victoria’s Secret’s use of paper from endangered forests for its catalogs.⁴⁹ The National Labor Committee and other anti-sweatshop groups mobilized media attention to the exploitative supply chains of Disney, The Gap, Nike, and many others.⁵⁰ When first thrust into the spotlight, retailers and brands often denied or deflected responsibility. “The pictures you

⁴³ See Vogel 1995; Vogel and Kagan 2004; Mosley 2011; Hafner-Burton 2009

⁴⁴ Klein 1999; Fitzsimons, Chartrand and Fitzsimons 2008

⁴⁵ Lindemann 2009

⁴⁶ Davis 2009

⁴⁷ Schurman 2004; Schurman and Munro 2009; King and Pearce 2010; Soule 2009; Bartley and Child 2014

⁴⁸ Holzer 2007

⁴⁹ Conroy 2007; Sasser, Prakash, Cashore and Auld 2006

⁵⁰ Bartley and Child 2014; Krupat 1997; Brooks 2007; Bair and Palpacuer 2012; Fransen and Burgoon 2013. Similarly, anti-GMO activists leveraged the market power of retailers such as Marks & Spencer and Tesco in the UK, while they struggled in the more fragmented retail market in the U.S. (Schurman and Munro 2009).

showed me mean nothing to me,” the CEO of Wal-Mart famously said on national television in 1992, when confronted with images of children in Bangladesh producing shirts for the company.⁵¹ But as scrutiny mounted, sometimes affecting sales or stock prices, companies began to accept at least partial responsibility for improving conditions in their supply chains.⁵² Usually this meant adopting rules, auditing compliance, and/or supporting external monitoring or certification initiatives. Even some companies that had not been directly targeted began to adopt codes of conduct or promote third-party certification.⁵³

Second, the structure of many industries changed, putting well-known corporations at the helm of global production networks.⁵⁴ The “supply chain revolution” of the 1980s and 1990s remade the global economy. As traditional manufacturers shed their factories to rely on sourcing from independent suppliers, other firms, such as Nike, were “born global,” with design and marketing machines but no factories of their own. Mega-retailers from Wal-Mart to Ikea, built their dominance by nimbly managing orders and pushing down suppliers’ prices. Integrated multinational corporations such as General Electric and Unilever survived but often evolved to look more like these new networked transnational corporations, which coordinate production processes that they do not own. By the 2000s, global production networks had become essential to the production of apparel, footwear, home furnishings, food, toys, electronics, and automobiles, and a growing presence in service industries as well.⁵⁵ By one estimate, roughly one fifth of workers worldwide now work in global production networks, making either final products or “intermediates” for export.⁵⁶

Global production networks connected well-known brands and retailers to numerous sites of exploitation and environmental degradation, while also putting them in the position of being quasi-regulators of the production process, not just

⁵¹ Quoted in Benoit and Dorries 1996

⁵² Spar and LaMure 2003; King and Soule 2007; Bartley and Child 2011

⁵³ Bartley 2005; Conroy 2007

⁵⁴ Some have described this structure of production under the heading of “global value chains” or “global commodity chains.” I will use the term “global production networks” (GPNs) throughout, due to its intuitive appeal and this tradition’s enduring attention to the territorial embeddedness of transnational production (Coe, Dicken and Hess 2008; Henderson, Dicken, Hess, Coe and Yeung 2002). The term “global commodity chain” has a history of use in sociology (Hopkins and Wallerstein 1986; Gereffi and Korzeniewicz 1994), but this work has gradually merged with work on “global value chains” (GVCs) emanating from business, economics, and political economy research (see Gereffi, Humphrey and Sturgeon 2005). Debates between the GVC and GPN traditions have mostly been matters of emphasis. Both describe the same phenomena and see “upgrading” of firms’ capacities as the path to economic development. The GVC tradition is more sensitive to how technical requisites and transaction costs shape the structure of production, while the GPN tradition is more attentive to social movements’ and labor unions’ attempts to shape production processes.

⁵⁵ Gereffi, Humphrey and Sturgeon 2005; Yeung and Coe 2015; Henderson, Dicken, Hess, Coe and Yeung 2002; Borrus and Zysman 1997; Gibbon, Bair and Ponte 2008.

⁵⁶ International Labour Organization 2015

participants in it. Integrated multinationals had been called to task for unethical dealings and links to repressive regimes in the past.⁵⁷ But global production networks allowed transnational corporations to “source” from countries where large capital investments would have been risky. Meanwhile, development policies in many poor and middle-income countries prioritized export-oriented production and integration into global supply chains, even if firms had to enter into precarious or exploitative relationships to do so. Although the relationship between “lead firms” and their suppliers varies, activists pointed out that large corporations in affluent countries routinely exercise power over the design of products, the materials used, and the prices paid to suppliers—so perhaps they should be expected to set labor and environmental standards as well.

Third, governments offloaded regulation to the private sector in various ways, partly reflecting neoliberal ideas about the power of markets to solve social problems. In the U.S. and UK, the Clinton and Blair administrations sought to “reinvent government” by promoting voluntary programs, private sector partnerships, and corporate social responsibility initiatives.⁵⁸ Among other initiatives, they convened groups of companies, NGOs, and unions to create labor codes of conduct and auditing systems, spawning the Apparel Industry Partnership/Fair Labor Association in the U.S. and Ethical Trading Initiative in the UK.

In addition to promoting a neoliberal model of governance, in which states take a “steering” rather than “rowing” role, governments were constrained by the free trade rules they had signed onto by joining the World Trade Organization (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT). GATT and WTO rules restrict regulations that create discriminatory non-tariff barriers to trade. They do not preclude all import restrictions, as a growing body of research on WTO-compliant environment and safety standards has pointed out, but they have raised the threshold for and style of government action.⁵⁹ Because GATT and WTO rules do not apply directly to private actors, though, reform projects have increasingly been channeled to the private sector.⁶⁰ In one clear instance of this, in the early 1990s, the Austrian government had to revise its initial response to campaigns against tropical deforestation. It had passed laws requiring the labeling of tropical timber and increasing import tariffs. As it became clear that these would be challenged as discriminatory trade barriers under the GATT, the government rescinded the laws—and then donated roughly \$1.2 million to a private sector solution, the emerging Forest Stewardship Council.⁶¹

⁵⁷ See Vogel 1978; Sikkink 1986

⁵⁸ Moon 2004; Kinderman 2012; Fiorino 2009; Bartley 2005; O'Rourke 2003b; Esbenshade 2004

⁵⁹ DeSombre and Barkin 2002; Chorev 2012; Neumayer 2004; Shaffer 2001; Kysar 2004

⁶⁰ Bernstein and Cashore 2004; Bernstein and Hannah 2008; Shaffer 2015

⁶¹ Varangis, Crossley and Braga 1995; Elliott 2000; phone interview with NGO representative, 9/2/02; interview with certification initiative representative, Oaxaca, 7/25/02

In addition, a number of reformers became disillusioned with both governments and inter-governmental organizations, which they viewed as either unwilling or incapable of passing stringent rules for global industries. International environmental NGOs, for instance, had been pushing for a binding forest convention at the 1992 UN Conference on Environment and Development (the “Earth Summit”). When this proposal fell through, as had a call for inter-governmental action through the International Tropical Timber Organization, environmental NGOs turned increasingly to the private sector.⁶² This was especially true of WWF, which helped found the Forest Stewardship Council and then went on to spread the certification model to a number of other industries. Similarly, labor and human rights NGOs pointed to the failed efforts to add a “social clause” to the GATT, the WTO’s decision not to address labor rights, and the International Labor Organization’s lack of enforcement power when arguing that private regulation and consumer pressure could serve as “an additional weapon in the arsenal for human rights.”⁶³

Few reformers have given up entirely on governments and inter-governmental organizations, but many have embraced the possibilities for transnational corporations to push standards through their supply chains, whether as a second-best solution when policy windows are closed or as a more “direct” way of reforming markets. Notably, calling “retailers to the rescue” is not limited to global problems that outstrip the capacities of national governments. Retailers have been pressured, and in some cases have accepted the responsibility, to regulate hazards to consumer health, including toxic phthalates in cosmetics and flooring.⁶⁴ This kind of private regulation has been especially prominent in the U.S., where governmental regulation of hazardous substances lags behind the EU.⁶⁵

To what extent has transnational private regulation made a difference? Most of what is known about this comes from studies of a single industry or issue. Studies of food safety, for instance, have revealed the power of large supermarkets to push standards onto farms and food processing companies around the world.⁶⁶ ISO technical standards have clearly facilitated the globalization of production and trade, and global financial markets have come to rely to a surprising extent on

⁶² Gale 1998; Dudley, Jeanrenaud and Sullivan 1995; Cashore 2002

⁶³ Interview with NGO representative, Santa Cruz, 8/22/02. See Posner and Nolan 2003; Compa 2008; Varley 1998. The International Labor Rights Fund, for instance, was central to the call for a social clause in the GATT and later became a partial, if tentative, supporter of private regulation. See Collingsworth, Goold and Harvey 1994.

