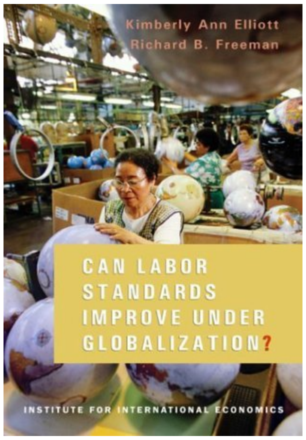

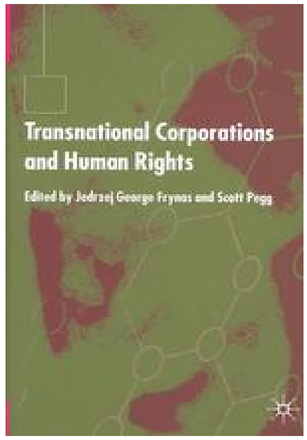

The Profit Motive: Can Corporate Networks be an Effective Conduit for Improving Worker Rights?

By Alisa DiCaprio

<u>Can Labor Standards Improve Under Globalization?</u> By Kimberly Elliott and Richard Freeman. Washington: Institute for International Economics, 2003. 179pp.

<u>Rising Above Sweatshops: Innovative Approaches to Global Labor Challenges</u>. Edited by Laura Hartman, Denis Arnold and Richard Wokutch. Westport: Praeger Publishers, 2003. 414pp.

<u>Transnational Corporations and Human Rights</u>. Edited by Jedrzej Frynas and Scott Pegg. London: Palgrave Macmillan, 2003. 223pp.

The rise of the anti-sweatshop movement in the 1990s made it clear that absent public pressure, multinational corporations tend to ignore the working conditions of employees in their subcontracted plants. Yet, these same corporations, once their profits became correlated with treatment of their workers, have implemented various policies aimed at promoting and protecting labor rights in their factories. In this essay, I trace some of the pressures that led to the turnaround of the corporate profit model and argue that despite their past, today's branded firms can and are being used by labor activists as a conduit to improve labor rights worldwide.

Workers in developing countries have known about the impunity of their multinational corporate employers since they first took their places on the factory floor. There are a number of different reasons for this lack of corporate responsibility. In part, manufacturing supply chains can be long and difficult to follow, so headquarters often does not know what is going on in sub-contracted factories. Often garment factories locate in the least developed countries where labor laws are weak and un-enforced. Workers are generally new to the formal labor force, young and are unfamiliar with their rights. In addition, governments in these countries tend to overlook problems with foreign investment as they seek to attract more. Cambodia presents a typical example of the poor state of labor rights in developing countries. Though an ILO-drafted labor code was implemented in 1997, few workers were aware of it and few factories enforced it. When I was involved in factory inspections as part of the U.S. Embassy's investigation of claims made in the

1998 GSP complaint, some common abuses I found were forced overtime, late payment of wages, intimidation of workers associations, and poor working conditions. The only factories where the new law was actively enforced were those that had experienced some form of violent labor unrest as a result of particularly egregious abuses of worker rights.

The impunity that had characterized multinational corporations' treatment of workers in many of their host countries was stripped away by the U.S. anti-sweatshop movement of the 1990s. Students, activists, journalists and workers publicized egregious labor practices in factories that were producing for major branded firms like Nike, ExxonMobile and Del Monte. Revelations of what had been fairly typical practices in garment, oil and food processing plants led to the vilification of firms and a turn of public opinion in the United States against free trade and globalization. In the beginning, many large branded firms refused to acknowledge any responsibility for the actions of their subcontractors. Following calls for Nike to accept responsibility for abuses in its subcontracting factories, the corporate office claimed that it did not track its subcontractors and was unable to produce any list of where production occurred.

Eventually, branded firms responded to public pressure and falling sales by improving their oversight of subcontractors, incorporating codes of conduct, and joining industry-wide working groups on how to improve labor rights. Pressures included action by industry associations, U.S. government requirements, and falling sales from consumer boycotts. In Cambodia, the turnabout has been particularly striking. Not only did both the government and the garment association agree to take part in a factory monitoring project, but they have voluntarily agreed to continue to participate in continued monitoring—even though the carrot for compliance, quota increases to the U.S. market, has been removed.

