Transnational Enforcement of Labor Standards
Professor Jodi Short
Spring 2013

Office: McAllister 200, Room 310
Phone: 415.703.8205
E-mail: shortj@uchastings.edu
Office Hours: Thursdays 2:00 pm - 4:00 pm

Course Description:

The increasingly multinational production of goods and services poses challenges for the development and enforcement of labor standards across national borders. Manufacturing firms in more developed countries outsource jobs to countries with low wages and workplace standards, and many less developed countries are reluctant to enforce workplace protections for fear of losing investment and jobs. This trend has, in turn, decreased the bargaining power of U.S. workers, exacerbating inequality both at home and abroad. There are significant limitations on the ability of domestic and international legal regimes to address the challenges of a globalized workplace. As a result, a number of private, voluntary, or “soft law” regulatory regimes have arisen to enforce transnational labor standards, including corporate codes of conduct, social auditing, information disclosure, and certification regimes. Whereas government regulation is driven by public political processes, these private transnational regulatory regimes are driven by a different set of pressures: from consumers, investors and private interest groups. For instance, activism on the part of consumers and investors recently prompted Apple to hire a social auditor to inspect its Chinese suppliers for compliance with its code of conduct. This global brand is hardly alone. Every Fortune 500 company in the United States and thousands of other transnational business maintain codes of conduct for their global suppliers. And countless NGOs, corporate consultants, social auditing firms, and other private actors have developed to promulgate labor standards and monitor compliance with them. This seminar will investigate the various actors driving these private transnational regulatory regimes, evaluate evidence of their efficacy, and discuss theories about their normative desirability. We also will address the implications of private transnational regulatory regimes for activism, resistance, democracy and citizenship, and their relationship with state-based or “legal” regulatory regimes. The aim of these analyses will be to think through the possibilities and limitations of corporations and other private actors as sources and enforcers of global regulatory norms and to examine how privately enacted “legal” regimes interact with and influence traditional domestic and international legal institutions.

Expectations of Students:

The class requires active, regular participation in and preparation for weekly discussions. Students are expected to listen well to others, to be open to new ideas, and to learn to understand and articulate the perspectives of others who do not share their own specialty training or experiences. If anyone
experiences difficulty participating for any reason, please talk with me about the issue so we can work to resolve it.

**Specific Seminar Requirements:**

**Attendance, Preparation and Participation**

Attendance, preparation, and participation by everyone are critical to a successful seminar. Students are expected to read the assignments closely and critically and to attend and participate actively in all class sessions. I will take attendance, and more than one unexcused absence will be grounds for a half-step grade reduction. If you must be excused from attending a class session, please contact me beforehand.

**Weekly Discussion Questions**

Each student is required to prepare five (5) discussion questions prior to each class session. The questions may address any of the issues raised by that week’s set of readings.

- At least one of your five questions must address an aspect of the readings about which you were confused or would like clarification or additional information.
- At least one of your five questions should address an issue in the readings that you found particularly compelling and would like to explore and elaborate further through in-depth class discussion.

Please post your discussion questions on TWEN each **Tuesday** that we have class by **10:00 am**. You will be expected to raise at least one of your discussion questions in class. You are required to submit discussion questions for every class session, even those that you miss.

**Discussion Leadership**

Each student will lead or co-lead one of the class sessions. I will pass around a sign-up sheet early in the semester and you will be required to select a session to lead.

**Writing Assignments**

Each student is required to submit two short papers of 8-10 pages apiece. Paper assignments are specified in the syllabus and will require students to build on or apply particular sets of assigned readings to a topic of interest to the student.

**Student Learning Outcomes:**

After completing this course, students will be able to:

- Describe what private transnational regulatory regimes are and why they arise
- Explain the role of corporations, NGOs, consumers, and states in private transnational regulatory regimes
• Evaluate the advantages and disadvantages of different private transnational regulatory regime designs
• Articulate and defend your own conception of the nature, effectiveness, and desirability of private transnational labor standards regulation
• Explain key concepts to others both verbally and in writing
• Generalize conceptual knowledge to new situations

Assessment (Grading):

Attendance and participation, including your weekly discussion questions, in-class contributions, and discussion leadership, will count for 20% of your final grade. Each of the two short papers will count for 40% of your final grade. The following will be grounds for a half-step grade reduction: more than one unexcused absence, failure to submit all required discussion questions, or a missed deadline that I have not approved.

Course Materials:

The readings for the seminar will posted on the course website or will be available online through links embedded in the syllabus.
Syllabus:
Transnational Enforcement of Labor Standards
Professor Jodi Short
Spring 2013

PART I: THE CHALLENGE OF REGULATING THE GLOBAL WORKPLACE

Class 1: Labor Conditions in Global Supply Chains


Reading Questions: What is the problem articulated in these pieces? Who or what has caused it?

Class 2: Workers’ Rights, Human Rights, or Contractual Rights?


