

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository: <https://orca.cardiff.ac.uk/id/eprint/121551/>

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Jenkins, Jean 2019. Tim Bartley. Rules without rights: Land, labor, and private authority in the global economy [Book Review]. *Journal of World-Systems Research* 25 (1) , pp. 214-220. 10.5195/jwsr.2019.916 file

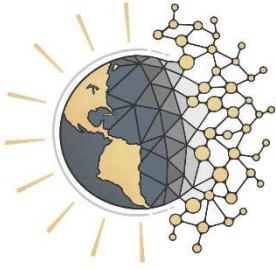
Publishers page: <https://doi.org/10.5195/jwsr.2019.916>

Please note:

Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies. See <http://orca.cf.ac.uk/policies.html> for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.





Book Review

Rules without Rights: Land, Labor, and Private Authority in the Global Economy. Tim Bartley. 2018. Oxford, UK: Oxford University Press. 368 pages, ISBN 978-0-1987-9433-2. Cloth (\$40.95)

Reviewed by Jean Jenkins

Cardiff University

jenkinsj1@cardiff.ac.uk

In this book, Tim Bartley writes with the authority that comes from being a patient researcher of the “concrete implications” (6) of the private transnational rules that have come to characterize the current international business environment. Private regulation has become ubiquitous, such that terms like ‘audit’, ‘soft law,’ and ‘compliance’ are now familiar to us all. However, Bartley quickly disabuses the reader of any illusion that such private systems of rules based on the “reputational investment” of corporations, the “moral authority” of non-governmental organizations (NGOs) and the “assessment capacity” of auditing and certification bodies are reliable and trustworthy in implementation (2). Focused on two sectors, forestry and apparel manufacture, Bartley provides a cross-country comparison of the implications of transnational rules for the two “fictitious commodities” of land and labor (Polyani 1944: 75–76) in Indonesia and China, and examines how such rules are implemented in the context of domestic governance structures. This book is a welcome and much needed contribution to our understanding of how micro and macro contexts interact in different international settings (see Cushen and Thompson 2016: 361) and is, in my judgement, a thoughtful and well-written volume that makes for essential reading.



Articles in vol. 21(2) and later of this journal are licensed under a Creative Commons Attribution 4.0 United States License.



This journal is published by the [University Library System](#), [University of Pittsburgh](#) as part of its [D-Scribe Digital Publishing Program](#) and is cosponsored by the [University of Pittsburgh Press](#).

Bartley begins with a thoroughgoing analysis of the context for transnational rule-making as an integral feature of today's global supply chains (see Bair 2005 for a review of the latter). Global supply chains have been portrayed as “infrastructures for the flow of rules – that is standards for sustainability, fairness, human rights and safety” (2). Yet, as Bartley notes, such conceptions of “de-territorialized authority” (4) are posited with little reference to the uneven development that characterises networks of production (see Bair and Werner 2015). The concrete effects and implications of transnational rules have escaped detailed analysis when actually implemented *in a place*, in “territory” (4). In redressing this gap in our knowledge, Bartley develops themes he has pursued in earlier journal publications (for example, Bartley 2011; Bartley and Child 2014). Specifically, he challenges simplistic understandings of private transnational regulation as a means of addressing the supposed “regulatory voids and governance deficits” – so-called empty spaces – erroneously ascribed to many of the poorer, newer locations for industrial production.

In reality, vacuums in regulation rarely exist in such countries unless deliberately created, as might happen in Export Processing Zones where legal exemptions to national regulation are designed as a stimulus to foreign direct investment (see for example, ILO 2003; 2014). More generally, quite contrary to these being ‘empty spaces’ to fill, Bartley emphasizes that transnational rules and codes of conduct are layered *over* prevailing domestic structures of governance. Thus, in the first two chapters of this volume Bartley debates the implications of the interaction of transnational private regulation and domestic structures of governance for the lived experiences of workers and communities.

