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Global Labour Governance: Potential and Limits of an Emerging Perspective

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Abstract

The paper addresses the meaning and relevance of the recently-emerged idea of 'global labour governance'. Increasingly influential in policy, it has been criticised for political and theoretical reasons, including the risk of normative ideological uses. The article suggests that labour studies should nonetheless engage, theoretically and empirically, with the issue and the perspective of 'global labour governance'. This is because of its growing political importance and for the attention it brings to still understudied issues of 'multi-level' dynamics, 'networks' and 'reflexivity'. Systematic analysis of governance alternatives is needed. The traditions of the sociology of work and industrial relations can contribute to this analysis through their elaboration on informality, sectoral differences and collective action, and by problematizing the idea of 'effectiveness'.

Keywords: global labour governance – globalisation – regulation

The term ‘global labour governance’ (Hassel 2008) has gained resonance over the last fifteen years in debates about globalisation and labour standards. This might be viewed as reflecting the growing popularity of the term ‘governance’ in two – themselves contested - fields. First, the idea of a shift from ‘government’ to ‘governance’ (Rosenau 1987; Held 1995), and from ‘hard regulation’ to ‘soft regulation’, which has been particularly visible in the EU. Second, the growing attention accorded to ‘corporate governance’, and, additionally, to ‘corporate social responsibility’ (Crouch 2006).

While the term global labour governance has become established amongst international organisations and in legal and political studies, industrial relations and the sociology of work have largely neglected it. For instance, up to the end of 2012 *Work, Employment and Society* had never published an article employing this term – although one discussed the ‘global governance of labour standards’ (Bloor and Sampson 2009). The concept of ‘global governance’ itself comes from politics (Rosenau 1987), but it has found only occasional application in industrial relations (e.g. Niforou 2012), although ‘European governance’ has gained more space (Author B; Léonard et al. 2007; Smismans 2012).

This paper asks what, setting aside the broader debates on ‘governance’ in general, the specific phenomenon of ‘global labour governance’ can add, as an object of inquiry and as an analytical perspective. As argued by Sisson (2007), industrial relations has always been about ‘governance’ rather than simply regulation, and certainly more about ‘joint regulation’ (especially, but not only, through collective bargaining) rather than ‘government’. Accordingly, we contend that the study of labour relations at the international level needs to take global labour governance seriously – but also critically, and that the concept offers much-needed analytical promise. In this way, a multi-disciplinary research programme can be opened up on issues of increasing social relevance. To do this, we first review disputed aspects of the concept, and then establish its relevance, before briefly reviewing the available literature adopting, and identifying a more systematic research agenda opened up by, the global labour governance perspective.

Conceptual issues

Although international concerns with labour standards have a long history, preoccupation with global labour standards has become an important international political issue since the 1990s, in the context of debates on ‘globalisation’, its labour consequences and its policy implications Robert Reich’s (1991). However, the term ‘global’ remains problematic on two grounds.

In terms of geographical scope, ‘global labour governance’ is supposed by definition to be exhaustive. However, many of its forms do not cover the whole world and leave important gaps. This is well-known for more traditional international regulations. Many of the ILO’s

Conventions, the oldest form of global labour governance, are not ratified by important countries: the USA and China have ratified only, respectively, 14 and 22 of the 189 Conventions. Similar ‘gaps’ occur in more recent private regulations. Volkswagen, for instance, a leading company in the globalization of employment relations, created a ‘Global Works Council’ back in 1999. It was not until 2010, however, that this ‘global’ council included the second-largest country by number of employees, i.e. China. Moreover, the use of the term ‘global’ in social issues often implicitly assumes a focus on developing, low-wage countries, and their potential for unfair competition with higher-wage ones. It detracts attention from threats to labour standards originating in the latter, highlighted by living wage campaigns and instances of restrictions on union rights.

In terms of institutional architecture, ‘global’ regulations are in fact closely intertwined with national ones in problematic ways. The linkages between global and national regulations can be both complementary and substitutive (Locke et al. 2012), but also involves contradictions and can induce regulation avoidance (Niforou 2012). As global regulations are often less strict than previous national regulations, a focus on global regulation might be seen as a tacit form of deregulation. Some have also argued that even in export-dependent countries (such as in plantation-based Central America) labour exploitation nonetheless follows patterns that are predominantly determined by national forces (Hough 2012).

