Networked regulation as a solution to human rights abuse in global supply chains? The case of trade union rights violations by Indonesian sports shoe manufacturers

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Networked regulation as a solution to human rights abuse in global supply chains? The case of trade union rights violations by Indonesian sports shoe manufacturers

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Abstract
This article analyses the capacity of global networks of civil society actors to effectively supplement weak state regulation in reducing human rights abuse by multi-national companies (MNCs). The effectiveness of non-government organisations (NGOs) as part of a network of control finds support both in the radical criminological literature as well as those explicitly advocating for a networked regulatory approach. This case study of the Indonesian sport shoe industry demonstrates that networked regulation has had a positive short to medium-term impact on respect for trade union rights among some manufacturers producing for Western MNCs. However, inconsistent approaches by the MNCs and ongoing resistance by manufacturers has made this influence difficult to sustain. Critically, the Indonesian state apparatus emerges as a powerful and primarily—but far from completely—complicit set of actors: applying criminal sanctions for trade union rights violations but failing to enforce them, and influencing networked regulation in complex, contingent ways. This case study suggests both that advocates and practitioners of networked regulation need to find more effective ways to respond to the corporate drive to maximise profit and that networked regulation's long-term usefulness will likely depend on the extent to which it draws from and operates to strengthen progressive regulatory elements within Asian states.

Keywords
Asian criminology, networked regulation, multi-stakeholder initiatives, corporate social responsibility, trade union rights
paper. The first of these is conceptualising and analysing where the state does or does not play a role either facilitating or ameliorating these harms. This conceptualisation involves grappling with ambivalence and ambiguity around the role of state and government agencies (as protectors/destroyers/enablers) and the moral valence (good/evil) attached to state processes and activities. Critically, in the context of economic globalisation, theorisation around the state involves assessments of its weakness or continued strength, of state incapacity given the strength of global capital or its capacity to act with impunity. This leads to the second and related concern, namely, the degree to which structural pressures associated with capitalism inevitably lead to exploitation and human rights abuse associated with business practice. Criminological analyses centred on these challenges clearly interact with allied perspectives within sociology, politics and law, yet there are distinct criminological sensibilities which point to both ends of a continuum between state malfeasance at one end and state weakness at the other, and a related scale that spans economic determinism and at the other end the possibility of productive change. So, the radical tradition identifies the way states and corporations can be complicit in criminal activity. At the same time, within an allied body of literature there are consistent calls for the state to protect the vulnerable against corporate malfeasance. A contrasting line of analysis, centred on networked regulation and nodal governance, downplays the state in a call to understand networks of control with nodes or centres of influence evident at key intersections between various government and non-government actors. Within both these literatures, however, the prevailing sentiment is that committed civil society actors can bring about positive change within the current economic system.

The focus on the state/business nexus within a global economic system is of critical importance to this special issue and its focus on Asia. In the white-collar arena as in many others, theoretical understanding has developed from analysis centred in the industrialised western world. These models and theoretical insights may assist in analysis of the industrialising East, but are likely to fall short of an adequate explanation. This is for two reasons. The first is a need to account for the historical development of a particular state within the Asian region, its experiences as it emerges from colonial rule (as in the case of Indonesia) or its history of resistance to that rule (as in the case of Thailand) forms a critical backdrop to what constitutes ‘the state’. The second element is the growing global economic influence of Asia. Economic globalisation no longer can be seen as driven primarily by the needs of global elites within the US and Europe. As our analysis below demonstrates, the economic strength of Asia must now be taken into account in understanding the capacity or otherwise of global capital to respect human rights.

In this paper, we explore the value within contemporary criminological understandings of corporate crime as they relate to sports shoe manufacturers in Indonesia that are contracted to high profile brands. Our analysis grapples with the challenges highlighted above, namely the influence of the state in exacerbating or ameliorating human rights abuse by business, the capacity for networked governance to facilitate positive change within a global economic system based on capitalist norms and finally the implications for human rights of a stronger Asian economic dominance.

Criminological analyses and corporate harms

Radical criminology long has drawn attention to the potential for the state to act with business to perpetrate human rights abuse and, in the face of such abuse, the call is for a progressive and sustained opposition to such atrocities (see e.g. Green and Ward, 2000; Kramer et al., 2002; White, 2009). Within this tradition, calling the harm a crime acts as
moral censure—that is just as likely to be targeted at the state and state agencies as it is to a private sector corporate actor. The term ‘crime’ has an ontological referent—most notably to a violation of shared humanity, to human rights abuse (Schwendinger and Schwendinger, 1975). Multiple categories: corporate crime (Clinard and Yeager, 1980), state crime (Barak, 1991) and state corporate crime (Kramer et al., 2002) amongst many others embody this performative, condemnatory nature of the criminal label.