⁶⁴ See the Mind the Store Campaign, developed by consumer health and environmental organizations.

⁶⁵ Vogel 2012

⁶⁶ Havinga 2006; Hatanaka, Bain, and Busch 2005

private standards supplied by the International Swaps and Derivatives Association.⁶⁷ The consequences of transnational private regulation as a general form, though, remain difficult to specify.

A CROSS-FIELD, CROSS-NATIONAL APPROACH

Comparisons can reveal parallels that would be missed by studying a single issue or location, as well as details and differences that are obscured by more distant and sweeping theories. Rather than zooming from “10,000 feet up” down to highly particular ethnographic sites—as Michael Burawoy’s (1998) “extended case method” and Anna Tsing’s (2005) “ethnography of global connection” would do—this book seeks to hover at something like “1,000 feet up” both empirically and theoretically.⁶⁸ The goal is to be close enough to see how transnational rules are put into practice but still able to compare across fields and countries. Like other comparative case study research, I will draw on a wide range of data sources to construct detailed narrative case studies, highlighting key events, processes, and patterns.⁶⁹ I will then use the commonalities and divergences across the cases, in combination with insights from existing research, to develop the theoretical account. At root, my research centers on a comparison of transnational fields concerned with land and labor as put into practice in a democratic and an authoritarian country.

Land and Labor

Land and labor, as theorized by Karl Polanyi, are “fictitious commodities” that cannot be fully subjugated to the dictates of the market without unleashing backlashes that seek to re-embed them in society.⁷⁰ For sociologists, this perspective has most often been applied to labor, where it resonates with the Marxist argument that labor is a “special commodity” because the product and the seller are inseparable. By either account, as the growth of capitalism expands the market for wage-labor, one finds various attempts to protect workers from pure market forces, via labor law, unions, and welfare states.⁷¹ With the expansion of global capitalism comes the expansion of labor unrest, as well as various attempts to de-commodify across borders, including cross-border solidarity campaigns and calls for global labor standards.⁷²

⁶⁷ Murphy and Yates 2009; Porter 2014; Riles 2009

⁶⁸ Burawoy 1998; Tsing 2005. See Salzinger 2003, Gille 2016, and Miraftab 2015 for provocative examples of global ethnography.

⁶⁹ See Evans 1995; Halliday and Carruthers 2009; Dezalay and Garth 2010b for examples.

⁷⁰ Polanyi 1944

⁷¹ See Western 1998

⁷² Silver 2003; Evans 2010

While sociologists have paid more attention to this Polanyian “double movement” for labor, land also has qualities that make it impossible to fully commodify.⁷³ Land and the people who inhabit it are logically separable, but the importance of land to livelihoods and collective identities makes it practically difficult to do so. Fully commodifying land may require expelling those who inhabit it, as the growing body of research on dispossession shows.⁷⁴ In addition, as Derek Hall (2013) argues, the melding of territory with national sovereignty since the 19th century, and especially since the decline of colonialism, limits the extent to which land is treated as an ordinary commodity.

There are also ecological processes that prevent land from functioning as a pure commodity. In Polanyi’s words, if the natural environment were fully subordinated to the dictates of the market “nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted, . . . and the power to produce food and raw materials destroyed” (p.73). Perhaps most importantly, exploitation of a particular piece of land—whether from mono-cropping, careless harvesting, or use of fertilizers and pesticides that disrupt the ecosystem—can degrade its future productive capacity and spill over to other parcels through erosion, damaged water supplies, invasive species, or declining biodiversity.⁷⁵

In the 20th century, the re-embedding of land and labor revolved around state policy and national social movements, but in the 21st century, reformers are often seeking to enforce rules across borders—and looking to the private sector to do so. The certification of sustainable forest management in the timber, paper, and furniture industries provides one important case. Certification to the standards of the Forest Stewardship Council has become the “gold standard” for sustainable forestry claims. As a field, forest certification has been widely studied and imitated, becoming “one of the most innovative and startling institutional designs of the past 50 years.”⁷⁶ But its implications at the forest level, especially in poor and middle-income countries, are often a mystery.

Private labor standards in the apparel and footwear industry emerged out of parallel concerns about untrammelled exploitation in global supply chains, taking shape as corporate codes of conduct, factory auditing programs, collective initiatives such as the Fair Labor Association, and certification of factories to Social

⁷³ See Kaup 2015

⁷⁴ Levien 2013; White, Borrás Jr, Hall, Scoones and Wolford 2012. Levien argues that while commodification of labor is ongoing and subject to covert resistance, commodification of land “poses a sudden, exogenous and irreversible threat to people’s livelihoods, homes, and ways of life” (p.362) and breeds overt resistance.

⁷⁵ For relevant but varied analyses of this sort, see Vayda and Walters 1999; Bunker 1990; Putz, Blate, Redford, Fimbel and Robinson 2001

⁷⁶ Cashore, Auld and Newsom 2004:4

Accountability International's SA8000 standard. Reactions have ranged from celebratory to highly critical, but often the heated debates have made it difficult to see what these codes accomplish on the ground.⁷⁷

These are two of the most prominent and influential fields of transnational private regulation, but they have rarely been examined together, perhaps due disciplinary specializations that have made land and labor, despite Polanyi's diagnosis, separate spheres of study. Comparing them allows for a clearer picture of transnational private regulation as a general form of governance. In both cases, reformers have sought to counteract exploitative commodification by infusing markets with moral principles and "orders of worth" beyond price.⁷⁸ As the Polanyian perspective would expect, private regulatory initiatives emerged in the shadow of scandals that illustrated the destructive consequences of globalizing markets. In addition, as we will see, the implementation of sustainability and fair labor standards continues to be beset with tensions springing from the fictitious commodity character of land and labor.

Certifying Sustainable Forestry

Perhaps no form of private regulation has been as influential as the certification of sustainable forestry. The story begins with the search for "good wood" and "positive alternatives" to the tropical timber boycotts waged in Europe and the U.S. in the late 1980s. Small, craft-based woodworking firms in the U.S. and Europe were among the first to suggest that "to ensure that timber that is marketed with the label 'sustainable' indeed confirms to certain production standards, and to separate genuine companies from opportunists, a watchdog in the form of an independent monitoring organization will be necessary."⁷⁹ They joined with a group of foresters, representatives of environmental NGOs, certification bodies, and a handful of retailers to convene meetings for what would soon become the Forest Stewardship Council (FSC). WWF quickly became what one participant called the "incubator and surrogate mother" of the FSC, pushing the organization forward to its official founding in 1993.⁸⁰

The FSC's standards set a high bar for the ecological and social dimensions of forest management, including requiring loggers to safeguard soil, water, and biodiversity; maintain "high conservation value" areas, and respect the customary land rights of indigenous communities. Very quickly, the FSC faced competition

⁷⁷ See Fung, O'Rourke, Sabel, Cohen and Rogers 2001 for an optimistic appraisal, Seidman 2007 for a critique, and Locke 2013 for an analysis that lies somewhere between.

⁷⁸ Guthman 2007; Boltanski and Thévenot 2006. On market- and moral-valuation more generally, see Fourcade and Healy 2007, Zelizer 2013, Beckert and Aspers 2011.

