

# Deliberative Democracy and International Labor Standards<sup>1</sup>

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## Abstract

Political theorists have argued that the methods of deliberative democracy can help to meet challenges such as legitimacy, effective governance, and citizen education in local and national contexts. These basic insights can also be applied to problems of international governance such as the formulation, implementation, and monitoring of labor standards. A participatory and deliberative democratic approach to labor standards would push the labor standards debate into the global public sphere. It would seek to create broad discussion about labor standards that would include not only firms and regulators, but also consumers, non-governmental organizations, journalists, and others. This discussion could potentially improve (i) the quality of labor standards by incorporating considerations of economic context and firm capability, (ii) their implementation by bringing to bear not only state sanctions, but political and market pressures, and (iii) the education and understanding of citizens. Whereas the role of public agencies in state-centered approaches is to formulate and enforce labor standards, central authorities in the decentralized-deliberative approach would foster the transparency of workplace practices to spur an inclusive broad public conversation about labor standards. To the extent that a substantive consensus around acceptable behavior emerges from that conversation, public power should also enforce those minimum standards.

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International governance is wrought with difficulties of just the sort that deliberative democrats have sought to resolve with the tools of participation and reasoned argumentation. Consider the legitimation challenges faced by international governance institutions, the deep divisions between developed countries and developing ones, or the need to develop more effective techniques to solve complex problems in areas such as environmental sustainability and labor standards. Locally and nationally, deliberation has been offered as a way to address these conundrums of legitimacy (Cohen 1989), conflict resolution (Gutmann and Thompson 1996), and problem solving (Cohen and Sabel 1997; Fung and Wright 2001).

It is perhaps unsurprising, however, that the growing ranks of deliberative democrats (Bohman 1996; Cohen 1989; Fishkin 1991, 1995; Habermas 1996) have thus far shied away from applying their insights to the problems of globalization and international regulation.<sup>2</sup> The conditions that make deliberative democracy attractive in other contexts seem to be absent in the international arena. The most obvious of these is scale. Implicitly or explicitly, many deliberative democrats are motivated by images of face-to-face discussions in settings like New England town meetings (Mansbridge 1980; Goodin 2000) that are plainly inappropriate to most regional and national, much less global, decisions. A second difficulty is the absence in the international context of decisive public power—a cosmopolitan state—toward which deliberative decisions or criticism might be addressed. As there is no state, there is no cosmopolitan “demos”—no group of citizens who share a fate and inhabit a polity—within which thick deliberation might occur (Bellamy and Castiglione 1998; Zürn

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<sup>2</sup> For some exceptions, see Koh and Slye (1999) and Thompson (1999).

2000). Furthermore, fair deliberation is thought to require equalities of procedural access and substantive capabilities and resources that are commonly violated by the exclusions and inequalities of the global context (Knight and Johnson 1997).

Notwithstanding these *prima facie* objections, the values and insights of theories of deliberation can offer important guidance toward the solution of vexing international problems such as the formulation and implementation of labor standards. The distinctive idea of deliberative democracy is that binding rules and practices should be determined through open and fair processes of public reason in which parties—be they citizens, political officials, or groups—offer arguments and evidence to persuade others (Rawls 1993, 212-54). Such processes can improve governance at three levels. First, individuals—as citizens, workers, or officials—can become more knowledgeable and other-regarding in the course of exchanging views and reasons. Arenas of deliberation can thus function as “schools of democracy” in which people learn the skills and dispositions necessary to be good citizens (Cohen and Rogers 1998; Levine 2000; Mattson 1998). Second, deliberation can increase the wisdom and efficacy of standards and rules by introducing additional information and diversifying the perspectives considered (Robb 1999; Fearon 1998). When participants are engaged in implementing resulting policies, public action also gains from their cooperation and contributions (Fung and Wright 2001). Deliberation can also enhance the legitimacy and credibility of standards and rules, and of the entities that set them as well as those that follow them, by subjecting them to the scrutiny of open public debate, review, and determination (Cohen 1989).

The arena of labor standards would certainly benefit from greater public understanding (viz. the conflicts over high labor standards and accusations of protectionism)

and wiser and more effective rules. Firms, states, and intergovernmental organizations would similarly enjoy increased legitimacy and credibility. The sections below argue that making the processes of setting, monitoring, and enforcing international labor standards more deliberative can educate citizens, improve policy, and increase legitimacy in the international arena. Extending and applying the political ideal of deliberative democracy to the state-less and demos-less problem of international labor standards, however, requires recasting many of its elements: who participates, methods of enforcing decisions and standards that result, and designs of institutions that seek to promote discursive engagement.