A strong theme within this diverse critical literature is a call upon the (most often western) state to treat these harms as crimes—both in law and in enforcement practice (Clinard and Yeager, 1980; Wells, 2001; Tombs and Whyte, 2007). State negligence in failing to act to prevent can, and should, itself be labelled as a ‘state-corporate crime’ (Kramer et al., 2002). The argument here is that normalisation of corporate harms (such as deaths at work) as ‘merely regulatory’ is a product of history (Wells, 2001) rather than an objective assessment of existing crimes in law as *mala in se* and lesser illegalities (those subject to penalties falling short of imprisonment) as *mala prohibita*.

Within this tradition, radicalisation and protest is essential to changing business practice. Indeed, for some protest is part of a moral duty (Datta et al., 2010). Opposition to the status quo then is to be found in the actions of protest: radical action aimed alternatively at providing redress for the victimised and a voice for the oppressed (see e.g. the Corporate Crime Network www.corporatecrimenetwork.org.uk, and White, 2009). Radical criminology long has debated the possibilities of change within a capitalist system, most clearly evident in debates around Left Realism in the 1980s and 90s.

Clearly, the effectiveness of such protest depends on the capacity to reform capitalist relations from within. Certainly, a structuralist Marxist reading would suggest the capitalist state depends upon business for its existence hence protest without wholesale reform of capitalist relations is likely to be futile. Others such as the Parisian Regulation School arising from neo-Marxism are more optimistic. They argue that capitalist reproduction, based as it is on conflict and inequality, necessarily is prone to crises. Hence, despite appearances born of hegemonic discourses, capitalist relations are vulnerable and capable of reform (Lipietz and Vale, 1988). Certainly, such change is hard won. Nonetheless, for commentators such as Polanyi (2001) any attempt to essentialise economic relations necessarily will be met by a social backlash—a double movement where social relations will be re-embedded within economic or market relations. Economic relations always are social, and as such economic imperatives cannot be successfully divorced from their social roots. From this view, then, both the state and business can and should be ‘socialised’.

An interesting complement to this argument of the necessary connection between the economic and the social is that of Fairclough. Anchored in a different tradition, that of post-structuralism, Fairclough (1995: 76-77) argues that, in order to build alliances and win the consent of subordinate groups, pro-business political parties need to create ‘orders of discourse’ which combine non-economic value systems with neo-liberal perspectives. But Fairclough (1995: 78, 90) also argues such orders of discourse are open to challenge and suggests a number of techniques and processes by which dominant orders of discourse can be undermined and forced to adapt.

For each of these perspectives, then, transforming business practice often requires sustained public protest by affected groups and their allies. Yet, within criminology at least, how that protest might be best targeted remains somewhat ambiguous, since there is considerable ambivalence as to the potential for progressive transformation of both governments and state apparatuses. So, the passage of criminal legislation as a result of union and victim pressure (such as the passing of corporate manslaughter laws (Gobert, 2008)) can be seen as flawed but at least a step in the right direction. It is well understood that the development of law and regulation in the control of the powerful often requires compromise
that blunts the transformational potential within such law (see e.g. Reichman, 1998; Gobert, 2005). Indeed, as Aubert (1952) highlighted six decades ago, criminalisation coupled with non-enforcement is a classic compromise born of the struggles between capital and labour.

Economic globalisation brings with it additional challenges, namely even where a state considers enacting strong control of MNC behaviour, such enthusiasm may be blunted by the fear of capital flight. In most industries MNCs are able to move their operations and select regions most congenial to their requirements. The threat, either explicit or implicit, by MNCs to move their operations means that there is an incentive for states to compete to offer the conditions most conducive to investment, and many argue this precipitates a ‘race to the bottom’ in terms of human rights standards set in law (Harvey, 1989; Greider, 1997; Strange, 1996).

In the face of these challenges there has emerged a bewildering array of governance regimes aimed at the control of corporate—and in particular MNC—misconduct. These range from the self-regulatory to multi-stakeholder initiatives comprised of business, NGOs and governments (Utting, 2005). These governance regimes pose some challenges for a criminological analysis. The distrust of both the state and MNCs means that NGO led initiatives may well be welcomed (Castells, 1997; White, 2009). Yet, there is a constant concern with various forms of ‘greenwashing’, that the programs developed will fail to live up to expectations, or indeed will blunt efforts for a more rigorous and determined method of control (Shamir, 2004; Shamir, 2010; Utting, 2005).