⁷⁹ Ecological Trading Company 1990

⁸⁰ Phone interview with NGO representative, 8/9/02

from “homegrown” industry- or government-sponsored programs in U.S., Canada, Germany, Sweden, Malaysia, Brazil, and several other countries, which would later unite under the umbrella of the Programme for the Endorsement of Forest Certification (PEFC).⁸¹ As several bodies of research have shown, the outcomes of this competition varied across countries, but the FSC’s stringent standards for forest management generally survived.⁸² Something of a “race to the middle” ensued, as industry-driven initiatives made reforms to increase their credibility and the FSC revised its labeling rules to increase its market share.⁸³

Contrary to the idea that consumer demand drives eco-labeling initiatives, the FSC and its supporters had to work very hard to “make the market” for certified wood and paper products. While the Ford Foundation, Rockefeller Brothers Fund, and other foundations helped WWF organize “buyers’ groups,” the Rainforest Action Network, ForestEthics, and other activist groups aggressively campaigned against large retailers and brands—generating a kind of “good cop-bad cop” dynamic.⁸⁴ Companies such as The Home Depot, Staples, Kimberly-Clark, and Ikea agreed to promote FSC certification in their supply chains, although many others adopted sourcing policies that accepted certification by either the FSC or its competitor, PEFC.⁸⁵

Much of the initial growth in certified land occurred in northern countries, especially Sweden, Poland, and the U.S., where existing management practices were not too distant from the FSC’s standards. This provoked a number of projects to extend the FSC’s reach, including a partnership between WWF and the World Bank with an ambitious growth agenda. As large increases occurred in Russia, Brazil, and Canada, watchdogs worried that the FSC’s standards were being watered down.⁸⁶ On the other hand, the FSC’s prohibition on clearing natural forests for timber plantations, its requirements for reduced-impact logging, and its support for forest-dwelling communities continued to make it a challenging set of standards for

⁸¹ These included the Sustainable Forestry Initiative in the U.S., the Canadian Standards Association’s sustainable forestry standard, PEFC affiliates in Germany and Sweden, the Malaysian Timber Certification Scheme, and the Brazilian Forest Certification Programme (CERFLOR). The history and trajectory of the Indonesian program, Lembaga Ekolabel Indonesia, differs in important ways, as described in chapter 3.

⁸² Cashore 2002; Cashore, Auld and Newsom 2004; Cashore, Egan, Auld and Newsom 2007; Gulbrandsen 2005; Auld, Gulbrandsen and McDermott 2008; McNichol 2006; Espach 2006; Espach 2009; Nebel, Quevedo, Jacobsen and Helles 2005

⁸³ Overdevest 2010; Conroy 2007

⁸⁴ Sasser, Prakash, Cashore and Auld 2006; Conroy 2007; Carlton 2000; Auld 2006; Caplan 2005; Bartley 2007a

⁸⁵ See Auld 2014; Conroy 2007

⁸⁶ Rainforest Foundation 2002. See Klooster 2010 for a critical but ultimately approving account of the FSC’s ability to withstand pressures to water down its original principles.

timber companies in many places.⁸⁷ Rigorous multi-stakeholder processes to localize the FSC's global standards were held in a few locations, though certainly not everywhere they were needed.⁸⁸

The FSC's influence has stretched far beyond forestry, especially as WWF became an enthusiastic carrier of the certification model. WWF copied many aspects of the FSC when it co-founded the Marine Stewardship Council for the certification of sustainable fisheries in 1997, and it went on to develop a number of "commodity roundtables" for the certification of sustainable palm oil, biofuels, aquaculture, soy, sugar, beef, and cotton.⁸⁹ These initiatives tweaked the FSC's model in various ways, but they have been subject to many of the same dynamics. Advocates have built market support by pushing large corporations to require certification in their supply chains, getting Wal-Mart and McDonalds to support Marine Stewardship Council certification and Nestlé to support the Roundtable on Sustainable Palm Oil.⁹⁰ Elaborate structures and norms of "best practice" have emerged as these initiatives have sought to legitimate themselves and fight off challenges from exporting industry associations.⁹¹

Scholars of sustainable forestry have largely focused on the conditions under which timber industries, especially in Europe and North America, have taken an interest in the high-bar of FSC certification, highlighting particular combinations of export dependence, domestic political support, and weak footholds for competing "homegrown" initiatives.⁹² Some have used counts of certified forests to generate a rough measure of consequences in different countries.⁹³ Only a few have looked at how sustainable forestry auditors translate global standards into

⁸⁷ See McDermott 2012; Tysiachniouk 2012; Malets 2013; Cerutti, Tacconi, Nasi and Lescuye 2011; Cashore, Gale, Meidinger and Newsom 2006

⁸⁸ Tollefson, Gale and Haley 2008. As of 2006, there were FSC-certified forests in 73 countries but only 34 national initiatives and 23 approved national or sub-national standards (http://www.fsc.org/en/about/accreditation/accred_fss, accessed June 28, 2006). In some countries—including Indonesia and China, as we will see—attempts to start a national initiative proved contentious and unsuccessful. Even in countries with functioning national initiatives, auditors retain a significant amount of discretion and may consider themselves "agents of change," not merely assessors (Malets 2015; Tysiachniouk 2012).

⁸⁹ These are the Roundtable on Sustainable Palm Oil, the Roundtable on Sustainable Biomaterials (previously the Roundtable on Sustainable Biofuels), the Aquaculture Stewardship Council, the Roundtable on Responsible Soy, Bonsucro, the Global Roundtable for Sustainable Beef, and the Better Cotton initiative.

⁹⁰ Auld 2014; Ponte 2012

⁹¹ Ponte 2014; Schouten and Glasbergen 2011; Boström 2006; Boström and Hallström 2010; Loconto and Fouilleux 2014

⁹² Cashore 2002; Cashore, Auld and Newsom 2004; Cashore, Egan, Auld and Newsom 2007; Gulbrandsen 2005; Espach 2006; Nebel, Quevedo, Jacobsen and Helles 2005

⁹³ Gullison 2003; Auld, Gulbrandsen and McDermott 2008; Gulbrandsen 2010; Marx and Cuypers 2010

concrete rules and request improvements from forest managers.⁹⁴ More broadly, research on sustainability standards has highlighted biases that keep small and marginalized producers from reaping the rewards of certification, while research on environmental management systems has analyzed its mixed effects on pollution reduction.⁹⁵

Auditing Labor Standards

Private regulation of labor standards arose through a similar but largely independent set of processes. As the production of apparel, footwear, and toys for American and European markets shifted more fully to Asia and Central America in the early 1990s, a wave of anti-sweatshop campaigns and media exposés revealed child labor, dire working and living conditions, abuse and sexual harassment, forced pregnancy tests, and repression of workers' attempts to unionize.⁹⁶ Levi Strauss, C&A, Reebok, and several other companies adopted codes of conduct early on, becoming leaders in the project to privately protect human rights and improve working conditions. By the late 1990s, most large apparel and footwear brands in North America and Europe had adopted codes of conduct and were sending auditors to check suppliers' compliance. As industry advisors put it, these steps might address the variety of "public black eyes for the garment industry" and perhaps "put a muzzle on these watchdog groups."⁹⁷ Reputation protection was elusive, though, as activists and scholars continued to reveal harsh, dangerous, and repressive conditions, sometimes passed over by poorly trained or negligent auditors.⁹⁸ Moreover, factory managers were complaining of "audit fatigue," as each brand conducted its own oversight.

It was in this context that groups of companies and NGOs formed collective initiatives to coordinate and lend credibility to factory auditing. One of these, the Fair Labor Association, grew out of the Apparel Industry Partnership convened by

⁹⁴ Malets 2013; Malets 2015; McDermott 2012; Tysiachniouk 2012; Cerutti, Tacconi, Nasi and Lescuye 2011. Research examining the "corrective action requests" provides one method (Newsom, Bahn and Cashore 2006; Newsom and Hewitt 2005), but one must be careful not to assume that the reforms recorded by auditors are necessarily substantive and durable. For a rare longitudinal study of certification and land use, see Heilmayr and Lambin 2016.