Global labour governance can also be problematic with regard to its object. In the western industrialised world, ‘labour’ has been predominantly identified with formal employment, which in turn has been historically regulated through legislation as well as institutionalised collective compromises between employees and employers. The concept of ‘global labour’ might imply, following modernisation theory, that developing countries are bound to move towards formal employment, and that there is a firm distinction between formal and informal labour. This is contestable: current global processes are as much about informalisation as formalisation, both in the global South and North, and the development of the latter does not imply a decline of the former (Standing 2011). In fact, urbanisation in the global South has coincided with new forms of informal work, in particular through increased migration. Moreover, the boundaries between formal and informal work, and even between free and unfree work, are not clearly distinct: the two spheres coexist and co-operate (Denning 2010), and formal international organizations such as the World Bank and the ILO value the informal sector as a functional safety net (Breman 2009). One telling example is ‘neobondage’, whereby workers may at the same time work in the formal, often advanced economy, and have informal migration status or are tied to illegal trafficking organisations (Breman 2010). Child labour similarly involves sensitive definitional boundaries: the ILO has made its prohibition one of its four Core Labour Standards, but defined the age threshold differently for North and South, rather than as fixed and ‘global’. Although *de jure* child labour should not exist (unless ‘light’), the ILO reports 210m child labourers worldwide, most in hazardous conditions (ILO 2002). And as in the cases of the Bolivian Union of Child and Adolescent Workers and the African Movement of Working Children and Youth, they organise and engage to assert their rights, despite not having the right to work in the first place.

The example of child labour organisation leads onto an additional complexity of the term labour. It refers not simply to an employment status, but also to a social actor. In the North, this has been generally identified with the organisations defending employees, and especially trade unions. While trade union power has declined in most of the global North, some have argued that it is structurally bound to increase in the global South (Silver 2003). It is however an open question whether the forms of labour organisation in the global South will resemble the historical ones of the North. Nonetheless it can be asked whether regulation is possible without effective voice for workers, and in turn whether this is possible without effective organisation.

In sum, the focus on labour as formal employment, and even more on labour as formal employee organisation, runs up against the risk of ‘labourism’ (Standing 2009) and the exclusion of different, widespread forms of work and activity, especially female. It is therefore advisable to adopt an extended, non-legalistic conception of labour. It is also useful, moreover, to add the ‘subjective’ meaning of labour, even if not necessarily in the classic trade union form – something that is largely neglected by political studies of global labour governance.

In political science, the term ‘governance’ has been introduced as an alternative to ‘government’, and has gained particular attention within international organisations, with the Commission on Global Governance set up by the UN in 1991 and the ‘White Paper’ on European Governance by the European Commission of 2001. In academic discourse, the term has become the focus of sustained controversy. The idea of global governance, as something complementary rather than substitutive of the nation-state, has been advocated by Held (1995) as the only democratic option to preserve social policies and social regulations, including on labour, in a globalised economy.

Critics have questioned, however, how far the term is more than a new label, with new ideological connotations, rather than a new analytical concept. In its explicit linguistic contrast from ‘government’, governance can be seen as a programmatic, ideological choice to de-politicise issues, and to understate the role of states, fostering a form of new hegemony that hides the actual sources of power behind undefined ‘networks’ (Davies 2011). Hardt and Negri (2006) have dismissed global institutions as an ‘Empire’ protecting global capital, proposals for their democratisation as unrealisable, and governance as replacing democracy with transparency. Social movement theorists have blamed global labour governance for its Northern perspective, its imposition of western tripartite formulae, and its demobilising nature, and argued for mobilisation from the South as the only democratic alternative (Waterman 2006).

In the field of labour studies the appeal of ‘governance’ is less immediately apparent, since two of its main implications are already well established. It is a commonplace that labour has long been regulated in many different ways than just by ‘governments’, with private mechanisms prominent, including collective bargaining. Equally well-known is the role of bottom-up processes, and the associated scope for informality (Brown 1973). Yet established approaches to theorising in the field reassert the centrality of the nation state and are not

readily extendable to account for the emergence of an international dimension where there is no equivalent state actor at global or regional level (Author B). In this context, 'governance' has gained recent traction in theorising the emergence of international levels in addition to the national one (Hassel 2008), and as providing a step forward from the previous concept of 'regulation' (Sisson 2007). It is not simply a 'broader' concept, but also a 'deeper' one, paying particular attention to processes, enforcement and compliance.