The next section begins this inquiry by offering two competing images of international deliberation. One would utilize deliberation to solidify a broad consensus on particular labor standards that are then promulgated and enforced by governmental entities, while the other would engender an open debate between corporations, firms, unions, civil society organizations, and consumers in which standards are continuously contested and revised in pragmatic fashion (Dewey 1927; Dorf and Sabel 1998). Section II argues that the second image better approximates the ideals of deliberation and is more capable of capturing its benefits for individual development, policy, and legitimacy. Section III grapples with issues around designing institutions that can advance fair, continuous, and decentralized deliberation around labor standards. It argues that one main task of such public institutions is to organize and foster a broader public debate and to empower stakeholders to take part in that debate rather than to develop, enforce, or adjudicate particular labor standards (Ansell 2000). Section IV describes obstacles that are distinctive to this decentralized deliberative approach.

## **I. Two Deliberative-Democratic Approaches**

### *A. The Grand Consensus*

The most straightforward interpretation of “deliberation” concerning labor standards perhaps depicts an ideal in which a broad, international consensus supports clear minimum standards of decent work. The major burden of public deliberation would be to generate popular support for these norms and inculcate them deeply into the international political culture. This imagined trajectory roughly follows the slow acceptance of some the major articles of the 1948 United Nations Universal Declaration of Human Rights in establishing universal norms (Beetham 1998). If this discursive effort were successful, then states and other actors who violate these norms, as those who violate the most basic of human rights against genocide and torture, would suffer broad condemnation and attendant sanctions.

On this view, international public agreement can provide a firm foundation upon which intergovernmental bodies, states, and non-governmental organizations interpret, adjudicate, monitor, and implement consensus standards. Deliberation thus occurs at two levels. In the popular discourse, expert groups offer arguments to international publics for which rights ought to be included in the consensus core. So, for instance, the four core labor standards offered by the ILO (1998a)—freedom of association and collective bargaining, freedom from forced labor, “effective” abolition of child labor, and nondiscrimination in employment—are ascendant as part of a minimum package of labor standards. Rights beyond these—to living wages or to good health and safety conditions at work—are highly contentious. Away from this popular argument, the elaboration and implementation of these standards occurs in insular and elite settings, often involving negotiations between national agencies and international ones. To the extent that the formulation of labor standards can be

characterized as deliberative, it is a senatorial deliberation between representatives of, for example, employers, labor, and governments. Implementation of these standards is hierarchical and state-centric; it depends upon nations ratifying international standards, and then using their official capacities to enforce them internally. In a more cosmopolitan version, supranational institutions might enforce these international standards directly, as illustrated by emergent institutions in the European Union (Preuß 1998; Archibugi 1998, Held 1995).

This image of a grand consensus enforced by intergovernmental and then national agencies falls short of the ideal of deliberation on several counts. It offers only a cramped role for the individual to participate. She is asked to join a consensus of billions around workplace standards, but not to contribute to the content of this consensus nor to act on it; action is entrusted instead to more distant officials and agencies (Dahl 1994). Because the substance of those standards typically results from abstract considerations of right tempered by political acceptability, they are likely to be either overdrawn or too constrained. The UN Declaration of Human Rights, for example, aimed to construct an ambitious consensus around difficult to achieve rights. Thus a conflict emerged between those who championed its political rights and others who emphasized economic and social rights. In this regard, the Declaration sets out a maximalist agenda rather than a set of standards for compliance. Conversely, the ILO's Fundamental Declaration of Principles and Rights at Work emphasizes a minimal set of labor standards toward which agreement may come more quickly, but which omits many important considerations for the sake of consensus. The implementation of these standards, furthermore, relies on the willingness and capacity of states that may, especially in developing contexts, lack either the desire or the administrative

wherewithal to enforce them. To the extent that popular deliberation generates a consensus that is not implemented by these institutional arrangements, legitimacy suffers.

### *B. Decentralized Deliberation: Civic Action and Corporate Reaction*

An alternative deliberative approach begins not from the hallowed heights of intergovernmental organizations, but rather from the recent groundswell of demands from activists, workers, and consumers for socially responsible production in social movement campaigns against visible corporations like Nike, the Gap, Disney, and many others. This is only the turbulent tip of a much broader current of popular concern in the developed nations about poor working conditions in the developing ones. One in three respondents in a 1995 survey of some 30,000 consumers in the United Kingdom reported that they had participated in a boycott over corporate ethical behavior (ILO 1998b). In a 1999 survey of 25,000 consumers in 23 countries, large minorities everywhere felt that major companies had responsibilities as ethical and social leaders. In North America, 51% of respondents reported punishing a company for being socially irresponsible in the past year, while 39% of Northern European respondents claimed to have done so (Enviroics International 1999).