⁹⁵ On sustainable agriculture, see Ponte 2008; Ponte 2014; Silva-Castañeda 2012; Fortin 2013. On environmental management system certification, see Prakash and Potoski 2006b; Potoski and Prakash 2013.

⁹⁶ See Armbruster-Sandoval 2005; Brooks 2007; Spar and LaMure 2003; Rodríguez-Garavito 2005; Ross 2004; Bartley and Child 2014

⁹⁷ WWD 1996:1; Rolnick 1997:72

⁹⁸ For exposés showing that codes of conduct were often not even posted in factories or exposing shoddy monitoring by accounting firms, see Campaign for Labor Rights 1997; O'Rourke 1997; Shaw 1999.

President Clinton in 1996, which brought Nike, Reebok, Liz Claiborne, and a handful of other brands together with NGOs, such as the International Labor Rights Fund and the Lawyers' Committee for Human Rights (now Human Rights First), and initially the Union of Needletrades, Industrial, and Textile Employees (UNITE), though it soon dropped out in protest.⁹⁹ The FLA's critics in the labor and anti-sweatshop movement created their own program, the Worker Rights Consortium, to conduct independent and thorough investigations of factories producing for the collegiate-licensed market. Although it occupies a small niche, this organization became a key player in highlighting the repression of union rights and mobilizing pressure on selected companies.¹⁰⁰

Around the same time the FLA was being developed, the Council on Economic Priorities, a U.S.-based non-profit advocate of responsible investment and consumption, joined with Toys R Us, Avon, Eileen Fisher, SGS, and a handful of others to develop the SA8000 (Social Accountability 8000) standard and begin certifying factories.¹⁰¹ The SA8000 standard was more stringent than most in calling for a "living wage" and for "parallel means" of worker representation where independent unions are outlawed. Although there is no on-product label—an option that was rejected by the Fair Labor Association as well—certified factories and participating companies can advertise their use of the SA8000 standard. SA8000 certification grew quickly in India, China, and especially Italy, where regional governments and national agencies were promoting and sometimes subsidizing it.¹⁰² More than other labor-centered initiatives, the SA8000 standard became integrated into the larger world of sustainability standards, positioning itself as a peer of the FSC, Marine Stewardship Council, Fair Trade Labelling Organization, and others.¹⁰³

These are just a few corners of the crowded, fragmented field of voluntary labor standards. Some brands and retailers have joined other multi-stakeholder initiatives, such as the UK-based Ethical Trading Initiative, while others have relied on initiatives spawned by industry associations, such as the European-based Business Social Compliance Initiative and the U.S.-based Worldwide Responsible Apparel Production program. Meanwhile, many companies, including mega-retailers such as Wal-Mart, Target, and Macy's, have relied primarily on their own

⁹⁹ See chapter 2 on how the exit of UNITE and the Interfaith Center on Corporate Responsibility shaped the FLA and perhaps the broader field of labor standards.

¹⁰⁰ Rodríguez-Garavito 2005; Ross 2006; Esbenshade 2004

¹⁰¹ The Rugmark certification program was founded earlier, in 1994, through the work of Indian and German activists, but it had a narrow scope, focusing only on rugs woven in South Asia. See Chowdhry and Beeman 2001 for the origin story and Seidman 2007 for a critique.

¹⁰² Corporate Register 2012; Carey 2008

¹⁰³ The accreditor for SA8000 certification, Social Accountability Accreditation Services, is a member of the ISEAL Alliance, along with the Forest Stewardship Council, Marine Stewardship Council, and other multi-stakeholder initiatives.

codes and auditing, sometimes aided by audit information clearinghouses, such as the Fair Factories Clearinghouse and Sedex (the Supplier Ethical Data Exchange).

As exposés of exploitation spread to other industries, so did private regulation. The electronics industry was next in line. Even before worker suicides brought Foxconn’s factories in China into the spotlight, labor rights activists were proclaiming that “Apple is the new Nike” and exposing the use of toxic chemicals and excessive overtime in electronics factories.¹⁰⁴ Dell, HP, and IBM joined with their suppliers to develop the Electronics Industry Citizenship Coalition (EICC), which soon gained additional participants and began requiring factory auditing.¹⁰⁵ In addition, HP supported SA8000 certification for several years, and Apple joined the Fair Labor Association in 2012.¹⁰⁶ Labor standards have also come to occupy a central role in codes and certification initiatives for extractive industries—such as the Initiative for Responsible Mining Assurance and its industry-driven counterpart, the Responsible Jewelry Council—and some sustainable agriculture programs.¹⁰⁷

Labor scholars have mainly focused on the limits of private regulation. Some research has traced the history of codes of conduct in different locations, arguing that they obscure the essence of labor rights struggles, spur evasion, and only rarely promote a “culture of compliance” among manufacturers.¹⁰⁸ As this field has matured, it has become clear that the evolving approaches of leading apparel, footwear, and electronics brands do generate some improvement, but perhaps only to the extent that fierce competition can be replaced with strong relationships and productivity-enhancing innovations.¹⁰⁹ There is also evidence that unions can “leverage” corporate codes of conduct, at least given particular combinations of brand image, grassroots mobilization, and cross-border solidarity.¹¹⁰ Researchers are learning more about the changes spurred by factory auditing and the correlates of compliance through analyses of data obtained from brands and auditors.¹¹¹ Note, though, that this data does not allow a comparison to factories that are subject to little or no private regulation—or a consideration of

¹⁰⁴ CAFOD 2004; Frost and Burnett 2007

¹⁰⁵ Raj-Reichert 2011; Fransen and Conzelmann 2015

¹⁰⁶ For more on HP, see Locke 2013; Distelhorst, Locke, Pal and Samel 2015; Nadvi and Raj-Reichert 2015

¹⁰⁷ While some view Fair Trade as a labor standards initiative, its origins and emphasis lie in supporting owners rather than workers—that is, owners of cooperative farms, who can receive a premium price if certified. More recently, Fairtrade International has added standards for hired labor. See Reynolds 2014. For more on the evolution of the fair trade model, see Auld 2014; Jaffee 2012; Lyon and Moberg 2010.

¹⁰⁸ Seidman 2007; Esbenshade 2004

¹⁰⁹ Locke 2013

¹¹⁰ Rodríguez-Garavito 2005; Armbruster-Sandoval 2005; Ross 2006. See Brooks (2007) on how this strategy can be counterproductive when it does not include organized grassroots actors.

¹¹¹ Distelhorst, Locke, Pal and Samel 2015; Locke, Amengual and Mangla 2009; Locke, Qin and Brause 2007; Locke 2013; Toffel, Short and Ouellet 2015

how auditors define compliance.¹¹² Meanwhile, most research focuses on the adoption of labor standards, the relationships between competing initiatives, and the rise of corporate social responsibility in affluent countries.¹¹³

Toward a Comparison

Attempts to look across multiple industries, issues, or fields have mainly examined the emergence, design, and support for private regulatory initiatives, not their implementation.¹¹⁴ It is clear from this research that certification for forests, fisheries, and coffee farms evolved differently, and that the local conditions that support one sustainability certification initiative may fail to support another.¹¹⁵ Practitioners and scholars have sought to assess the performance of certification across issues and industries, but the necessary evidence has been sparse.¹¹⁶

A comparison of sustainable forestry and fair labor standards captures two of the most prominent and influential attempts to privately govern land and labor. For those interested in how far private authority can go, these cases provide a wealth of material, intersecting with issues of indigeneity, environmental justice, climate change, biodiversity, property rights, human rights, union rights, gender discrimination, and workplace health and safety. We should not expect private regulation to work identically in these fields, but we should certainly see some parallels, given the role of retailers and brands in pushing standards, the widespread use of auditing, the challenges of credibility, and the “fictitious commodity” character of land and labor.

Democracy and Authoritarianism

If transnational rules can truly bypass the state and transcend domestic governance, then they ought to work in similar ways in different countries. To the extent that domestic governance channels and reconfigures private regulation, though, we should see transnational rules becoming intertwined with the state and

¹¹² For analyses that do include negative cases, see Oka 2010; Bartley and Egels-Zanden 2015. For a study that does examine auditors’ understandings of compliance, see Kim 2013.