In implementation, transnational rules may be undermined by a range of factors, such as uneven enforcement, entrenched local interests and cultural norms, the role adopted by the state, and the relative weakness and variation in the influence of the consumer (39–50). Such factors are well understood by researchers, campaigners and activists on the ground (for example, Ruwanpura 2016; Anner 2015) but other readers less knowledgeable about these dynamics might be disheartened by Bartley's conclusions in this regard. He points out, for example, that international certification of factories for social and environmental compliance is a weak indicator of their actual behaviours. Indeed, on a range of indicators he finds that factories certified as SA8000 compliant are unlikely to be considerably better than others (35). Furthermore, enforcement of transnational standards may be inversely related to the space allowed for civil society and dissent, whereby social compliance may actually appear to be more robustly enforced in repressive political environments. Here, Bartley is making a crucial point, which is that the “construction of compliance” must be understood as a process whereby transnational rules are applied and evaluated in specific domestic contexts, which influence not only their implementation but also their interpretation (51).

In this context, Bartley lays down eight general propositions for a “substantive theory of transnational governance” (54). In summary, the main insights that he posits are as follows:

1. Process over Performance: auditing and associated increased bureaucracy are not generally reflected in substantive change or improvements on the ground.

2. Network Conditions: the scale and nature of the production network matters for the implementation of private transnational regulation. In this respect: a) The greater the network distance between transnational rules and their implementation, the weaker they are likely to be; b) The more durable the network relationships, the more likely it is that transnational rules will be effective; and, c) High state capacity and high civil society capacity are likely to increase the chances of meaningful compliance with transnational rules at the point of intersection with domestic governance.

3. Political Construction of Compliance: in relation to the foregoing point, civil society needs to be active and independent *via-a-vis* the state. Where “open contention is suppressed or submerged, auditors are more likely to quickly and easily designate a particular site of production as compliant” (60).

4. Clash of Rules: where there is a direct clash between norms of domestic governance and transnational rules (particularly private regulation in the form of voluntary codes for suppliers), the latter rarely “win out” (61).

5. Territory Rights and De-Centred Authority: in relation to the previous point about a direct clash of rules, while transnational rules on product standards may be met in the interests of securing trade, transnational rules on control of land or labor rights (or a combination of the two) are much less likely to prevail over domestic governance. In this respect, it is of significance for labor rights that collective rights are “especially problematic” (64).

6. A Typology of Rules: Bartley distinguishes between transnational market and product rules *vis-à-vis* rules for production methods and processes. Such a distinction makes it possible to highlight “where the risks of non-compliance are most directly felt” (66). Market and product rules are felt by consumers and directly attributable to the brand or retailer, and therefore more likely complied with, particularly where there are safety considerations. In contrast, production and process-based rules are subject to supply chain dynamics, more distant and less visible from the consumer, more likely to be “easily trumped by other business priorities,” and, therefore, more vulnerable to being weakly enforced (67).

7. Land and Labor: Product and process-based rules on *labor* conditions are likely to be less rigorously enforced than those on land. In making sense of this difference, Bartley concluded that the evidence is mixed (68–70). Using the comparison of apparel production and forestry, Bartley highlights differences in visibility, mobility and scrutiny of work sites, which might explain local, sectoral differences in the implementation of transnational rules. Apparel production is far less

visible and its capital more mobile than is the case for timber and forestry. In this context, Bartley identifies key actors in the forestry sector in the form of powerful and robust multi-stakeholders who act within the sector as “critical insiders” (71). Bartley also grapples with contested ideas of the common good, which lie at the heart of debates over the ‘race to the bottom’ versus protectionism and paternalism (77).