The books reviewed in this essay explore the results of the anti-sweatshop movement and the extent to which multinational firms can successfully be used by labor rights activists to improve conditions in their host countries. Can Labor Standards Improve Under Globalization? explains the different actors involved in creating the pressure for firms to incorporate labor standards into their operating structures. Transnational Corporation and Human Rights and Rising Above Sweatshops both offer theoretical and moral justifications for corporations to protect human rights in their supply chains. All three books provide excellent case studies of how and why various firms that have abused or protected workers. In the concluding section, I mention some of the problems that remain, and ask whether firms are actually being used to improve labor standards.

What are the existing incentives for firms to incorporate labor standards?

For much of the past decade, the phenomenon of globalization has been perceived as a target of, rather than a tool for, labor rights groups. This perception is a result of the labor rights challenges that accompany market integration, such as encroachment on domestic sovereignty, effective impunity for multinational firms, and the increased likelihood of exploitation of workers and the environment. These challenges have been the source of numerous protests against globalization. Labor rights concerns were frequently voiced during the NAFTA negotiations in 1993, protests over a social clause disrupted the WTO meetings in 1999, and debates about labor language almost derailed CAFTA in 2005.

However, globalization is also a legitimate source of investment and growth for developing countries. Many of these countries are actively negotiating free trade agreements, petitioning to become WTO members, unilaterally opening their markets, and seeking foreign investment. Because of the benefits they hope to attain from globalizing their markets, often developing countries and their advocates view labor standards as a tool for protectionists who want to limit access to lucrative export markets (Third World Intellectuals and NGOs-Statement Against Linkage 1999).

Though globalization presents labor rights advocates with a number of new challenges, it also offers additional opportunities to improve labor rights situations worldwide. Better communications technology means that unions are better connected with resources that can help them in their domestic activities. Labor provisions in free trade agreements give activists an additional source of leverage, and firms with locations in various countries present workers with the structure to form an international solidarity network internally.

There is also a growing body of evidence that adherence to labor standards does not have a negative effect on investment and exports. Studies have shown a strong correlation between the adequacy of working conditions and the presence of foreign firms (Mascus 1997), no relationship between export performance and labor standards (OECD 2000), and that unions do not result in market rigidities (Freeman 1980). These all support the premise that labor standards and globalization can indeed be complimentary.

The multinational firm is one of the most recognizable (and maligned) agents through which globalization has spread. It is because the firm is such an integral component of globalization that it merits closer examination as a conduit to improve labor standards. The benefits to using the firm as a tool to improve labor standards are threefold. First, firms have development effects, such as extending a country's production possibilities frontier, that make them attractive to host governments, so they are actors that are actively invited into all different types of economies. This is particularly important in the least developed countries, where globalization has led to rising income inequality and social dislocation. Governments often do not have the capital or the political incentive to spend resources on social programs, so the firm can be an attractive alternative means of promoting labor rights. Second, a firm that has gone multinational provides its workers with a pre-existing international solidarity network. Finally, firms are often sensitive to public opinion in their consumer markets, which means that they can be persuaded to follow standards beyond what the market dictates.

In their corporate decision-making, firms are influenced by a number of external and internal incentives to promote labor rights. <u>Can Labor Standards Improve Under Globalization?</u> presents these various incentives in its evaluation of the hypothesis that globalization and labor standards are complementary ways to pursue economic development. The authors address their question by looking at the application and outcomes of labor standards in the current international economy.

There are basically two approaches to encouraging firms to improve working conditions in their host countries. The first approach is through regulation of firm activities by external requirements, such as the prohibition of imports made by forced labor. This is the most common type of approach since it offers the opportunity to change firm behavior without the approval of the firm itself. The second approach is for the firm to decide that it is in its best interests to unilaterally apply labor standards to its corporate structure.