Reading Questions: How are workers’ rights different from human rights? What are the advantages and disadvantages of each framework for advancing global labor standards? Is the right to contract a human right or a workers’ right? How should these various rights be balanced? Who should decide?

Class 3: Legal Regulation of Global Labor Standards

- George Tsogas, LABOR REGULATION IN A GLOBAL ECONOMY, Chapter 4: Unilateral Application of Labor Standards in Trade Relations [pp. 86-93]
- George Tsogas, LABOR REGULATION IN A GLOBAL ECONOMY, Chapter 2: The International Labor Organization and International Labor Standards [pp. 49-60]

Reading Questions: What legal tools have been used to address labor standards in global supply chains and how have they succeeded and failed? How might you craft a domestic statute to address global labor standards that is consistent with GATT? Is international law an appropriate
tool for addressing domestic working conditions? In light of what you have read about treaty compliance, is the ILO likely to be an effective instrument for raising labor standards?

Class 4: From Hard Law to Soft Law
- John Ruggie, *Protect, Respect and Remedy Framework* [summary]

Reading Questions: Why has there been a shift from hard law to soft law approaches (or public to private regulation) in the field of global labor regulation? Do you agree with the UN’s decision not to attempt to subject corporations to international law? What are some of the different varieties of private labor regulation? How is private regulation similar to/different from state-based regulation? Begin to develop criteria for assessing a “good” system of private labor regulation. Which private regulatory systems are likely to be most effective? For whom? What is the likelihood that they will be widely adopted?

PART II: BUILDING BLOCKS OF PRIVATE TRANSNATIONAL REGULATION: KEY TOOLS AND PLAYERS

Class 5: Key Tools: Responsive Regulation
- Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (1992) [pp. 3-53]

Reading Questions: What is “responsive regulation”? Why did it come about? How does it work? How is it different from other types of regulation? Could the approach developed here be adapted for the transnational context? What challenges would be presented in doing so?

Class 6: Key Tools: Disclosure

Reading Questions: What is “disclosure regulation” or “information-based regulation”? How does it work? What are some examples of successful disclosure regulation? What are some examples of unsuccessful disclosure regulation? How do they differ? Can disclosure regulation work on a transnational scale? What would be some of the challenges of implementing a transnational disclosure regime? What advantages would it offer?

Paper Assignment 1 Due: Select a disclosure regulation scheme and use the assigned reading materials
to explain its design and analyze its likely efficacy.

Class 7: Key Players: Corporations

- Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, THE NEW YORK TIMES MAGAZINE, September 13, 1970

**Reading Questions:** What is a corporation? Who owns the corporation? Are there other constituencies with interests in the corporation? What is their relationship to the corporation? Who should be empowered to make decisions about the corporation? What is the corporation’s relationship to the state? What are the arguments for and against corporate responsibility? Are corporations well-situated to act in the public good?

Class 8: Key Players: Consumers


**Reading Questions:** Is there a difference between citizens and consumers? What is political consumerism? How does it compare to other kinds of political activity? What are its implications for democracy?

Class 9: Key Players: NGOs


**Reading Questions:** What are transnational advocacy networks and how do they work? What role do NGOs play in them? Are NGOs acting as complements to or substitutes for states in these networks? What are the critiques of the role played by NGOs in transnational governance? Do you agree or disagree with them?

PART III: PUTTING THE PIECES TOGETHER: PRIVATE TRANSNATIONAL REGULATION IN ACTION

Class 10: Corporate Codes of Conduct and Monitoring


Reading Questions: Do codes of conduct work? If so, when and how? What are the factors that promote meaningful compliance with codes? What are the limitations of codes? How could codes be improved?

**Class 11: Certification and Social Labeling**


Reading Questions: How do certification regimes work in theory? By what mechanism do they shape corporate behavior? Who are the key actors and what are their roles? How do certification regimes work in practice? What are some of the key conditions for the success of certification regimes? What are their limitations?

**Class 12: Reputational Regulation: Ratings and Rankings**


Reading Questions: How can ratings and ranking systems be used to regulate behavior? By what mechanism do they change behaviors? Under what circumstances are they most likely to affect behavior? Evaluate GoodGuide’s rating system. How does it measure up to these criteria?

**Class 13: Bringing Law Back In: From Soft Law to Hard Law?**


• *Doe v. WalMart*
**Paper Assignment 2 Due:** Research corporate codes of conduct posted online and identify a code of conduct regarding supply chain responsibility to use as the basis for this assignment. First, based on criteria developed from the readings, analyze the likely effects of this code of conduct on practices in supply chain factories. Second, discuss whether this code of conduct might form the basis of legal liability by comparing and contrasting it to the codes at issue in *Kasky* and/or *WalMart*. Third, regardless what you conclude about actual legal liability, make a more general normative argument about whether you think it is a good idea to subject companies to legal liability for harms in their supply chain factories based on their codes of conduct.