These demands have resulted in many so-called voluntary responses from corporations that have been targeted and anticipatory measures from those that fear harmful publicity. Most commonly, corporations develop codes of conduct in which they issue either declarations of intent or internal standards for ethical conduct. While these codes often grapple with a variety of social concerns, they tend to focus on labor and environmental issues (Gordon and Miyake 2000). Though estimates are imprecise, surveys indicate that many companies, especially larger ones, have adopted such codes. In one international

survey of 300 companies, 76% reported having a code of conduct (Berenbeim 1991). A Department of Labor survey of the largest apparel manufacturers and retailers reported that 36 out of 42 companies had codes restricting child labor (U.S. Department of Labor 1996). Critics have doubted the sincerity of these corporate policies and argued that they yield few benefits for workers. Many firms, in turn, have taken pains to respond by hiring independent social auditing agencies, developing partnerships with more credible non-governmental organizations, and incorporating these codes into their own internal quality management and supply chain practices (Fung, O'Rourke, and Sabel 2001).

This cacophonous dynamic of protest, consumer demand, and corporate response hardly seems conducive to, or constitutive of, deliberation. Rather than civil negotiation and rights-based reasoning, these movements exploit scandals, utilize accusation, and exercise protest, while firm responses are often designed to improve press relations rather than to establish earnest dialogue. The protagonists are not duly selected representatives of states or venerable interests and their associations, but rather self-selected activists, non-governmental organizations, and corporations. Rather than tending toward consensus standards and uniform regulations or “rules of the game,” these demands may push firms toward diverse codes and measures. Furthermore, these efforts short circuit official public power—they often result in private agreements rather than public laws.

But, those drawn to deliberative democracy by its participatory moment rather than its senatorial one may discern a more promising image of governance from these developments. Unlike the grand consensus, this process is more decentralized, continuous (activists will always argue that corporations should do better with respect to labor standards,

and perhaps they should), and impatient with traditional state-centered regulatory mechanisms.

Writ large, these developments would sketch a pervasive, bottom-up discourse in which the general public evaluates claims and counter-claims about the content and violation of labor standards (Lohmann 2003). In a typical exchange, activists might condemn the suppliers of some multinational corporation for employing children or paying poor wages, or a government for condoning such practices. That corporation (or government) might respond by denying culpability, acknowledging these claims but pointing out that such treatment is generous by the standards of the local economy, or by reducing child labor and raising wages. In such contests, those who demand stronger labor standards and those who operate under them must offer increasingly credible claims to be adjudicated in the court of public opinion by a general audience of consumers, investors, concerned citizens, and journalists. In an environment where their claims can be checked, the demands of activists and responses of corporations becomes more reasonable not because these actors are necessarily motivated by ethical considerations, but because that is what public credibility demands. Such open deliberation about labor standards creates opportunities for individuals, as political actors, private consumers, or even workers, to reflect more deeply about the actual practices of firms, and the impact of those practices upon often distant workers and communities. These engagements can in turn transform preferences, assessments, market behaviors, and political positions.

This very general public discourse can drive a more technical but still open and inclusive kind of deliberation. For example, student anti-sweatshop groups on U.S. campuses have worked with University administrations and labor unions to develop particular codes of

conduct for licensing and purchasing of apparel (Elliot and Freeman 2000). While this movement began as protest, it has become an effort in which all sides sought to educate themselves through research committees, joint fact-finding missions and reports. These efforts have triggered searching discussions on issues such as the meaning and desirability of living wage requirements. Similarly, efforts to develop accurate and credible workplace monitoring programs have brought together corporations, NGOs, and labor organizations—often mutually antagonistic on labor standards issues—in joint problem-solving efforts.

Finally, decentralized participatory deliberation around labor standards should in principle be articulated to formal, centralized, and muscular mechanisms that enforce basic labor standards at the firm, local, national, and transnational levels. As I have described elsewhere (Fung, O'Rourke, and Sabel 2001), decentralized deliberation around labor standards can generate a broad substantive consensus around minimum standards that becomes more stringent over time. To the extent that such authority is available, public agencies might adopt and enforce these results of decentralized deliberation.

## **II. THE CASE FOR INCLUSIVE AND CONTINUOUS DELIBERATIVE ENGAGEMENT**

Both of these approaches have their limitations, and both are ideals in the sense that they lay at great remove from current realities. Nevertheless, the second, more civic and decentralized, mode offers a more promising starting point from which to advance the principles of deliberation and capture its benefits in the context of international labor standards. This approach of inclusive, politically mobilized, and continuous deliberation can make citizens in both developing and developed countries more informed and cosmopolitan,

generate responsive standards, improve the implementation of those standards, and thus enhance the credibility of firms and states that adhere to them.

#### *A. Cosmopolitan Citizens*

A central distinction between the two approaches lies in the expectations that they place on ordinary individuals. The hierarchical, consensual approach relegates consumers to endorsing abstract labor standards and entrusts the work of formulating, articulating, monitoring, and enforcing those standards to distant agencies. Popular endorsement does not impose specific responsibilities or duties of action. In the second, continuously inclusive mode, citizens consider a plethora of claims and counter claims about the ethical character of production by various firms, or in particular countries and regions. In their purchasing decisions, for example, consumers must balance these considerations and arrive at their own judgments both about values (e.g. child labor, minimum wages) and whether the behavior of firms with respect to those values is acceptable. These judgments involve both private, internal reflection (Goodin 2000) and deliberation in the public sphere of newspapers, political campaigns, and organizational claims.