8. In his final proposition, Bartley highlights the vested interests involved in the contestation of rights and conditions for labor. By my reading, Bartley appears to look mainly to institutions such as the World Bank, the International Monetary Fund, the ILO, multi-stakeholder initiatives and private regulation to do better, but here I would encourage him to go further. His discussion could perhaps have engaged more explicitly with labor’s collective capacity to represent its *own* interests as an independent critical actor. National comparative advantage and large corporate gains, particularly in labor-intensive industries, *have* been built on “workers’ desperation” (77) and we know that the workplace is generally a hostile environment for organized labor. In this respect, in his concluding chapter, Bartley highlights the worst-case scenario of private regulation endorsing the “denial of [collective] rights” of workers and communities (258). This begs the question of whether another proposition should have been considered—namely, that the ongoing denial of labor rights is a predictable outcome of deliberate strategic choices by international firms. These choices are predicated on the pursuit of business models designed to squeeze suppliers and anticipate the fact that transnational rules and principles that might protect labor are likely to be eroded by domestic interests seeking to increase value capture in the supply chain.

Setting this point of debate aside, by the close of the second chapter, a strong contextual springboard exists to the remainder of the book. The competing, contradictory and entrenched interests operating in local contexts are well explained, as are the complexities of the auditing process and the interpretation of the audit, which itself is elegantly defined by Bartley as little more than a “simplified, decontextualized versio[n] of truth” (51). In the four chapters that follow, Bartley moves on to focus on the “crowded places of implementation” (78) – the work sites that have informed his understanding in the field.

Four case study chapters provide detailed information on sustainable timber production in Indonesia, forest certification in China, corporate social responsibility in footwear and other labor-intensive industries such as garment production in China, and labor standards in Indonesian garment factories. Bartley’s declared intention is not to test his foregoing eight propositions but rather to “provide rich narratives of the contexts and consequences of private regulation” (78). This he does in detailed, insightful accounts that continually question what transnational rules *actually mean* for practice on the ground and offer detailed comparisons between the various claims for private regulation and its performance. The picture that emerges is multi-layered and

complex. In each case, there are workplace politics as well as wider domestic norms at play and we gain insight into these specifics.

The interaction of states, domestic civil society, communities and corporations in forestry is complex and context specific, and Bartley's findings suggest that ultimately, scholars should be ready to "look more closely at what particular companies are and are not willing to do to push standards through their global operations" (162). In this respect, Bartley sees hope for better standards in forestry in transnational penalties acting in concert with robust "domestic contention" by local civil society actors (273). This discussion will return to such issues in its consideration of Bartley's prescription for change, below. However, Bartley also shows that in the case of labour rights, contention is more open to being obscured, individualised and suppressed. For instance, the relationship between growing managerialism and social compliance is revealed in his review of labour standards in China in chapter five. Here, the bureaucracy and record keeping associated with human resource management practices may be taken as "assurance of decent conditions" while in reality they may just as likely be part of "channeling workers' grievances inward", containing them within organisations, thereby undermining meaningful collective representation and the pursuit of legal rights by workers themselves (205).

The contested nature of so-called 'flexibility' is also brought to the fore in the analysis of labor standards in Indonesia, where local capital makes abundant use of seasonal contracts and temporary workers, and rising wages or increased trade union power "appear to put a factory at great risk of losing orders" (255). Read in the context of findings from other researchers in the field, there are solid grounds for believing Bartley's findings are generalizable. Crucially, in the cases he outlines, we see how, in the present space between transnational regulation and domestic governance, the exploitation of land and labor is put into effect, such that each becomes a source of surplus value in a world characterised by uneven capitalist development, power and opportunity (see Bair and Werner 2015).

The final chapter of the book attempts to offer a prescription for change in the form of transnational governance that is "place conscious" and brings in "legality" and the state. This is ambitious, but well argued. Bartley first acknowledges that while transnational private regulation may have brought with it limited and specific areas of reform, it has been neither empowering nor transformative (258). In fact, as they pass through global production networks the power of transnational rules is "often dissipated, sometimes to the point of irrelevance" (258). Thus, as part of his prescription for meaningful change, he begins by referencing the example of the transnational timber legality regime which establishes a form of hard (as opposed to 'soft') law across geo-political boundaries, whereby domestic standards and international mechanisms are linked. The transnational timber legality regime is an international legal instrument that requires corporate compliance with domestic law, with associated enforceable sanctions and penalties for

transgressions by firms along their supply chains. In this respect, it provides a form of “extra-territorial enforcement of territorial law” (264).