¹¹³ See Fransen 2011; Fransen 2012; Fransen and Burgoon 2011; O’Rourke 2003b; Brammer, Jackson and Matten 2012; Matten and Moon 2008; Campbell 2007; Vogel 2005; Mundlak and Rosen-Zvi 2011

¹¹⁴ Büthe and Mattli 2011; Büthe 2010; Verbruggen 2013; Bartley 2007; Fransen and Conzelmann 2015. Some strands have been brought together in edited volumes and summary overviews, such as Potoski and Prakash 2009; Graz and Nölke 2007; Vogel 2008. For studies that have some consideration the “on the ground” effects of different types of standards, see Vogel 2005, Dauvergne and Lister 2012, Bartley et al. 2015, and Tampe 2017.

¹¹⁵ Auld 2014; Gulbrandsen 2010; Espach 2009

¹¹⁶ RESOLVE 2012; Ward and Ha 2012

civil society in distinctive ways in different countries. A comparison of Indonesia and China contributes both substantive significance and analytical leverage.

Both countries are important sites for the implementation of fair labor and sustainable forestry projects. They have large export-oriented apparel/footwear and forest products industries that have been at the center of controversies about labor exploitation and environmental degradation. The clearing and burning of rainforests in Indonesia has at various points spread a haze over large swaths of Southeast Asia, while the exploitation of Indonesian workers fueled some of the earliest campaigns equating Nike's swoosh with sweatshops. In China, from the brutal repression of the Tiananmen Square protests to the suicides of workers making iPhones, the rights and well-being of workers have been difficult for foreign observers to ignore. Meanwhile, as China became the "factory to the world" for furniture, paper, and plywood—not only apparel and electronics—its forest products industry became intertwined with illegal logging and land grabs both within and outside the country. The success or failure of fair labor and sustainable forestry initiatives depends in no small part on their effectiveness in these cases.

Analytically, it is important that Indonesia and China differ in their political regimes, with a burgeoning Indonesian democracy since the fall of Suharto and a resilient form of authoritarianism in China.¹¹⁷ This provides a chance to examine how transnational private regulation intersects with democratic and authoritarian governance at the point of implementation.

A democratic-authoritarian comparison captures two key aspects of the domestic context. First, a democratic setting allows for forms of popular scrutiny and pressure that have been found to amplify private rules. Where there are autonomous NGOs and independent trade unions, they can participate in "brand boomerang" campaigns to push companies to live up to the standards they have adopted.¹¹⁸ As labor rights groups press firms to make good on promises to respect freedom of association, environmental justice and land rights groups may do the same for promises about respecting indigenous people's rights. NGOs can also organize stakeholders to be consulted by auditors or contest controversial decisions about certification, which may shape auditors' assessments of compliance.¹¹⁹ The existence of autonomous local NGOs may also enhance the possibilities for collaborative projects that produce more meaningful corporate reforms.¹²⁰ Some

¹¹⁷ See, for instance, Aspinall 2005; Perry and Heilmann 2011.

¹¹⁸ Seidman 2007; Anner 2009; Armbruster-Sandoval 2005. See Keck and Sikkink 1998 for the original, more state-centered account of the boomerang effect in transnational advocacy.

¹¹⁹ Malets 2013; Tysiachniouk 2012

¹²⁰ Distelhorst, Locke, Pal and Samel 2015. In their analysis of HP's social compliance audits, they find that the rate of compliance is significantly lower in China than in other countries with HP suppliers, including middle-income countries with more autonomous civil society, such as Mexico.

evidence also suggests that compliance with private regulation is higher in countries with greater press freedoms, perhaps because the media enables popular scrutiny.¹²¹ Of course, NGOs and journalists can expose problems and pressure companies in all but the most closed authoritarian countries too, but they will face much tighter oversight and control from the state. Watchdogs are widespread, but they should generally be on sounder footing in democratic than authoritarian regimes.

Second, a strong authoritarian state is likely to be more difficult for transnational private regulators to bypass. Truly bypassing the state may prove impossible in nearly every case, but the more encompassing the state's power is, the more private regulators should be dependent on its consent. Authoritarian regimes often govern through deep ties between political leaders, the military, trade associations, and leading companies. In some cases, these ties have been organized into effective developmental states, as in South Korea and Singapore, while in others, the heavy hand of the state has led to predation and corruption.¹²² In democratic regimes, administration tends to be more fragmented, again producing dynamism in some countries and dysfunction in others.¹²³ The implication for transnational private regulation is that democratic settings should be more permeable, allowing actors from standard-setting bodies, international NGOs, and transnational corporations to become integrated into the strategies of domestic industries. Authoritarian regimes are likely to police this boundary more aggressively.

This does not exhaust the significance of democracy and authoritarianism for transnational private regulation. My case studies of land and labor in Indonesia and China will turn up some unexpected—and seemingly perverse—ways in which the contentiousness of democracy and the repressiveness of authoritarianism shape private certification efforts.

Indonesia and China obviously also differ in ways that go beyond democracy and authoritarianism. China's market size and dominant manufacturing position are unmatched.¹²⁴ Export-oriented industrialization in each country rested on "great migrations" of young people—especially women—from rural to urban settings.¹²⁵ But there are important differences in the status and settlement of internal migrants, as we will see. Forest land is governed somewhat differently,

They also describe a case in which a Mexican NGO worked with a brand to promote a higher bar of compliance.

¹²¹ Toffel, Short and Ouellet 2015

¹²² See Evans 1995; Wade 1992; Amsden 1989

¹²³ Chibber 2002; Rodrik 2007

¹²⁴ See Hung 2009

¹²⁵ Meng and Manning 2010. On the gendered character of migration and industrial development, see Wolf 1992 on Indonesia and Lee 1998 on China.

although there is significant “institutional ambiguity” surrounding forest boundaries and uses in each case.¹²⁶ Indonesia’s large extractive industries (oil and mining) and majority Muslim population have each, in their own ways, shaped the country’s politics and governance.¹²⁷ One can rarely control for all the differences between substantively important cases. Thus, rather than relying on a static comparison, the case studies in this book will try to show *how* democratization in Indonesia and resilient authoritarianism in China intertwined with the implementation of private rules.

Interestingly, China and Indonesia are interdependent cases with regard to the fields studied here. Orders for apparel and footwear have shifted back and forth between the two countries—along with a handful of others—as wages and labor unrest have risen and fallen. A different sort of interdependence exists in the forest products industry, where voracious demand for imported timber arose in China as political change was fostering illegal logging in Indonesia, making Indonesia a major source of the illegal timber flowing through factories in China. These intertwined paths reveal some of the evolving interdependencies in the global economy and world of transnational governance.

¹²⁶ Ho 2001; McCarthy 2004.

¹²⁷ See, for instance, Rinaldo 2013; Mujani and Liddle 2004; Rosser 2007

The Politics of Production in China and Indonesia

China's place in the global economy requires little exposition. Market reforms in the 1980s made China the "factory to the world" by the 1990s. Mainland China became the world's leading exporter of clothing in 1994, and by 2006 it was exporting more clothing than the next six countries combined.¹²⁸ In addition to the boom in export-oriented production of clothing, footwear, and electronics, China's forest products industry greatly expanded in the 1990s and 2000s. Plywood exports increased by a massive 4,600% from 1996 to 2006, making China the world's top producer by 2003.¹²⁹ As China's furniture, flooring, and lumber industries similarly expanded, they rapaciously consumed logs from Russia, Burma, Malaysia, and Indonesia, raising concerns that Chinese production was driving unauthorized logging and timber smuggling networks. There are large tracts of forest land within China—the fifth largest amount in the world—but several rounds of devastation have led to new controls, reforestation campaigns, and massive new timber plantation projects.¹³⁰