On the production side of this relationship, citizens are workers and managers rather than consumers. In a consensual approach in which nations require firms to meet certain minimums, companies may be able to respond with relatively straightforward policies. However, a continuously deliberative approach is likely to generate more demanding requirements for workplace improvements. Satisfying these sometimes requires practical, problem solving deliberation by those who are most familiar with production processes and dangers at work: managers and workers themselves (Insan Hitawasana Sejahtera 1999).

Both as consumers and as workers, then, the inclusive and continuous approach to deliberation demands moral and practical reflection upon actual facts and situations. Those who engage in this process of reflection are likely to deepen their understanding of the values at stake in labor standards, appreciation for the complexities of advancing those values in various economic contexts, and cosmopolitan sympathy for those who toil under unacceptable working conditions. This reflection is not idle. It forces action—some will refuse to connect conscience to consumption while others are moved to do so, but all must choose. In a modest way, this discussion may spur the development of a cosmopolitan public around labor standards by fortifying an inclusive global discourse and crystallizing cross-national solidarities among heterogeneous actors such as activists, consumers, workers, and managers.

### *B. Responsive Standards*

Whatever its prospects for broadening the minds of citizens, inclusive deliberation might seem decidedly less attractive for formulating workable labor standards. These are complex matters that could be left to a consensus of experts and representatives who are insulated from political interference. But the drive for uniformity and consensus can also hamper the development of judicious standards, and so decentralized deliberation offers advantages in this regard. This approach may offer, at least in the realm of labor standards, a solution to the alleged trade-off between citizen participation and effective governance (Dahl 1994; Bohman 1996).

First, the desire for consensus and uniformity drives standards to a minimum package and thus omits important issues either because they cannot gain sufficient support, or because

they are not everywhere applicable or urgent. Thus the core labor standards mentioned above omit considerations that are widely acknowledged to be important such as wage levels and occupational health and safety. Attempting to include such considerations would be self-defeating because it would soften the consensus that gives *core* labor standards their power. But more decentralized encounters, targeted to individual firms, industries, or countries, can develop standards that would be inappropriate or unfeasible as universal demands. So, for example, many of the recent encounters between consumers, NGOs, and firms in the apparel industry (Insan Hitawasana Sejahtera 1999; Global Alliance 2001) have yielded programs to address problems such as occupational health, safety, and compensation.

Second, decentralized and continuous deliberation can better respond to differences in economic development contexts than can consensus- and rights- based approaches. Many critics from developing countries object to international labor standards on issues such as wages and child labor because they fear such policies will have harmful protectionist consequences. The deliberative response is not to reject labor standards altogether, but to develop diverse labor standards that are appropriate to different levels of economic development. So, while incomes from working children may be necessary to sustain families in many regions of India and China, situations in which children receive some education in addition to work are preferable to those where they lack these opportunities, or where they suffer physical or psychological abuse (Basu 1999). Deliberation should aim to articulate appropriately subtle standards for child labor that are rooted in the full complexity of circumstances. Similarly, labor standards ought to be more demanding for wealthy nations. A recent Human Rights Watch report criticizing constraints on freedom of association in the United States, for example, is compelling not so much because it stands in violation of

universal norms of association—El Salvador and China are far worse in this regard—but because it performs so poorly compared to its peers in Western Europe (Human Rights Watch 2000).

Finally, unlike an approach geared to entrenching fixed rights, solutions that emerge from decentralized deliberation can better manage unintended consequences by incorporating feedback into its standards and methods. For example, the outright prohibition of child labor in poor areas can make matters worse by driving families below subsistence levels or by pushing children into less regulated, more degrading and dangerous work. International conventions now recognize this reality and call for the “elimination of the worst forms of child labor” rather than a more encompassing immediate ban. Serious efforts of NGOs, the ILO, and firms have grappled with these intertwined difficulties by combining education with work, modifying production facilities and processes to reduce child labor, and instituting careful monitoring procedures. These efforts sometimes proceed through cooperative deliberative problem solving, but sometimes they are more adversarial encounters in which activists accuse, governments and firms respond, activists point out the partial character of solutions and their unintended consequences, and so on (International Labor Organization 1997; International Labor Rights Fund 1999).

### *C. Implementation*

In local and regional contexts, deliberative processes are thought to facilitate implementation by securing greater acceptance among those who must live with the burdens of the decision, expanding the resources devoted to public problem solving by enlisting their commitment and capacities, and thickening post-hoc monitoring and assessments (Cohen and

Rogers 1998; Fung and Wright 2001). In the context of decentralized deliberation around international labor standards, similar implementation advantages may accrue when firms, workers, and consumers are deeply involved in efforts to improve and assess social performance.