The responsive regulatory literature has engaged extensively with issues of control in the context of global capital (Braithwaite, 2006; Braithwaite et al., 2010; Braithwaite and Drahos, 2000; Burris et al., 2005). This literature has embraced the governance agenda when it comes to controlling and minimising corporate crime and corporate harm. There is a growing literature around networked regulation and nodal governance that assesses the capacity of governance regimes to achieve significant reductions in human rights abuse by multi-national corporations. These perspectives extend the view of the possible beyond the centrality of the state and the impact of government inspectors (key actors in much criminological discourse) in their emphasis on the capacity for international non-government organisations (INGOS) to work in tandem with local actors (such as unions) to improve standards on the ground. Social networks, it is argued, can effect change in economic settings in a world where MNCs can be forced to take note of non-governmental efforts to spur change, even in the absence of an effective state presence supporting human rights (Braithwaite, 2006).

A critical premise of Braithwaite’s analysis stems from his understanding of ‘multiple selves’ (Ayres and Braithwaite, 1992). That is, each of the actors can respond differently in different contexts. Put simply, there is always the capacity for virtue (and for vice). So, there is a possibility for MNCs as well as governments (both as individual and organisational actors) to reduce the levels of harm they engender and indeed to act as regulators in their own right—to control the harmful tendencies of those with whom they have a relationship. Networked partners observe and control each other’s behaviour. There is an expectation that any attempt to control will be met by resistance, and oppositional networks (Braithwaite, 2006). Networks can work both ways, then, in either facilitating or undermining human rights abuse (Burris et al., 2005). Nonetheless, the emphasis here is on the possibilities of progress, rather than a consistent expectation that structural competitive economic pressure will win out.

Networked regulation shares the views of the radical tradition that developing/industrialising states will have limited regulatory capacity. However, from a networked regulation perspective, state based regulatory authorities are more likely to be incompetent and weak rather than malevolent. For networked regulation the way forward for
these states is to draw on the capacity of NGOs to complement and supplement their incapacity to control the activities of MNCs. Bullying behaviour by MNCs can be met by increased networking with different civil society actors (Braithwaite, 2006; Braithwaite and Drahos, 2000). Indeed, for some there is no necessary place for state agencies at all in governance regimes. States are at best ‘decentred’ (Black, 2002) and may be entirely absent from a regulatory regime. Governance networks are ‘polycentric’ (Black, 2008) where the presence of a state regulatory agency is simply one amongst many actors.

There are reasons, though, to be somewhat cautious in simply applying general understanding of the interaction between states, MNCs and NGOs to specific contexts. David Nelken long has argued the importance of understanding diverse settings as judged from their own reference points (Nelken, 1994; see also the collection in Nelken and Feest, 2001). In particular, the form different institutions take (e.g. police, military, criminal justice agencies, NGOs) may differ markedly between settings. There is also the potential significance of local ways of working that may affect which strategies are successful and which destined to fail. In particular, local political tensions may be important to understand (Haines, 2005; Woodiwiss, 1998). Further, the actions of the industrialising state and their relations to business may be as much about the need to retain much needed access to international markets. This may include formal acceptance of the activities associated with a particular governance regime (such as NGO forms of accreditation) but also resentment and resistance to its impact on the ground (Haines, 2005). A comparative frame of reference also suggests that close attention needs to be paid to exactly how such regimes interact with formal law (whether they support or are in tension with local laws and regulations) and exactly how governance regimes designed independently from a particular location actually work in practice (Teubner, 1998).

**Methodology**

Our case studies focus on trade union rights violations in Indonesian factories which supply Nike, Reebok or Adidas. Since 2000 Indonesian employers have been subject to potential criminal sanctions if they intimidate or discriminate against employees for exercising their trade union rights. Nike, Adidas and Reebok are also significant objects of—and participants in—networked regulation. Since the early 1990s the global sport shoe sector has been a key target of the international anti-sweatshop movement. Numerous NGO and academic studies have documented the prevalence of exploitative work practices, including pressure to work at high intensity for long periods, very low wages, trade union repression, widespread sexual harassment of female workers by male supervisors and working conditions which seriously endanger workers’ health and safety (see e.g. Connor, 2008; ITGLWF et al., 2008; Esbenshade, 2004; Bulut and Lane, 2011). Anti-sweatshop activists have used a wide variety of protest strategies to draw consumers’ attention to the divide between these companies’ marketing strategies—which associate their brands with health, athleticism, assertiveness and egalitarianism—and the unhealthy and exploitative pay and conditions facing the primarily female workers who make the companies’ products (see Connor, 2008: 119-166). These companies are vulnerable to these campaigns because effective marketing is central to their business strategies. In the words of Phillip Knight, Nike’s founder and for much of the company’s history its Chief Executive Officer:

> For years we thought of ourselves as a production-oriented company, meaning that we put all our emphasis on designing and manufacturing the product. But now we understand that the most important thing we do is market the product…(cited in Klein, 2000: 24).
Nike, Reebok and Adidas have responded to this extensive documentation of human rights violations and this campaign pressure in a number of ways, including by becoming members of a multi-stakeholder (company and NGO) governance initiative (MSI) known as the Fair Labor Association (FLA). FLA member companies are expected to monitor their suppliers’ compliance with trade union rights and other standards in the FLA’s *Workplace Code of Conduct* and to make future business with their suppliers contingent on compliance. The FLA in turn uses surprise factory visits and other processes to monitor whether participating companies are properly implementing the FLA’s program. In addition, in our case-studies Indonesian trade unions cooperated with Oxfam Australia, Clean Clothes Campaign (CCC) and other international labour rights groups to pressure Nike, Adidas and Reebok to persuade their suppliers to comply with the FLA code, providing an additional layer of networked governance.

These three cases are drawn from one of the author’s (Connor) broader work and greater detail is available within this work (Connor, 2008: 221-274). This work is situated within the ‘scholar-activist’ tradition, between 2000 and 2010 Connor intervened extensively in these cases in his role as coordinator of Oxfam Australia’s labour rights advocacy. In addition to documentary analysis and interviews with key stakeholders, Connor’s methodology therefore also involved reflecting on his own observations and experiences (for an extended discussion see Connor, 2008: 90-118).

**Perspectives on the effectiveness of networked regulation of labour rights**

The FLA’s requirement that participating MNCs audit their own suppliers’ compliance with the FLA code, with that voluntary auditing in turn being monitored by the FLA itself, has parallels with a number of other networked governance initiatives—including the Ethical Trading Initiative (ETI) in the UK. While some reviews of research into voluntary labour rights auditing in global production networks suggest it is largely ineffective (Esbenshade, 2004; Locke et al., 2007), there are some major studies which indicate it has improved labour rights compliance in relation to some labour standards but not others, with trade union rights being among the labour standards which are typically neglected (Barrientos and Smith, 2007; CCC, 2005; see also Connor, 2008: 186-189).

Scholars and civil society groups who have sympathies with networked regulation have responded to this research by advocating technical improvements to social audit programs. Thus some have called on MNCs to change their purchasing practices—which usually involve demanding manufacturers maximise speed of delivery and minimise costs or lose orders to competitors—and to instead reward labour compliant suppliers with higher prices and longer term orders (Barrientos and Smith, 2007; ITGLWF et al., 2008: 49). There have also been calls for more involvement of local civil society actors in auditing processes (Braithwaite, 2006; CCC, 2005) and for networked governance initiatives to have a greater focus on trade union rights (Barrientos and Smith, 2007: 727; ITGLWF et al., 2008: 55-56). In line with the radical criminological tradition’s suspicion of corporate motives, other scholars and civil society groups argue it is simply naive to expect MNCs to voluntarily cooperate in initiatives to expand workers’ freedom to form trade unions (see e.g. Ballinger, 2010; Wells, 2009; Bulut and Lane, 2011). Before assessing what our case studies have to say to this debate, it is worth making a few observations, both about the global apparel and footwear industry and the history and role of the Indonesian state in relation to trade union rights.
The global apparel and footwear industry: MNC power in relation to suppliers and states

While western MNCs operating in this industry have considerable bargaining power in relation to their Asian suppliers, the power relationship is not entirely one-sided. Nike and Adidas (which purchased Reebok in 2005) control more than half of the global athletic footwear market. When they negotiate with their Asian suppliers Nike and Adidas use this market power to drive down cost and push for better quality and speed of delivery, while at the same time demanding compliance with labour rights codes. However, a giant sport shoe manufacturer such as the Taiwanese-owned Yue Yuen, which alone produces more than 20 per cent of Nike and Adidas’ shoes, has some ability to push back against such demands. Even in the apparel market, which is made up of much larger numbers of smaller manufacturers, most manufacturers supply multiple western companies in order to manage risk (see Connor, 2008: 70-74).