There are a number of national and international labor rights requirements that affect the way firms operate. They include labor provisions in free trade agreements, ILO conventions and activities, and various industry standards that govern the operation of constituent firms. External requirements are tied to reputational and commercial outcomes that affect firms' profits. There is a good deal of evidence that these external standards affect how firms act. In the case of soccer balls manufactured in Pakistan, once it was determined that many were being made using child labor, the International Federation of Football Associations adopted stricter standards, which led to changes in the production structure of the industry in that country. In the case of Cambodian garment workers, a bilateral agreement signed with the United States specified labor standards that were required in return for quota increases. This agreement, as with the Pakistani standards, resulted in dramatic positive changes in the working conditions in the target country (Polaksi 2004).

Though external regulation encourages firms to follow established standards, it does not produce incentives for firms to go beyond the required minimum standards. Despite this apparent lack of institutional incentives, there have been a number of well-publicized cases where firms have independently implemented standards-improving programs that raised labor standards beyond those which were required by these external regulations.

Rising Above Sweatshops: Innovative Approaches to Global Labor Challenges is devoted to case studies of these innovative programs. The authors present a variety of best practice programs that have been implemented by various branded firms. Though the editors point out that the programs documented in their book are not typical—they were the outcome of bad publicity and were often costly or difficult to implement—the fact that they exist suggests that firms can act as a conduit for improved labor standards beyond that which is required by external regulation.

There are two basic reasons why firms might independently choose to improve working conditions in their host countries beyond the level that is required. The moral approach is one where firms decide to implement programs to improve working conditions regardless of their effects on profits for ethical reasons. The market approach is one where firms decide to improve working conditions to maintain or improve profits.

The Moral Approach

Much of the literature on private enterprise and labor standards grounds itself in a moral and ethical discourse. This is the case with both Transnational Corporations and Human Rights and Rising Above Sweatshops. The editors argue that firms should implement programs that take labor rights into account because it is the ethical thing to do. Both volumes focus on the idea of corporate social responsibility as the reason firms should adopt workplace practices that respect human rights. This approach acknowledges that costs may rise in the short term, but that there is the possibility that firms will recoup their losses in the longer term. There is certainly anecdotal evidence that some firms choose to pursue above-market labor standards as a result of value-based operating systems. Rising Above Sweatshops presents a very good example of this with the case of Levi-Strauss's "Terms of Engagement."

However, while ethical justification is an important component of human rights and trade, and though corporate ethics officers are becoming more common, they are often left off the guest list for corporate strategy sessions (Block in Hartman *et al.*: xiv). For most private enterprises, cost comes first and human rights considerations are seen as an optional second tier of constraint. This type of thinking is particularly dangerous in light of evidence that unethical firm behavior is often a result of the increased competition that is a hallmark of globalization (Schleifer 2004).

The Market Approach

In contrast to the other two volumes under review, Can Labor Standards Improve Under Globalization? offers an unusual perspective on why firms might follow labor standards: because there is a market for them. The authors detail some new commercial markets for goods produced under good working conditions that have been created as a result of the globalization of information technology. Labor rights interest groups have exploited new sources of information to create both positive and negative profit incentives for firms to improve on labor standards.

The positive incentive component is comprised of consumer demand for products that are made under good working conditions. Positive incentives are formed by targeting consumption markets rather than the production process. There have been a number of consumer surveys and other studies, many of which are cited in Can Labor Standards Improve Under Globalization?, that suggest consumers might prefer to buy products by workers who enjoy good working conditions. In fact, in certain cases, consumers may be willing to pay a premium for these products.

The market for "fair trade" coffee is just such an example. This is an industry where human rights violations stem from the colonial period, and where the U.S. Congress actually had to impose an embargo on Ugandan coffee to convince firms not to invest in a country ruled by a genocidal regime. Activists took advantage of the fact that coffee prices on the supply side were falling, even as coffee prices worldwide continued to rise. Once the idea of fair trade coffee came to the United States, activists began to pressure large multinationals like Starbucks and Sara Lee. Demand came from student groups and even legislators who demanded fair trade coffee in their cafeterias. In addition to providing purveyors of certain types of coffee with new markets, the student campaigns in particular have resulted in free positive publicity for carriers of fair trade coffee.

The negative incentive component of this market is the deterrence effect that bad publicity can have on share prices and sales. Can Labor Standards Improve Under Globalization? shows that following allegations of poor conduct, share prices tended to fall. For firms that rely on brand reputation or where profit margins are slim, negative incentives can lead to wholesale industry changes. The development of a number of different textile and apparel industry certification codes, for example, was the direct result of a negative incentive to improve labor standards.