In the midst of market reforms, the resilient Communist Party of China has kept a tight grasp on the Chinese polity, promoting a "harmonious society" while working to strictly regulate information and association. Political authority in China has often been described as a kind of "fragmented," "soft," or "adaptive" authoritarianism, which allows flexibility for local policy innovation and multi-level governance, while maintaining single party control and strong coercive state powers.¹³¹ Since the 1990s, there has been an active "semi-civil society" in China, including a range of environmental and labor NGOs. But they are overseen by the state and face repression if they cross the fuzzy line into "political" activities.¹³² With the growth of wildcat strikes, anti-pollution protests, and other so-called "mass incidents," the Chinese regime has developed a kind of "bargained authoritarianism" that uses a mix of concessions, cooptation, and repression to maintain control.¹³³ Since 2013, under President Xi Jinping, the repressive components of the central government's strategy appear to have become much stronger, as activists and NGO leaders have increasingly been detained.¹³⁴

¹²⁸ WTO export value data for SITC 84, clothing

¹²⁹ Chinese Academy of Forestry 2007; Sun, Wang and Gu 2004

¹³⁰ Food and Agriculture Organization (FAO) 2010; Food and Agriculture Organization (FAO) 2006; Robbins and Harrell 2014; Trac, Harrell, Hinckley and Henck 2007

¹³¹ Lieberthal and Lampton 1992; Mertha 2009; Perry and Heilmann 2011

¹³² Spires 2011; Stern and O'Brien 2012; Chang, Ngok and Zhuang 2010

¹³³ Lee and Zhang 2013

¹³⁴ See Mitchell 2016. In its various forms, the "authoritarian resilience" of the Chinese government has attracted a great deal of scholarly attention (Nathan 2003; Stockmann and Gallagher 2011; He and Warren 2011).

Indonesia is the world's fourth most populous country, but this archipelago of over 13,000 islands often seems invisible to social scientists in North America. Those who cite Benedict Anderson's *Imagined Communities* or James Scott's *Seeing Like a State* rarely remember their Indonesian points of reference.¹³⁵ Although there have been several prominent analyses of Indonesia's democratization and navigation of the Asian financial crisis, the country is often neglected in American sociology.¹³⁶

Indonesia has long been a major exporter of forest products, with "timber barons" benefitting from tight links to the military and central government—as well as Japanese and American corporations—during the Suharto regime.¹³⁷ As Indonesia surpassed Malaysia to become the top Asian exporter of forest products in 1988, the industry was shifting from raw commodities to manufactured products, such as plywood and furniture, including teak and mahogany furniture made by clusters of small craft-based producers.¹³⁸ Pulp and paper companies were also setting up massive mills in Indonesia, often fueled by the destruction of old-growth natural forests.¹³⁹ Forests cover nearly half of the country's land—amounting to the third largest tropical forest area and eighth largest forested area in general—but natural forest land has been at a high risk for clearing, burning, and conversion to oil palm and timber plantations.¹⁴⁰

In addition to its natural resource industries, Indonesia became a major exporter of footwear and apparel, facilitated by foreign investment from South Korea, Hong Kong, Taiwan, and Japan in the 1980s.¹⁴¹ By the mid-1990s, Indonesia was one of the top five exporters of footwear worldwide and one of the top six clothing exporters in Asia.¹⁴² Its apparel industry benefitted from U.S. quotas—in the form of the Multi-Fiber Arrangement—that kept clothing imports geographically dispersed, at least until these quotas were eliminated in 2005. This

¹³⁵ Anderson 1983; Scott 1998

¹³⁶ For exceptions, See Gellert 2005, Slater 2009, Halliday and Carruthers 2009, and Rinaldo 2013. A search of abstracts of articles in the *American Sociological Review* and *American Journal of Sociology* from 1975 to 2013 reveals just three that mention Indonesia, compared to 57 for China, 13 for India, and 14 for Brazil. To be sure, social scientists in some parts of Europe—especially the Netherlands—and in Australia are much more attentive to Indonesia, due to colonial history and proximity.

¹³⁷ Dauvergne 1997

¹³⁸ FAOStat database, total export value of forest products. In 2005, Indonesia was surpassed by China as the largest exporter of forest products in Asia. On the furniture industry, see Posthuma forthcoming; Morris and Dunne 2004.

¹³⁹ Dauvergne and Lister 2011; Barr 2001

¹⁴⁰ Food and Agriculture Organization (FAO) 2010; Food and Agriculture Organization (FAO) 2006; Barr 2001; McCarthy and Cramb 2009; Ruslandi, Venter, and Putz 2011

¹⁴¹ Dicken and Hassler 2000

¹⁴² Scott 2006; WTO export value data for sitc 84, clothing. Indonesia has been in the top 15 clothing exporting countries (by value) nearly every year since 1991, although its position has fluctuated with the value of the currency and the changing costs of production in other parts of Asia.

left the Indonesian apparel industry in a precarious but still competitive position, as wages remained relatively low.¹⁴³

General Suharto rose to the Indonesian presidency amidst a bloody purge that killed 500,000 to a million suspected leftists between 1965 and 1967. The thirty years of his so-called New Order regime combined a deeply militarized and coercive state with the *Pancasila* ideology of national harmony.¹⁴⁴ Then, in 1998, in the wake of the Asian financial crisis, an El Niño-driven draught, student protests, violent riots, and the fracturing of his coalition, Suharto resigned.¹⁴⁵ The new administration, headed by Vice President Habibie, quickly began a process of *Reformasi*, expanding party competition, press freedoms, civil and labor rights, and scheduling new elections. Indonesia's score on the Polity IV scale of democracy—a -10 to +10 scale—swung from -7 to +6 from 1998 to 1999.¹⁴⁶

The scars of the past were by no means quickly erased, and new power elites emerged, but Indonesia became a burgeoning democracy with an active civil society. Domestic NGOs, which had been tolerated to some degree under Suharto, found new space to press claims about human rights, indigeneity, and environmental justice.¹⁴⁷ Independent trade unions blossomed, although the labor movement quickly became highly fragmented and had to contend with the “legacy union” of the Suharto era.¹⁴⁸ Local strongmen and corrupt officials make Indonesian democracy far from rosy, but the country's human rights record has seen marked improvement, especially since 2006.¹⁴⁹

Researching Private Regulation in Practice

To examine fair labor and sustainable forestry standards in Indonesia and China, I conducted 145 interviews with practitioners between 2007 and 2014.¹⁵⁰ They included auditors, consultants, representatives of domestic and international NGOs, compliance staff for brands and retailers, managers of apparel, footwear,

¹⁴³ In part due to rising wages elsewhere in Asia, Indonesia remained among the top six apparel exporters in Asia in 2013, according to WTO export value data for sitc 84, clothing.

¹⁴⁴ Dove and Kammen 2001; Hadiz 1998; Vickers 2005

¹⁴⁵ Aspinall 2005; Slater 2009; Liddle and Mujani 2013

¹⁴⁶ In contrast, China has retained a Polity score of -7 since 1976.

¹⁴⁷ Ford 2009; Peluso, Afiff and Rachman 2008

¹⁴⁸ Caraway 2008; Juliawan 2011; Tjandraningsih and Nugroho 2008

¹⁴⁹ Cingranelli, David L., David L. Richards, and K. Chad Clay. 2014. “The CIRI Human Rights Dataset.” Version 2014.04.14. <http://www.humanrightsdata.com>. On the rise of local strongmen since democratization, see Hadiz 2010.

¹⁵⁰ 47 interviews focused on labor standards in China, 24 on sustainable forestry in China, 32 on labor standards in Indonesia, and 38 on sustainable forestry in Indonesia. Four interviews were with practitioners who straddled the two fields without fitting clearly into one or the other.

and timber companies, garment workers, trade union leaders, and local researchers. Starting with contacts gained from prior research and other scholars, and then recommendations from those I interviewed, I expanded my list of practitioners and sought interviews that would help to triangulate information about key events and processes.¹⁵¹ To get beyond surface-level portrayals, it helped to talk in specifics rather than generalities, so I let the semi-structured interview move into the person's particular area of expertise, and I probed for the details of specific cases.¹⁵² Corporate compliance representatives and auditors were well aware of the critiques of their work, and many talked candidly about problems and potential solutions. Because many of these individuals operated in organizational worlds where English is the *lingua franca*, approximately two-thirds of the interviews could be conducted in English. The others were done with the help of local interpreters.

A rich trove of secondary sources, including practitioners' reports and specialized research literatures, has helped me contextualize and supplement the interviews. I also coded publicly disclosed audit reports and have analyzed two factory-level datasets that were graciously shared by the local researchers who collected them.