Decentralized deliberation occurs not only in the disciplined contexts of international organizations and official venues, but also in the public and economic spheres. Accordingly, it supplements the ordinary pressures to implement labor standards that come from national and international agencies with the potentially much more potent demands for socially responsible production methods and decent working conditions. In an information rich environment, these demands come from consumers in product markets, investors in capital markets who are sensitive to corporate reputation and brand quality, and through mass media.

Furthermore, decentralized deliberative initiatives often engage particular firms or industries and their critics in dialogues on labor standards and violations (Broad and Cavanaugh 1999; O'Rourke 2000). These interactions can generate sophisticated workplace improvement solutions that utilize the managerial and organizational capacities of firms themselves in ways that uniform standards or more distant regulators could not. Firms have begun to incorporate labor standards monitoring into their internal supply chain management and evaluation practices, thus re-deploying organizational methods and capacities designed to improve quality, product diversity, and cost to the task of improving labor standards (Sabel, O'Rourke, and Fung 2000).

Third, decentralized deliberative action often brings sustained demands for monitoring and assessment. In order to demonstrate their seriousness to skeptical consumers and other publics, firms have adopted various reporting, monitoring, and transparency

measures. Many corporations have adopted independent or third-party monitoring, in which they hire social auditing firms or submit to the inspections of NGO or other independent groups, to conduct assessments of their labor conditions and those of their suppliers. This practice has created a cottage industry of for-profit and non-profit social auditing consultants and accreditation bodies. Many firms have also agreed to make certain aspects of their own operations less opaque, for example by disclosing the locations of their production facilities or previously confidential internal social inspection results.

#### *D. Legitimacy and Credibility*

These elements of a decentralized deliberative approach—engaged workers and consumers, articulated and contextually sensitive standards, and forceful and monitored implementation—contribute to the legitimacy of the enterprise of enhancing labor standards at several levels. First, standards that emerge from an open and publicized process of argument and response, that takes the interests of workers from developing countries, the concerns of ethical consumers, and the capabilities of firms themselves into account are likely to be better understood than those generated in more insular and hierarchical fashion. For example, when their content reflects economic contexts and firm capacities, standards can more ably withstand objections that labor standards are protectionist or economically unfeasible.

Firms that strive toward standards from fair decentralized deliberation can gain additional credibility as socially responsible entities. Abiding by the basic labor standards that are laid out by core international conventions or even local law has proven insufficient to shield corporations from accusations of abuse. However, firms can demonstrate additional

ethical commitment by participating in discussions about what reasonable advances might be made above these minimums, developing programs toward those ends, and then submitting to verification protocols. Deliberative engagement of this sort will not silence the most strident or skeptical advocates, but will differentiate firms that are responsive and proactive from the ones that are defensive or that fail to adopt workplace conditions as a priority.

Finally, institutions and organizations that successfully organize this deliberation can gain legitimacy as labor standards authorities. Currently, a variety of agents in the intergovernmental sector, among non-profits, and even among large consulting firms currently contribute in partial and unintended ways to deliberation on labor standards.<sup>3</sup> None of these, however, has managed to position itself as a neutral arbiter. They are alternatively thought to be pro-business or beholden to it, captured by particular labor interests, constrained by limited scope, or simply ineffective. Thus there is space for the construction of public authority—perhaps composed of one or more of these agencies, organizations, or associations—to foster decentralized deliberation.

More crucial than opportunity, however, is the need for such authority. Without it, decentralized deliberation on labor standards is haphazard in its focus, inequitable in its decision processes, and its impacts difficult to assess or utilize. Consider now the functions of such public power.

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<sup>3</sup> See Sabel, O'Rourke, and Fung (2001) for a discussion of the role of organizations such as the ILO, World Bank, the UN Global Compact in the intergovernmental sector, SA8000 and the Workers' Rights Consortium among non-profit groups, and for profit consultancies such as PricewaterhouseCoopers in labor standards discourse and action.

### III. DELIBERATIVE INSTITUTIONS: CREATING SPACE FOR PUBLICS

The purposes of regulatory authority under a state-centric and consensual notion of labor standards are to develop standards, generate popular support, and to promulgate and enforce them.<sup>4</sup> Its distinctive role in the deliberative approach is to facilitate open and fair discourse and foster decentralized action. Following the discussions of the facilitative role that states can play in networked governance arrangements (Ansell 2000), public power in the deliberative approach aims to (i) provide the knowledge-base necessary for fair and effective deliberation through transparency and the diffusion of information about labor practices and efforts to improve them and (ii) constitute stakeholders to participate in deliberations about labor standards, with special attention to voices and interests that would otherwise lack the strength to be heard or the capacity to act.