Bartley explains that the principles of this form of regulation have already been tested, in a case against Lumber Liquidators, a U.S. firm accused of selling flooring containing wood that was illegally logged in Russia. The intricacies of the case are explained and highlight three crucial points: first, the immense effort and resources that campaigners, NGOs, lawyers and regulators devote to pursuing highly complex and multi-layered cases such as this; second, that there are people determined to do so; and third, however imperfect and complex the process, success is possible. Bartley posits that a similar approach to transnational legal accountability could be applicable to labor standards. This is a persuasive argument, but Bartley’s work shows us the processes are likely to be even more onerous than in the case of environmental standards. Nevertheless, his examples highlight sterling work being done by dedicated lawyers and labor rights campaigners in national settings and international courts (for examples of similar legal work in Europe, see Terwindt and Saage-Maass 2016).

In conclusion, this excellent book presents a clear message: even where social compliance certification is robust, it is unlikely to deliver more than “shallow resolutions to deep conflicts” (81), and transnational private regulation is certainly no better than statutory protections (64). His prescription for change is ambitious and complex, and would almost certainly face fierce resistance from corporate interests. Nevertheless, Bartley provides us with the evidence and urgency for change in a world where exploitation of land and labor still goes largely unpunished, and where private transnational rules have consistently failed to deliver enforceable rights or empowerment to workers and their communities.

References

- Anner, Mark. 2015. “Social Downgrading and Worker Resistance in apparel Global Value Chains.” Pp. 152-170 in *Putting Labor in its Place: Labor Process Analysis and Global Value Chains*, K. Newsome, P. Taylor, J. Bair and A. Rainnie, eds. Basingstoke, UK: Palgrave MacMillan.
- Bair, Jennifer. 2005. “Global capitalism and commodity chains: looking back, going forward. *Competition and Change*” 9(2): 153–180.
- Bair, Jennifer and Marion Werner. 2015. “Global Production and Uneven Development: when Bringing Labor in isn’t Enough.” Pp. 119–134 in *Putting Labor in its Place: Labor Process Analysis and Global Value Chains*, K. Newsome, P. Taylor, J. Bair and A. Rainnie, eds. Basingstoke, UK: Palgrave MacMillan.

- Bartley, Tim. 2011. "Transnational Governance as the Layering of Rules: Intersections of Public and Private Standards." *Theoretical Inquiries in Law* 12(2): 517-542.
- Bartley, Tim and Curtis Child. 2014. "Shaming the Corporation: The Social Production of Targets and the Anti-Sweatshop Movement." *American Sociological Review* 79(4): 653–679.
- Cushen Jean and Paul Thompson. 2016. "Financialization and value: why labor and the labor process still matter." *Work, Employment and Society* 30(2): 352–365.
- International Labor Office. 2003. *Employment and social policy in respect of export processing zones (EPZs)*. Document GB.286/ESP/3 March 2003. Geneva, Switzerland: International Labor Office.
- International Labor Office. 2014. *Trade Union Manual on Export Processing Zones*. At: https://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@actrav/documents/publication/wcms_324632.pdf. (accessed March 15, 2019).
- Polyani, Karl. 1944. *The Great Transformation*. Boston, MA: Beacon Press.
- Ruwanpura, Kanchana N. 2016. "Garments without guilt? Uneven labor geographies and ethical trading: Sri Lankan labor perspectives." *Journal of Economic Geography* 16(2): 423–446.
- Terwindt, Carolijn and Miriam Saage-Maass. 2016. *Liability of Social Auditors in the Textile Industry*. At: https://www.ecchr.eu/fileadmin/Publikationen/Policy_Paper_Liability_of_Social_Auditors_in_the_Textile_Industry_FES_ECCHR_2016.pdf. (accessed March 15, 2019).