In studying forest certification in Indonesia, I interviewed auditors, sustainable forestry consultants and researchers, representatives of competing certification initiatives (including the homegrown Lembaga Ekolabel Indonesia), international and domestic NGOs, and timber companies. Most were interviewed during several stays in Jakarta and in Bogor, the home of the Center for International Forestry Research (CIFOR) and several other relevant organizations. In Yogyakarta, I interviewed the heads of small craft-based home furnishings companies and the consultants that were helping them reach "green" markets. In East Kalimantan, a once-richly forested region now suffering from severe deforestation, I joined a team of auditors and experts as we took a boat up the river to visit an oil palm plantation that was considering certification.

In Jakarta, an early interview with a labor rights NGO quickly spawned a long taxi ride through the city's infamous traffic to meet with a group of factory-level union leaders. This began a series of interviews with unions and other participants the "code of conduct network" that had engaged in bottom-up monitoring of brands' standards.¹⁵³ Over the course of several visits, I also interviewed brands'

¹⁵¹ I also interviewed approximately 60 practitioners in North America and Europe between 2002 and 2004 to gather information about the emergence of fair labor and sustainable forestry initiatives.

¹⁵² These were informant interviews rather than attempts to capture the subjective experiences of actors in a population. I sought to follow Weiss's (1995) approach to conceptualizing informant interviews and building rapport.

¹⁵³ Some were conducted in tandem with Niklas Egels-Zanden, my collaborator on one part of the project. Graduate students working with him conducted a number of additional interviews and

compliance staff, auditors, trade association leaders, corporate social responsibility consultants, researchers, and representatives of NGOs, mainly in the greater Jakarta area, Bandung, or Bogor, the traditional manufacturing centers. I interviewed several groups of garment workers as we sat on the floors of their homes or cramped union offices, and I worked with a local research assistant to gather additional information on key cases. In addition to a practitioner's conference and audit observation, I gained access to survey data on factories that are and are not subject to codes of conduct. (See chapter 6 for a complete description.)

In China, I began with a series of interviews with labor rights NGOs and apparel/footwear brands in Hong Kong and Shenzhen. Later, during a three-month stay in Guangzhou and several visits to Beijing and Shanghai, I interviewed labor standards auditors, NGO leaders, factory managers, researchers, and the local staff of apparel and footwear brands and private regulatory initiatives.¹⁵⁴ I followed along as an observer on two audits, attended practitioners' conferences, and worked with local research assistants who conducted short interviews with garment workers outside several certified factories—sites where my own presence would have been extremely conspicuous. I also gained access to survey data collected by researchers from Peking University that allows for a rigorous assessment of differences between SA8000-certified and uncertified factories.¹⁵⁵ (See chapter 5 for a complete description.)

Studying sustainable forestry standards in China took me mainly to Beijing, where most key practitioners are based, in part because of this field's links to the State Forestry Administration and its northern forests. Over several visits, I interviewed some of the most active auditors, foresters who were involved in public and private policy discussions, as well as representatives of certification initiatives, international NGOs, sustainability consultancies, and a trade association. As we will see, sustainable forestry in China was in flux—and facing profound challenges—as I was studying it, so media coverage, NGOs reports, and follow-up interviews were also important for fleshing out several cases. The public summaries of audit reports for FSC certification proved also valuable for understanding forest certification in both China and Indonesia.

follow-ups, which enhanced our work but are not counted in the number of interviews reported above.

¹⁵⁴ During this period at least, a foreign scholar of labor standards could make contacts with little interference. I was told by one recent university graduate at a dinner, casually and with a smile, that he had been assigned to watch me. But I encountered no obvious interference in meeting with labor NGOs and scholars.

¹⁵⁵ This and much of my other evidence on labor standards in China comes from Guangdong province, the traditional center of export-oriented manufacturing and thus of private regulatory activity, although interesting new dynamics may emerge as companies move inland in search of lower wages.

This multi-method research provides a number of points of evidence about the outcomes of transnational private regulation. As international relations scholars have argued, identifying the “outcomes” of a regime means documenting the observable changes made by its targets. Studying “outputs,” in contrast, would simply involve collecting written agreements, rules, and standards. Rigorously identifying “impacts” is incredibly difficult, since it requires systematic measures over time and the ability to rule out alternative explanations.¹⁵⁶ The case studies in this book will document changes made by factory and forest managers in response to private rules and auditing; steps taken to evade or resist this scrutiny; and re-interpretations of the rules that occur along the way. Some systematic comparisons are possible—of SA8000-certified and uncertified factories in China, for instance—but many of the central insights will come from narrative reconstructions of key cases and events, as revealed through a combination of interviews, documentary evidence, and secondary sources. The case studies seek to make the contexts and consequences of private rules intelligible and engaging.

A SHARED DIAGNOSIS AND SET OF DIFFERENCES

Looking across the cases, we will see that domestic governance is far more than an empty space; it channels and reconfigures transnational private regulation in distinctive ways. The hope of transcending domestic governance and bypassing the state is illusory. For instance, state repression of migrant workers’ rights in China led practitioners of private regulation to either ignore rules about workers’ freedom of association or to redefine them in domestically-friendly ways. In the forestry case, transnational standards asked timber companies to respect the customary land rights of indigenous people, but this was difficult if not impossible to do in Indonesia, since the state grants forest concessions to companies with little regard for customary claims. In China, the Forest Stewardship Council received a powerful reminder that there is no bypassing the state, when new regulations threatened its ability to continue operating in the country just as it was facing new competition from a homegrown, state-sponsored program.

As practiced in Indonesia and China, private regulation of land and labor has at best been a source of marginal change in industries that remain highly exploitative. At worst, this approach has accepted small and cosmetic changes as evidence of market transformation. Reforms that would be needed to live up to the most rigorous transnational rules often cut against deeply entrenched cultures of production and modes of domestic governance. At times, private actors were simply *incapable* of altering systems of land governance and rights regulation that were grasped as tightly as possible by the state. Certainly, in comparison to cases where transnational private regulation has significantly altered the normal

¹⁵⁶ Biermann and Bauer 2004; Underal 2002.

operation of business—such as accounting, food safety, and professional qualifications—fair labor and sustainable forestry standards must be considered failures.¹⁵⁷

The failings stem in part from transnational corporations’ mixed incentives for rigorous enforcement of rules. Simply put, brands and retailers wanted assurances of decency, safety, and sustainability to protect and build their reputations, but they often wanted extreme flexibility and ever-lower prices from their suppliers as well. But the case studies suggest another, less-often-recognized source of the failures: Transnational private regulation sets rules for what constitutes a decent workplace or well-managed forest management enterprise, but it brackets what lies *beyond* the factory walls and forest boundaries. It papers over the sourcing practices of brands and retailers, who are treated as the enforcers rather than the targets of regulation. It ignores the domestic political economy in which factories and forests are embedded, and it pretends to bypass the state rather than grappling with the messy but essential character of state-based governance.¹⁵⁸

Despite this shared diagnosis, there is notable variation across locations and fields, as depicted in Figure 1.1. Democratization in Indonesia allowed civil society actors to push for “maximalist” constructions of compliance with private rules. Unions and labor rights NGOs pushed Nike, Adidas, and other brands to truly respect workers freedom of association—by allowing insurgent independent unions in their suppliers’ factories, for instance. Indigenous rights and environmental justice NGOs in Indonesia likewise argued that timber companies should not be certified unless the contested rights to Indonesian forest land could somehow be resolved. As we will see, activists rarely won these debates, but their persistence put collective labor rights and community rights at the center of private regulators’ attention, and occasionally spurred surprising achievements.