As for the pressure on Asian states to compete for investment, at times MNCs involved in the global garment and footwear industry do threaten to relocate production, and to some extent industrialising Asian states do adjust the nature or enforcement of their employment laws to accommodate MNCs’ preferences (Bulut and Lane, 2011; Caraway, 2009). But it is important not to overstate the extent to which MNC’s sourcing decisions are actually based on labour costs. A range of other factors are in play, including trade tariffs; exchange rates; political stability; and the cost, accessibility and reliability of credit, raw materials, electricity and transportation (Connor, 2008: 75-81). Thus it is primarily because of factors other than labour costs that China is the world’s largest garment and footwear exporter. In 2008 China accounted for 33% of global apparel exports, well ahead of Bangladesh’s 3% share, even though apparel wage costs in China’s coastal industrial zones, where most garments are produced, were at that stage five times higher than apparel wage costs in Bangladesh (Clothesource, 2008).

The importance of place: Trade union rights and the Indonesian state

Indonesian labour history is also critical to understanding struggles to establish independent unions within the sports shoe industry. In the mid-1960s, during Suharto’s accession from army general to Indonesian president, the 62 trade unions affiliated to the Indonesian communist party were deregistered and thousands of their members were murdered (Hadiz, 1997: 59). From 1973 until 1998 only the official government trade union, SPSI, was legally allowed to operate and in many factories workers became members of SPSI automatically rather than by choice. Factory-level SPSI leaders commonly had closer relationships with managers in their factories than with their members and it was not uncommon for SPSI leaders to call in the military to suppress worker unrest (Hadiz, 1997: 104-110).

After Suharto’s fall in 1998, a combination of international and domestic pressures for political reform led Suharto’s successors to bring Indonesia’s trade union laws into line with the relevant ILO conventions (Caraway, 2009: 164). It was during the progressive but precarious and relatively brief presidency of Abdurrahman Wahid that Act No 21 of 2000 was introduced, articles 28 and 43 of which make it a criminal offence to discriminate against or intimidate someone in order to prevent them from engaging in trade union activities. Article 43 describes such behaviour as a ‘grave criminal offence’ and provides for a penalty of at least one year in prison and/or a significant fine.
But while Indonesia’s labour laws have become relatively progressive, little energy is put into enforcement and corruption remains a significant problem at all levels of the Indonesian legal system (Caraway, 2009: 164; Fenwick, 2008). In 2004 the Indonesian government established a Corruption Eradication Commission (KPK) and gave it significant powers. But while the KPK is relatively well regarded by the Indonesian people and has prosecuted individuals from across the political spectrum (Schütte, 2012: 39-40) its impact on systemic corruption has been limited (Fenwick, 2008; Schütte, 2012: 39-40). Indonesia’s performance on Transparency International’s Corruption Perceptions Index has only improved gradually from a score of 2/10 in 2004 to 3/10 in 2011 and over the same period the improvement on the Word Bank Institute’s ‘corruption control’ indicator was similarly modest (Schütte, 2012: 39). Further, Fenwick (2008) questions the reliability of the Indonesian data on which these corruption measures are based; Newman (2011) argues that corruption has in fact become more pervasive in Indonesia as power has been decentralised following the end of Suharto’s regime; and Butt (2011) points to the failed attempts to frame two of the KPK’s deputy chairmen and the successful but dubious conviction of the KPK’s chairman Antasari Azhar in 2010 as evidence of the determination, influence and likely ultimate success of those who oppose the KPK’s anti-corruption efforts.

As a result of limited enforcement efforts and ongoing issues with corruption, many employers deliberately flout labour laws, confident their chances of being punished for doing so are slim. When workers attempt industrial action they are still often met with violence, although now factory managers are more likely to seek the assistance of police or of local criminal gangs—known locally as ‘preman’—than the military (Ford, 2000: 77). It was not until 2009 that there was a successful criminal prosecution of a manager for violating trade union rights in breach of articles 28 and 43 of Act No 21 of 2000 and in that case the union put a considerable amount of work into lobbying the local police prosecutor to initiate proceedings, including by bringing a labour academic to explain the legislation (Tjandra, 2010). While the 18-month penal sentence in that case was twice upheld on appeal and the sentence was served, the trade union leaders whose dismissal constituted the criminal act were not reinstated (Tjandra, 2010).