#### *A. Transparency*

One important obstacle to the development of current consumer, activist, and corporate efforts is paucity of reliable public information regarding the quality of efforts to implement workplace improvement programs and their effects. Firms themselves hesitate to reveal even basic facts such as the locations of production facilities or identities of suppliers on the grounds that such information is a source of competitive advantage. These habits of secrecy have extended even to the emerging community of private and non-profit social auditing concerns who often consider their protocols and assessments to be proprietary products.

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<sup>4</sup> For another approach to enhancing accountability in international governance arrangements, see Stiglitz (2003) in this issue.

This opacity impedes deliberation and the development of labor standards in two central ways. First, it is difficult to systematically compare the labor standards practices of firms (or regions and nations) against one another. Deliberations and arguments about labor standards violations thus often depend upon anecdotal accounts or politically motivated claims and public relations counter-claims. The lack of public data to assess and compare this kind of social performance makes it difficult for firms that out-perform their peers to credibly claim that they are ethical and responsible. It is also difficult for consumers, activist organizations, and others to confidently translate their values into choices about who to praise and to criticize. Second, the absence of public knowledge and discussion about workplace improvement strategies reduces the ability of civic, public, and private actors to develop effective strategies for improving workplace conditions. That problem is complex and multifaceted: it spans multiple issues areas such as child labor and education, environment, industrial hygiene and occupational health and organizational boundaries that separate multinational corporations from their suppliers, public regulators, and non-governmental organizations. The deliberative exploration and comparison of public and private strategies is one promising way to make headway (Dorf and Sabel 1998), but that cannot occur in the absence of fuller public disclosure.

Improving the transparency of private labor standards programs, their monitoring, and their impacts is thus one prime route to improving the quality and consequences of decentralized deliberation. Individual actors often lack the motivations and the capacities to compile and disclose information about labor standards. Collective action and the intervention of public authority are therefore necessary to establish this condition of effective deliberation. Such a transparency authority would seek to develop standards for pooling

information about public and private workplace improvement efforts, their monitoring and assessment, and capacities to render this information comparable and accessible. It would do so by organizing various constituent entities such as large multinational firms and supplier groups, social auditing firms and independent monitoring groups, civic and labor organizations, and official regulatory bodies. This authority might grow out of initiatives at IGOs such as the ILO, UN, or World Bank. Alternatively, it could also spring from a variety of non-governmental efforts to establish broad labor standards criteria such as the Workers' Rights Consortium, SA8000, or the Global Reporting Initiative. Whatever its origins, this transparency authority would face daunting challenges. Technically, it would strive to make the vast amount of data generated by large firms and various private and civic social monitors comparable and interoperable. Its regulatory challenge would be to compel firms and their suppliers to collect and disclose information about their labor practices and their assessments. Politically, such a body would strive to maintain a responsive neutrality in its interpretation and construction of knowledge standards that consumers in the North, workers in the South, multinational firms, regulators, and others perceived as reasonable and fair.

If these obstacles were met, deliberations in the unruly public sphere as well as those that occur among regulators could draw upon comparative information that would dramatically improve both the content (What standards are reasonable in various situations? How can we reach them? Which firms deserve applause and which approbation?) and practical effects of efforts to improve labor standards. In particular, transparency would enable various publics and regulators to identify leaders and laggards in labor standards performance. Economic, political, and administrative pressures that have driven much of the movement toward corporate accountability and social responsibility would be more

judiciously targeted. They would help to create competition for performance in labor standards among large firms, who would pass this pressure onto their suppliers. While high-profile, brand-sensitive firms would work hard to score high marks, even unexceptional firms would try avoid poor labor standards assessments. This competition would in turn expand and discipline markets for services such as assessment and technical assistance that larger firms need to become credible social performers. Enhanced transparency would thus create a “double-sided competition” that could continuously improve both labor practices within firms and the capacity of monitors to evaluate them (Sabel, O’Rourke, and Fung 2001).

### *B. Voice and Inequality*

In addition to lack of transparency, inequality poses another major obstacle to fair decentralized deliberation. Cooperative and conflictual engagements around workplace standards and conditions are typically characterized by intense inequalities and bear little resemblance to a Habermassian ideal speech situation. A second important function of public authority for decentralized deliberation, then, is to increase the fairness of labor standards discourse by mitigating these inequalities.

Relations between workers and their employers are frequently characterized by corrosive inequalities. However, the contributions of workers are crucial for effectively identifying and prioritizing problems, developing strategies to improve workplaces, and monitoring and assessing programs in the deliberative approach to labor standards. When their voices are not heard, or when those of employers or officials dominate, deliberation suffers because it is inattentive to the particular concerns of laborers and less disposed to revealing deceptions and abuses. Many of the rights commonly thought crucial to

underwriting deliberative democracy—such as freedom of expression—are also important as ways of securing minimally open conditions in the deliberative approach to labor standards (Cohen 1997). In particular, the core right of workers to freedom of association can reduce the discursive inequality between workers and employers and thereby enhance the quality of deliberation.