In China, in contrast, there were few countervailing forces to prevent transnational corporations, suppliers, and auditors from using minimalistic constructions of compliance. Independent unions did not exist, and migrant labor NGOs were in a precarious position, facing repression if they became too political. Rural residents had little power to resist land grabs orchestrated by companies and local governments, even if external actors were watching. Auditors and other practitioners of private regulation—even those who were conscientious and experienced—routinely accepted weak assurances in this context. In a sense, they

¹⁵⁷ Bütthe and Mattli 2011; Cafaggi and Janczuk 2010; Fuchs and Kalfagianni 2010

¹⁵⁸ Practitioners of private regulation could adapt transnational standards to domestic governance, but the logic (and economic reality) of their work militated against asking whether domestic governance was so deeply in conflict with transnational standards as to render the latter ridiculous.

were not forced to look hard at the vexing issues of land and labor rights in authoritarian China.

Figure 1.1. Summary of the cases

		TRANSNATIONAL FIELDS		
		Fair labor	Sustainable forestry	
NATIONAL SITES OF IMPLEMENTATION	Indonesia	<p>“Contentious Codes”</p> <ul style="list-style-type: none"> • bottom-up monitoring / leveraging • precarious industry 	<p>“Purity and Danger”</p> <ul style="list-style-type: none"> • push for high standards • unsettled land tenure, messy democratization 	<p><i>Civil society push for maximalist constructions of compliance; but little certification</i></p>
	China	<p>“Beneath Compliance”</p> <ul style="list-style-type: none"> • low-quality auditing • impossible to guarantee collective rights 	<p>“The State Strikes Back”</p> <ul style="list-style-type: none"> • dependence on the state • certification despite land grabs 	<p><i>Contained, minimalist constructions of compliance; higher rate of certification</i></p>
		<p><i>Lax but widespread private regulation</i></p>	<p><i>More rigorous private regulation (with blind spots)</i></p>	

This suggests a perverse way in which transnational private regulation is shaped by democratic and authoritarian contexts. The kind of open contention that is facilitated by democratic governance and an autonomous civil society can *impede* certification to rigorous multi-stakeholder standards. When activists push for maximalist definitions of compliance, expose weaknesses in implementation, and link up with international watchdogs, certification becomes more costly and time-consuming. Because authoritarian governance contains, absorbs, or represses contention, it can make it easier for companies to be certified to a high standard, since auditors may not even see the underlying conflicts. Ironically, it has turned

out to be easier for firms to get credibly certified as sustainable, fair, and rights-respecting in authoritarian China than in democratic Indonesia.

Land and labor are similar as fictitious commodities, but there are notable differences across these two fields of transnational governance. On the whole, private regulation has been more rigorous for sustainable forestry than for fair labor standards. The Forest Stewardship Council's standards for forest management have remained expansive and challenging, despite several pitfalls and blindspots—including weak enforcement of rules about labor rights in the forest. SA8000, the most rigorous factory certification standard, has suffered from inconsistent auditing and poor quality control in China and a puzzling lack of application in Indonesia, where collective labor rights are legally protected. Apparel and footwear brands and retailers have pushed a number of other rules as well, generating widespread scrutiny. But often auditing has been weak, and enforcement has been geared toward creating plausible deniability if problems arise rather than promoting meaningful improvements.

The difference across fields, I will argue, cannot be explained by simplistic ideas about corporate greening as an efficiency-enhancing “win-win,” which are an especially poor fit with the costs and conflicts involved in sustainable forestry. Instead, I will argue that the pattern stems from differences in the power of non-industry groups in the initial design of private regulatory initiatives, the relative mobility and visibility of industries, and the framing of labor and environment relative to the global public good. While leading strands of organizational and field theory are reluctant to make substantive distinctions, I will argue that fairly durable features of industries, products, and issues set fields on different paths.

Beyond Forests and Apparel/Footwear Factories

The two fields of transnational private regulation covered in this book do not represent the full landscape of land and labor standards, though they should capture some general tendencies. Observers of sustainable agriculture and responsible mining should, for instance, find significant points of connection in this study of sustainable forestry, particularly when it comes to land grabs, ecosystem impacts, and negotiations to control natural resources that are fixed in place.¹⁵⁹ On the other hand, forest land has more multi-faceted uses—for timber harvesting, hunting and collection of non-timber forest products, the conservation of biodiversity, and the mitigation of climate change—than most land used for agriculture and mining. The Forest Stewardship Council's participatory decision-making structure also sets it apart from most other multi-stakeholder initiatives.

¹⁵⁹ See Ponte 2014; Fortin 2013; Silva-Castañeda 2012; Djama, Fouilleux and Vagneron 2011

Similarly, scholars of labor standards in other manufacturing industries or in labor-intensive agriculture will notice some common enforcement challenges, such as widespread sub-contracting, a search for lower-wage workforces, and the vulnerability of workers who are marginalized by migrant status, gender, ethnicity, and/or race.¹⁶⁰ On the other hand, the apparel industry is less capital-intensive and more mobile than many others, making it especially difficult to have significant increases in labor costs without spurring exit. Industries with more complex production processes, greater place-based agglomeration effects, or higher barriers to entry should be somewhat less challenging to regulate, whether publicly or privately. On the other hand, the progression of outsourcing and franchising has generated “fissured” production architectures in surprising places.¹⁶¹

What Lies Ahead

The next chapter builds from a critique of “empty spaces” imagery in theories of transnational governance to the contextual and substantive approach developed in this book. While many treat governance in poor and middle-income countries as so weak, corrupt, or illegitimate as to be analytically irrelevant, I argue that it is better to start from the opposite premise and look closely at the intersections of domestic governance, global production networks, and transnational fields. A series of theoretical propositions, which have been abstracted from my case studies, further specify a substantive and generalizable theory of transnational governance.

The empirical studies begin in chapter 3 (“Purity and Danger”), with the case of forest certification in Indonesia. Although the field of forest certification was created in large part to counteract deforestation in Southeast Asia, few forests in Indonesia were certified to the standards of the Forest Stewardship Council. Those that did often struggled to reform destructive logging practices and tense relationships with communities. This chapter asks why forest certification was underdeveloped and what kinds of reforms were made. It shows how “certifying in contentious places” turned out to be quite difficult.¹⁶²

As the next chapter (“The State Strikes Back”) shows, China saw faster growth in forest certification, even as the operations of private regulators were constrained and threatened by the Chinese state. This was possible because of what I call the “dual logic of certifying in authoritarian places,” in which the state crowds the space of private regulators but also edits out the messiness and contention that can otherwise impede certification. Among other things, this

¹⁶⁰ See Nadvi and Raj-Reichert 2015; Coslovsky and Locke 2012; Tampe 2016; Barrientos 2016

¹⁶¹ Weil 2014

¹⁶² See McCarthy 2012 for the initial use of this terminology.

chapter will argue that authoritarian governance suppressed conflicts over land rights, making it easier for apparent land grabs to be certified as compliant with the Forest Stewardship Council's high standards.

Chapter 5 ("Beneath Compliance") examines the practical meanings of labor standards and corporate social responsibility in China. SA8000 certification initially made waves in China by proposing stringent rules and strong respect for labor rights. But as this chapter shows, oversight was weak, and SA8000-certified factories proved not especially different from others. More broadly, despite some provocative projects, brands and initiatives responded to government restrictions on workers' rights largely by constructing "compliance" in stripped down, managerialist terms that were compatible with authoritarian governance.

Labor codes of conduct took a different trajectory in Indonesia, as the next chapter ("Contentious Codes") will show. Although democratization, independent unions, and progressive labor law did not turn Indonesia into a locus of responsible apparel and footwear production (or SA8000 certification), unions and NGOs were able to engage in bottom-up monitoring and leveraging of brands' codes of conduct. Yet the modest improvements that resulted were overshadowed by several larger defeats. This chapter shows how the mobility of the apparel industry and the factory-centered logic of private regulation impeded greater gains.

The final chapter ("Re-Centering the State: Toward Place-Conscious Transnational Governance?") considers the possibilities for improving transnational governance of land and labor. Rather than rejecting supply chain scrutiny entirely, I argue that it could be made more effective by acknowledging the spatial and temporal dimensions of corporate responsibility/sustainability and "re-centering" the state. This is not a starry-eyed call for strong but responsive governments to somehow emerge, but rather a call to extend potentially empowering reforms that are already underway. A new, binding transnational timber legality regime holds great promise, along with some pitfalls, and perhaps lessons for projects—including the ILO-IFC Better Work programs—that seek to improve the enforcement of labor standards.