Nike in particular presents an excellent example of how negative publicity not only led to the development of industry-wide codes, but also caused the firm itself to go beyond the standards required by those codes in order to maintain market share. Nike was targeted by activists when it initially claimed to have no responsibility for its suppliers during the early years of the U.S. anti-sweatshop movement. Yet today, as Rising Above Sweatshops details, Nike's current initiatives in Vietnam are among the industry's most innovative, with after-hours education, micro-enterprise loan programs, and cultural sensitivity training. Nike's activities nearly singlehandedly prompted other firms in the sportswear industry to also adopt codes of conduct. And as a result of the negative publicity, Nike has come up with a number of different industry-leading labor-improving programs in countries where it was targeted.

How have firms incorporated worker rights initiatives into their operating structures?

Firms have been motivated by both moral and market incentives to improve labor standards on three levels: industry-wide regulation; individual practice; and local engagement.

The most general level at which a firm can take advantage of the market for above-standard labor practices is by participating in industry-based initiatives. These are often designed at the industry association-level with the input of various stakeholders. Corporate codes of conduct are the most common incarnation of this level of initiative.

The initiation of codes of conduct tends to be a defensive response to negative market incentives, such as publicity of worker rights violations in various factories. For those firms and industries that implement codes without external prompting, publicity tends to jumpstart popularity of the code. In the case of the chemical industry, for example, though there had been some movement on industry-wide regulation, the Responsible Care program was not widely implemented until the 1986 Union Carbide disaster in Bophal, India. In the textile and apparel industry, though some firms have had codes at various levels of enforcement for decades, significant diffusion of industry-wide codes of conduct did not occur until the rise of the anti-sweatshop movement in the 1990s.

Industry-wide codes of conduct may act as a springboard to improving the protection of workers' rights by providing firms with incentive to innovate beyond the minimum standard established by the code. If the market incentive is strong enough, firms might improve labor standards beyond the code of conduct in order to distinguish themselves from other members of the association. In fact, as Can Labor Standards Improve Under Globalization? found out in a review of codes of conduct, there has been an unexpected race to the top as different firms adjust codes to match their sector-specific needs.

Unlike other forms of labor standards, codes of conduct rely heavily on monitoring to certify compliance. This is both a strength and a weakness of the method. The addition of external monitors is a key reason that codes of conduct are as respected as they are today.[1] As Can Labor Standards Improve Under Globalization? points out, codes spawned an entirely new monitoring industry with networks around the world. Yet monitoring has proved to be one of the main problems of codes of conduct. As Dara O'Rourke found in his review of PricewaterhouseCoopers inspectors, monitors can be poorly trained and bestow certification undeservedly (O'Rourke 2000).

A second level at which firms have incorporated labor standards into their operations is at the firm level. Labor practices at the firm level are generally where labor standards begin to exceed required minimums.

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[1] In their previous incarnation, codes of conduct were primarily aimed at the internal workings of the firm, and so not particularly well-suited to regulation or foreign locations. For a history of the early stages of codes of conduct, see Kline (1985).

The initiation of firm-level programs is often a combination of both negative and positive incentives. While the editors of Rising Above Sweatshops point out that they chose the industries in their book in part because they had been subject to negative incentives to implement innovative programs, Transnational Corporations and Human Rights casts a wider net. As a result, we gain some insight into why coffee firms began to purchase TransFair coffee—not only were they being pressured by interest groups, but many firms also identified a growing market for it.

It is at the firm level where the most creative innovations to required labor standards occur. They are, on the whole, more innovative and better suited to the individual conditions of the host country and the firm's industry that are more generalized codes of conduct. However, they also tend to be so specific to the firm or sector in question, that they do not provide any significant degree of change in other sectors or countries where the firm maintains locations. It was this disconnect that the authors of Rising Above Sweatshops were trying to address. They described successful programs with the intent that other firms would be able to follow their example in their own situations.

The third level at which firms can affect local rights situations is by integrating local communities into the planning process. Collaborative partnerships are the least common way in which firms have addressed the market for better labor rights.