Conventional state-centric measures to secure freedom of association will therefore build foundations for the deliberative approach. However, the methods and pressures of the deliberative approach itself can also advance associative liberty for workers. Enlarging freedom of association where it is cramped or nearly non-existent is at least as politically and economically daunting as reducing child labor or improving occupational safety. The best tactics for advancing this liberty will vary according to local and national circumstances, and practical efforts will inevitably stumble on unintended consequences. As with other labor standards, transparency can illuminate the corporate and political practices conducive to greater associative freedom and identify firms and governments that are leaders and laggards. Social, political, and market pressures might then generate pressures to realize this right. Thus the methods of the deliberative approach can build, in ways that are gradual and attentive to local circumstance, one condition of its own success: the freedom of association that reduces the inequality of voice between workers and their employers.

The differential capacity and voice that separates the developed North from the developing South is a second characteristic inequality infecting the politics of labor standards. Backed by familiar histories of domination, many fear that international labor standards will in practice turn out to be standards and rules that wealthy nations impose upon poor ones. On these grounds, many have resisted attaching sanctions to existing labor

standards through mechanisms such as a WTO “social clause” (Bhagwati 1995). Others have suggested that international labor standards ought to emerge principally through agreements among poor nations themselves in a “consensus from the tropics” (Basu 2001). The domination of voices from developed nations can twist labor standards deliberation to the detriment of those in developing ones by favoring particular priorities and benchmarks, being deaf to appeals based on contextual considerations, or by monopolizing monitoring capacities and assessments.

These massive inequalities cannot be mitigated easily, or even bracketed. Nevertheless, the deliberative approach may treat the voices and interests of developing country workers more favorably than hierarchical, state-centric modes of labor standards governance. The deliberative approach focuses on the need for understanding and working conditions in the lives of actual workers, and this perspective naturally privileges the opinions and knowledge of those workers. Furthermore, the emphasis on civic and public discussion in the deliberative approach creates the infrastructure for generating sympathies, solidarities, and mutually reinforcing organizational linkages between Northern and Southern citizens and organizations (Keck and Sikkink 1998).

The extent to which background inequality between rich nations and developing ones biases deliberation around labor standards also depends upon the details of institutional design. A public authority that seeks to foster decentralized deliberation should therefore strive to mitigate this characteristic inequality in its internal composition and governance. Many of the nascent public, non-governmental, and private associational efforts to foster transparency and social competition stem from, and are predominantly composed of, parties from developed countries such as large multinational producers, global consulting firms, and

organized labor. If one of these efforts is to mature into a legitimate agency that organizes fair and open deliberation about labor standards, it must first diversify its composition. Beyond basic constitutional equity, such a body might also foster equity on the ground by building the capacities of labor agencies, trade unions, and NGOs in developing countries. Finally, a deliberation-reinforcing public authority should emphasize the inherently privileged position of developing country perspectives and interests in both its internal discussions and public communications. Its underlying refrain in the public sphere and more formal arenas should reiterate the self-evident truth that international labor standards are pursued principally for the sake of workers in developing countries. The deliberative approach would expand the space for those perspectives to be heard and harness the power of global publics and public institutions to them.

#### **IV. OBSTACLES TO DECENTRALIZED DELIBERATION**

Though it offers substantial benefits over more state-centric and consensual approaches to labor standards, decentralized deliberation faces its own distinctive challenges. Only experience can reveal whether a participatory approach to international labor standards can overcome these impediments. However, brief reflection upon the most significant of these obstacles suggests that they may be less daunting than they initially appear.

##### *A. Apathy*

Can popular interest in the complex and distant problems of international labor conditions be durable and deep? Recent enthusiasm for sweat-free products, ethical consumerism, and responsible investing may soon fade, and decentralized deliberation may

be unrealistic in its demands for active, broad, and continuing public interest. The above approach addresses this problem of apathy in part by constructing an environment in which social concerns about international conditions of production becomes part of the ordinary evaluation of products, companies, and national policies. The strategy here is to reduce the costs of deliberative engagement for consumers, workers, organizations, journalists, and regulators through transparency and similar measures. When information is freely available and comparisons of social performance can be easily made, individuals and organizations can more easily reflect, deliberate, and act upon otherwise latent ethical concerns.

More practically, will institutional efforts to reduce the costs of deliberative engagement in labor standards be sufficient to generate the social, political, and market pressures and discussions that motivate labor standards improvements? While it may be unrealistic to expect a large portion of any nation's consumers or voters to possess or exercise such ethical commitments, the substantial response of many high-profile corporations to consumer concerns and threats to their reputation suggests that relatively few critics and customers can leverage substantial responses from large firms. In competitive markets, marginal threats are important and reputation is difficult to build but easy to lose. Decentralized deliberation may thus yield worthwhile labor standards advances despite quite partial public participation.