To avoid a normative use of the concept, it is however imperative to include the state in it and leave its supposed 'retreat' (Strange 1996) as an empirical problem, rather than an assumption. In this more open sense, the concept's main added value is stressing aspects that, while known in labour studies, have hitherto been accorded relatively little importance. First, the multi-level aspect (Hooghe and Marks 2001), which becomes more complex and less hierarchical at the international, rather than national level (Author B; Author B). Second, the attention to networks, besides hierarchy, which has already proven valuable in the understanding of transnational trade union action (Fichter and Sydow 2002; Author A). Third, the growth of new forms of reflexive regulation at the global level and their contribution to the establishment of a global labour law regime (Hepple 2005; Rogowski 2013).

Relevance

We move to address the relevance of global labour governance as a field of inquiry, doing so in three steps. First, the idea of global labour governance assumes the pre-existence of a global labour problem that requires governance. Pro-market optimists and social-democratic pessimists have resisted this assumption. The former have focussed on the benefits for labour from economic globalisation, regardless of regulations (Flanagan 2006), and the latter have argued for the enduring priority of the national level (Scharpf 1997). There is however by now a sufficient consensus, both institutionally and academically, about the relevance of globalisation and its problematic nature (e.g. Bacchetta and Jansen 2011, Bonacich and Appelbaum 2000, Standing 2009). The economic crisis that started in 2008 has underlined both interdependence and social vulnerability. Moreover, in recent times industrial strife has risen dramatically in the so-called emerging economies of China, India, Bangladesh, South Africa and Brazil, indicating that labour is not an 'old world' problem. Recent disasters in Bangladeshi garment factories supplying western brands highlight the weakness of national regulations, the responsibility of multinational companies, and the complexity of the challenges to be surmounted to improve the situation. Further, 'global labour' issues are not simply of relevance for developing countries or for specific transnational phenomena, such as the international maritime sector (Bloor and Sampson 2009). They also disrupt national employment relations in developed countries, as in the protests against foreign contract workers in British construction in 2009 and in the growing concerns with issues such as people trafficking, living wages for immigrant workers and the social consequences of multinationals' actual and threatened relocations.

Second, if we agree that there is a global labour problem, are the traditional forms of labour governance not sufficient to cope with the challenges? It has been widely argued that national instruments such as labour law and collective bargaining, and for transnational issues inter-governmentalism, are meeting increasing obstacles in their operation (e.g. Author B; Standing 2009). In particular, national regulations are finding it problematic to deal with increased cross-border movement of labour and services and with multinational companies, although on both fronts they are far from having become irrelevant (Cremers 2011, Author B). Among recent examples is the disruption to long-established national governance instruments through collective bargaining and industrial action in Germany, Finland and Sweden as a result of European Court of Justice rulings favouring the right of establishment and the freedom to provide services over national labour law, and the destabilising impact on Italy's collective bargaining system of the exit of its largest industrial employer, the Fiat-Chrysler multinational alliance. The imposition of labour market reforms by international institutions, in order to enhance international competitiveness, is no longer confined to developing countries; in Europe, it occurs under direct pressure from international institutions in Greece and Portugal, and under pressure from international financial markets, as well as from European institutions, in Italy and Spain. The problem is even deeper in developing countries where reference to national regulations may even mean, in practice, lack of regulation, as illustrated by Niforou (2012) in the case of International Framework Agreements (IFAs).

Reflecting the absence at global or regional level of a centralised state authority, the traditional regulatory instruments at international level are those deriving from inter-governmental institutions, in particular the ILO. These too are finding it problematic to deal with the global labour problem. Despite going beyond mere inter-governmentalism thanks to its tripartite dimension, the ILO's capacity for setting standards considerably exceeds that for ensuring their implementation and compliance with them, as indicated by the rather limited ratification of its Conventions noted above. And in the rare cases where a country has been condemned for breaching one of its core labour standards, the ILO itself cannot enforce any sanctions. The WTO possesses stronger powers of enforcement, via trade sanctions, but it never came close to agreeing on a 'social clause' (Granger and Sireon 2006). At regional level, with the exception of the EU and to a lesser extent Mercosur, inter-governmentalism generally prevails amongst regional trade blocs with social commitments at most extending to a mutual commitment by each member government to enforce national labour laws (Kaminska and Visser 2011).