Local initiatives are most commonly initiated by local-level action on the supply side, rather than on the consumer end of the product's lifecycle. Supply-side support for creative solutions to labor standards tends to occur because the firm was itself perpetuating labor violations. Unfortunately, supply-side incentives often fail, and sometimes with violent results, particularly if the host government is not sympathetic to the claims of its citizens. Transnational Corporations and Human Rights provides the particularly brutal example of repression of indigenous people in Nigeria.

Labor innovations at this level are particularly well-suited to local needs and desires, since it was at that level where they were initiated. This is in contrast to other forms of labor initiatives which are the result of the needs of local workers as they are perceived by foreign consumers. In addition, they address the dearth of local participation in firm decision-making.

Are firms an effective tool for promoting labor rights?

The books in this review present various ways that the firm can be used as a tool to improve labor standards in their host countries. However, the volumes are less clear on the efficacy of firms as a tool as opposed to other ways of improving labor standards beyond a few factory or plant locations. A quick survey of alternative methods reveal a number of different problems, and in fact, anecdotal evidence appears to suggest that labor advocates are increasingly turning to the firm as a conduit for the promotion of labor rights.

On the international level, labor rights are adopted and promoted by the International Labor Organization. Although there are about 180 ILO conventions, in 1998 the ILO adopted the Declaration of Fundamental Principals and Rights at Work, which promotes four categories of "core" labor standards for all of its members. In terms of transparency and monitoring legitimacy, the ILO is one of the best multi-lateral institutions. However, its enforcement mechanism is notoriously weak, and has proven fairly ineffective at encouraging member states to follow the core standards.

On the bilateral level, labor-augmented trade arrangements also serve to promote labor rights. The United States has a number of unilateral and bilateral trade arrangements that include labor provisions in some form. The list of labor rights promoted by the United States is known in these agreements as "internationally recognized worker rights" and is slightly different from the ILO list of core rights. With the exception of the case of the U.S.-Cambodia Bilateral Textile Agreement that was discussed earlier, labor activists have been dissatisfied with these types of provisions. Their dissatisfaction results from the fact that the decision to accept a labor petition and to sanction a country is a political one. In the case of NAFTA, human rights activists have consistently voiced their dissatisfaction with the review process in the labor side agreement (Human Rights Watch 2001). In the U.S. Generalized System of Preferences, activists actually initiated a court case against the U.S. Government for what they saw as inadequate enforcement of labor requirements (Compa and Vogt 2003). In contrast to the ILO, this method can have adequate enforcement procedures, but the lack of transparency in the petition process has led to frustration on the part of petitioners.

On the local level, labor rights NGOs present workers with an immediate means to learn about their rights and pressure their employers to follow existing labor laws. As we saw earlier, labor laws in developing countries are often inadequate or antiquated. In the case of Burma, its labor law even sanctioned of forced labor. And even in countries with labor laws that embody the ILO core standards, enforcement is often a problem.

The advantages that firms present as a conduit to improve labor standards include the potential to promote labor standards that go beyond those embodied in their domestic laws, to encourage resolution at the source of the conflict, and to produce pressure beyond the factory itself. Firms have also become less resistant to incorporating labor standards, partly because of evidence that higher labor standards can have positive commercial results. Collective bargaining can increase information flows, higher wages are positively associated with productivity (Van Biesebroeck 2003), minimum wages can increase output (Harrison and Leamer 1997), and better working conditions tends to result in lower employee turnover. This suggests that the incorporation of human rights considerations into corporate operating structures is both ethically and commercial attractive.

While the books reviewed here presented some excellent case studies and examples of how firms may improve labor rights, there are no systematic studies that prove or disprove the thesis that they may provide an effective conduit for the promotion of workers' rights. The benefit of firms is that they are subject to pressure from various levels of actors. Their role as a conduit for labor rights is more plastic than that of the institutions mentioned above, which are often politically governed and show inertia in making ideological changes. These volumes chronicle a phenomenon that is only now starting to garner academic attention. Firms have shown that they can be used as a tool; now it is up to labor activists to sustain this through public pressure, informational dissemination to workers, and promoting new markets for goods that are produced in a sustainable and worker-friendly environment. Once this becomes the norm for branded firms, the case can be made to move efforts onto the smaller, unbranded enterprises.

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