### *B. Limited Scope*

A second difficulty is that public concern may extend only to high-profile corporations for whom reputations and brand names are crucial competitive advantages. If the reach of decentralized deliberation were constricted to the few companies in this realm

and their business partners, it would be a narrow regulatory approach indeed. Consumer and social movement campaigns for stronger labor standards have thus far been largely limited to such prominent firms. However, experience from other arenas where transparency regulation enjoys a longer history suggests that the actions of an information-forcing public authority described above would substantially extend the scope of decentralized deliberation. The Toxics Release Inventory in the United States and the PROPER initiative in Indonesia, for example, are both state programs that provide information about the environmental performance of private firms and production facilities to the general public. Far from being household names, the firms affected by these regulations are typically obscure manufacturing, chemical, and other industrial concerns. Nevertheless, substantial evidence suggests that these programs do compel firms to improve their environmental performance (Afsah, Blackman, and Ratunanda 2000; Fung and O'Rourke 2000; Karkkainen 2001). These same dynamics might well develop in a labor standards arena regulated by monitoring and transparency.

### *C. Diversion and Distraction from Binding Regulation*

Some advocates for more stringent labor standards may nevertheless fear that this decentralized deliberative approach may ultimately harm the cause by diverting attention and energy away from establishing public capacity to compel corporate behavior regarding labor standards. The conventional path toward that end would involve establishing international conventions of minimum decency, cajoling nations to adopt those conventions, and fortifying an international popular consensus to support them. While that path, like the parallel trajectories of labor standards within nations and international human rights, may require

decades to translate ethical commitment into compelling legal and political institutions, many feel that it is nevertheless more sure. Asking activists, consumers, workers, and citizens to focus upon particular firms and nations, acknowledge the complexities of implementing labor standards, and support “soft” public measures such as independent monitoring and transparency may weaken the resolve to pursue the longer but more familiar path.

But decentralized deliberation may have the opposite effect. It may, by dramatically broadening the conversation around international labor standards and by bringing much more information to bear, make both conventional binding regulation and unconventional pressure for improving labor standards more compelling and effective.

At the level of individuals and organizations, the deliberative approach uses public authority to facilitate direct channels of expression, pressure, and response between citizens and workers on one hand, and corporations on the other. When firms (and their chains of suppliers) are transnational, these unmediated channels operate more nimbly than either conventional state-mediated regulation or international governmental action.

Within nations, these mobilized constituencies, including consumers, workers, journalists, investors, and others—may render labor regulation more open, inclusive, and deliberative and less subject to capture by concentrated and well organized interests. Furthermore, regulators and legislators might use the knowledge generated through transparency and robust public debate to formulate more sensible, discriminating, and informed mandatory labor standards. Finally, their efforts to enforce these standards would be strengthened by the monitoring and transparency provisions of the deliberative approach.

At the international level, the deliberative approach potentially complements the agenda of Cosmopolitan Democracy laid out by David Held and others (Held 1995;

Archibugi 1998). That program favors global democratic institutions from both above and below. From above, the program of Cosmopolitan Democracy would make institutions such as the United Nations (and the International Labor Organization) more powerful by granting them direct jurisdiction, at least in some areas such as human rights, unmediated by national governments. From below, Cosmopolitan Democracy also favors the development of transnational civil society organizations that participate in global governance. The decentralized deliberative approach to labor standards laid out above, though it emphasizes grassroots deliberation and action more than Cosmopolitan Democracy, is entirely consistent with this approach. The imagined international transparency authority, for example, regulates transnational corporations and their suppliers directly, not through the auspices of national sovereignty. The results of this transparency regulation might foster just the kinds of transnational civil society organizations favored by Cosmopolitan Democracy. Similarly, decentralized deliberation around labor standards might inform and support centralized international authorities in their efforts to promulgate and enforce basic mandatory labor standards.

## **CONCLUSION**

Labor standards are one important component of human dignity and rights generally. The most familiar translation of these deep and broadly shared commitments into public action has relied upon state institutions and their international analogues to entrench clear rules and requirements and to enforce them upon private economic actors. The ideal of inclusive deliberative democracy offers an additional, more participatory, method to advance international labor standards. Rather than viewing these human rights as a condition of

democracy or political participation and substantive basic rights as two important but independent values, this approach would help realize those rights *through* deliberative democratic engagement.

The recent wave of globalization has created the opportunity to explore this approach by sparking a new surge of public interest in workplace conditions and practices worldwide. This interest has spurred labor standards innovations on the part of activists and firms, and has given rise to a host of social monitoring and certification bodies. But these developments by themselves are likely to be either short-lived, to be limited in scope, or to unfairly privilege certain voices and priorities. The decentralized deliberative approach would meet these challenges by refashioning the regulatory power of international bodies to sustain this broad-based interest, to deepen it through the illumination of transparency, and to harness it by triggering social competition among the firms that ultimately determine workplace conditions. This wider conception of direct and cosmopolitan political participation may help hasten our progress toward effective labor standards.

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