Third, the increasingly apparent limitations of national, and inter-governmental, regulations have raised new calls for transnational co-ordination and new forms of governance. But are new relevant forms of global labour governance emerging? The main examples addressed by the literature are soft law in the EU (Zeitlin 2010) and the ILO (Vosko 2002), EU-level social dialogue (Léonard et al. 2007), and private initiatives relating to multinationals. These include Codes of Conduct (Lock et al. 2012), IFAs (Papadakis 2011) and multi-stakeholder initiatives both from above, such as the UN Global Compact, and below, such as the Fair Labor Association (Anner 2012). Criticism has been raised on these experiments, in

particular on their limitations in terms of democracy (Niforou 2013) and to the degree they are affected by structural power (Author B). Some have also argued that rather than governing labour standards, they pre-empt national regulations and result in the promotion and justification of neo-liberalism (Esbenshade 2004, Standing 2008). Nonetheless, it can be argued that the emerging system of global labour governance is relevant in two ways. First, the simple growth of the system must be explained by some sort of function, whether the declared ones, tacit ones, or even unintentional ones. Secondly, there is at least sufficient evidence that it is leading towards a shared understanding of labour standards and to a common discourse around it (Hassel 2008).

Open questions

We therefore contend that global labour governance urgently invites further inquiry. Its relative novelty implies important gaps in knowledge, already the focus of the developing literature on private - unilateral, multi-stakeholder and joint (management-union) – initiatives concerning multinational corporations and their supply chains. Broadly speaking, this has considered the actual forms governance takes, its substantive content and its consequential effects.

On forms, authors have provided analytical distinctions according to whether the governance instruments concerned are: controlled by (as under unilateral codes of conduct, e.g. at Nike and Hewlett Packard, and business association initiatives, e.g. WRAP (Worldwide Responsible Apparel Production)); influenced by (as under multi-stakeholder initiatives including NGOs, e.g. FLA (Fair Labor Association) and ETI (Ethical Trade Initiative), or IFAs negotiated with international trade unions); or autonomous of (e.g. WRC (Workers' Rights Consortium)) the multinationals which are the object of these new forms of regulation (Anner 2012, Franssen 2011, O'Rourke 2003). Criteria for assessing different forms have also been proposed and applied, such as legitimacy, transparency and accountability (O'Rourke 2003, 2006, Niforou 2013). The legitimacy basis of initiatives varies, including hierarchy (unilateral codes of conduct), representativeness of the actors involved (multi-stakeholder initiatives, IFAs), epistemic (reference to scientific standards) and normative (reference to established principles such as the ILO's four core labour standards). On accountability, considerable attention has focused on mechanisms for monitoring implementation. Alternatives include regular self-evaluation (as under the Global Reporting Initiative), internal audit units (as at Nike and Hewlett Packard, but which raise potential conflicts of interest), external expert agencies (as under FLA and WRAP, but which raise questions of access to data and beyond 'gatekeepers'), joint evaluation (as under IFAs) and verification by autonomous expert agencies (as under WRC). Transparency concerns the openness and availability of results of monitoring and review procedures: there is no public disclosure under WRAP, the FLA fully discloses its reports on lead companies, but not the identity of supply factories, whereas WRC practices full disclosure.

Substantively, governance differs according to whether the standards required involve complying with local labour laws / material terms and conditions which prevail locally (as under some unilateral codes of conduct and WRAP), with international labour standards (as under ETI, FLA or with IFAs), or even aim to improve on these (as in the living wage commitments of ETI and WRC) (O'Rourke 2003, Fransen 2011). In respect of labour, a problematic issue is the relative emphasis on fundamental rights, such as the ILO's four core labour standards, or on material standards such as wages and conditions. In part influenced by the ILO's approach, private forms of governance have tended to focus more on the former (although as just noted some also commit to a living wage); IFAs, for instance, tend to be 'rights agreements' rather than collective agreements in the classic sense specifying material standards (Papadakis 2011).

In terms of their effects, distinctions have been drawn in the degree of independence of the monitoring of implementation, as indicated above; also in its extent and rigour (O'Rourke 2003, Fransen 2011, Locke 2013). Extent and rigour are not necessarily related, with the highly rigorous monitoring of WRC not being routine but triggered by complaints from labour or civil society groups. Conversely, monitoring mechanisms under some unilateral codes of conduct are very extensive, although subsequent review and therefore rigour is compromised by lack of transparency over results. In general, the degree of rigour seems to increase moving from initiatives which are controlled by multinationals to those which are autonomous of them, and when interacting with public (state) institutions (Locke 2013). Distinctions have also been identified in the mechanisms, if any, available to ensure compliance (Niforou 2012). Possibilities range across 'soft' market sanctions, such as 'naming and shaming' to 'hard' ones, such as loss of contracts, and also include problem solving, as under IFAs and some multi-stakeholder initiatives. Again, there is considerable variation, with unilateral codes and business association initiatives tending to be softer in these respects than multi-stakeholder initiatives and IFAs. Finally, new forms of governance seem to vary in their effectiveness as between issues, being least effective in upholding the core industrial relations issues of freedom of association and collective bargaining (Anner 2012).

Systematic research is largely missing, though, on the intersection of formal, substantive and consequential aspects of global labour governance: most research so far has been exploratory, most usually on specific forms. To assess the varieties of global labour governance, it is necessary to distinguish between and investigate all three. An integrated approach is needed which can consider governance alternatives, and governance gaps, rather than initiatives in isolation. Public initiatives, such as the OECD's revised and strengthened (2011) guidelines on multinationals, and hybrid ones, such as the UN's Global Impact, need to be included as well as private ones, enabling comparative assessment of various combinations of public and private governance. The forms of regulation involved tend to rely on reflexive regulatory mechanisms intended to prompt self-regulation (Rogowski 2013), but the ways in which this is achieved, and their relative success, have yet to be evaluated. Unresolved also is the extent to which different forms might constitute competing regimes offering more or less rigorous mechanisms in a market for regulation (Fransen 2011), and the extent to which they are

complementary to, or a substitute for, traditional, 'harder' regulation (Locke et al. 2012). Crucial intervening factors, such as economic sector and configuration of global value chains, need to be controlled for. Anner et al (2006) identify different, sector-specific prevailing modes of international trade union organisation and action. Donaghey et al (2014) propose an analytical distinction between consumer activism and labour activism as sources of pressure to improve global labour standards, and relate alternative possibilities to sector characteristics and differences between 'buyer' and 'producer' driven supply chains. The configuration of global value chains and the extent of collaborative buyer-supplier relations have particularly strong implications for the effectiveness of different forms of private governance initiatives, and for the extent to which multinationals may develop a self-interest in them (Lakhani et al 2013, Locke 2013).

Moreover, although multinationals and their supply chains have attracted by far the most attention, it has been argued that labour standards are significantly more threatened by, and more difficult to regulate under, foreign trade and freedom of movement of labour and services than foreign direct investment (Mosley 2011, Author A). Yet on trade, where the possibility of a multi-lateral measure on the inclusion of social clauses foundered at the WTO, the first decade of the 21st century saw a steady increase in the number of bi-lateral trade agreements containing such clauses (Ebert and Posthuma 2011; Granger and Sireon 2006). Considerable variation is evident in the nature of the regulation specified, from 'harder', either 'punishing' or 'rewarding' breaches or compliance with international labour standards, respectively, to 'softer' mechanisms which promote learning and good practice, with distinct differences in approach seemingly apparent between three main global regions: Europe, north America and south and east Asia. Migration brings implications for labour conditions, notably in terms of flexibility and insecurity (Raess and Burgoon 2013), and transnational regulatory mechanisms have emerged, through bilateral agreements, EU Directives and soft policies, inter-regional social dialogue bodies and transnational labour networks. Embracing the range of different forms of international economic exchange and factor mobility raises further questions about the ways in which global labour governance initiatives concerning multinationals and/or movement of labour and/or trade might interact, and whether these can be mutually reinforcing.

Conclusion

The concept of global labour governance should not be taken uncritically, because its terms and implications constitute an ideological minefield. But labour studies, including the sociology of work and industrial relations, should not neglect a phenomenon of fast-growing interest academically and politically: as with globalisation (Giles 2000), rather than dismissing it, we should take it seriously.

Adopting a global governance perspective promises conceptual advance in terms of 'depth', of 'multi-level' dynamics, 'networks' and 'reflexivity', and requires labour studies to open up to categories elaborated by political science. In reverse, industrial relations and sociological

labour studies can contribute through sensitivity to bottom-up processes and associated informality (Brown 1973), the specificities of economic sectors (Author A) and the logics of collective action, whether of employers (Hassel 2008) or workers (Erne 2008).

This opens up a broad area of research, and in particular an assessment of various forms of governance, relating to different modes of international economic activity (trade, foreign direct investment, migration, provision of services). It also invites the problematisation of the issue of 'effectiveness', including the potential 'displacement' of other forms of regulation. Theoretically-informed research on global labour governance can then contribute to the detection of the specific conditions and obstacles that explain the variation of global labour governance by sector, issue and region.

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