Case study one: Qualitas and Nike

The Qualitas factory in West Java produced Nike shoes up until 2004, employing between 3500 and 6000 workers. Up until 1998 all Qualitas workers had automatically been SPSI members, but in 1999 a new union, Perbupas, was registered at the factory as allowed by the new legislative regime. In the same year US activists arranged an international speaking tour by Gunardi, a Perbupas member who had been dismissed from Qualitas after he lost several fingers in an industrial accident at the factory. On his return Gunardi was reinstated, presumably at Nike’s request. In a focus group discussion on 3 October 2003 the chairperson of the Perbupas union at Qualitas told Connor that this had boosted the confidence of Perbupas organisers:

...the factory managers remember what happened with [Gunardi]... That case for them was like, what do you call it? Shock therapy.

Even so, during research undertaken in March and July 2000, Perbupas officials told Connor that Qualitas managers subjected Perbupas members to considerable intimidation and discrimination. Based on this research, in September 2000 Oxfam Australia released a report about labour issues in this and other Indonesian sportswear factories. When Connor returned
in July 2001, Perbupas organisers at Qualitas reported that the discrimination had largely ceased.

In January 2004 Perbupas members took industrial action at Qualitas and won a 10% wage increase. Two months after the strike, Qualitas announced it was moving all Nike production to another factory owned by the same company and that Qualitas would only produce for the domestic Indonesian market. In July 2004, 700 workers were transferred from Qualitas to the other factory, and although a number of Perbupas union leaders from Qualitas applied to be transferred, all were refused. Qualitas declined to divulge the basis on which workers were being selected for relocation. Oxfam Australia raised this and other issues in a letter to Nike and the company replied on 23 February 2005. Rather than accepting responsibility for investigating whether the FLA’s code had been breached, Nike’s letter deferred to the Indonesian state:

Where freedom of association is supported by law, as is the case in Indonesia, we believe it is in the best interest of all workers to have local governments build capacity in addressing these issues.

In June 2006 management closed Qualitas and dismissed all the workers. According to the union the factory was later reopened with all workers employed on short-term contracts and no Perbupas members were reemployed.

So for four or five years Perbupas was able to work with international allies to push Nike to persuade Qualitas to allow the union to exist and even grow. But once the union impacted negatively on Qualitas’ profits by winning better wages, the manufacturer successfully avoided networked regulation by shifting that part of its production which was for Nike away from the factory and then destroying the union. Rather than ensuring that trade union leaders were not discriminated against as they tried to move with the Nike production, Nike deferred to Indonesian legal processes. Although it was the legal reforms of 1998 which had made it possible for Perbupas to legally register and publicly campaign for their rights, the Indonesian legal apparatus ultimately failed to protect the union.

Case study two: Panarub and Adidas

Panarub, also located in West Java, produces football boots exclusively for Adidas. Since 1998 there have been two unions registered at the factory, one which was formerly affiliated to SPSI and a branch of the Perbupas union. Between 2000 and 2004 Oxfam Australia and other international groups publicly expressed concern about anti-union discrimination and other labour issues at Panarub. Early in 2004, Oxfam Australia and Adidas jointly invited another US-based MSI, the Worker Rights Consortium (WRC), to investigate these allegations. The WRC investigation identified a number of breaches of Indonesian law and Adidas’ code, including systematic discrimination by management against members of Perbupas. Over the course of 2004 and 2005 Adidas and Panarub implemented almost all of the WRC’s recommendations, including significant improvements in health and safety; reinstatement of previously dismissed Perbupas union members; and offers of open-ended contracts to all factory-line workers who had been employed on short-term contracts.

However, in October 2005, Panarub management dismissed the Perbupas union’s entire leadership team for events which occurred during a one-day strike. In this case Adidas declined to give significant weight either to the views of the WRC—which investigated and declared the workers’ dismissals illegal—or even to investigations by Adidas’ own compliance staff, whose investigations raised a number of concerns about the dismissals.
Instead Adidas argued Indonesian legal procedures should determine whether the workers had been wrongfully dismissed. In January 2006 the Indonesian Ministry of Labour declared all the dismissals legal. Perbupas regarded Indonesian courts as corrupt and biased and so, rather than appealing to the Supreme Court, it asked the Indonesian government’s Human Rights Commission, which had a reputation for impartiality, to investigate. The Commission agreed to do so and found that by dismissing the workers Panarub management had violated both Indonesian law and the workers’ human rights.

On the basis of this finding, Adidas called on the factory to reinstate the dismissed workers. Panarub’s owner refused to do so, insisting that unless there was a legal decision in favour of the dismissed workers by the appropriate government body—which in his view was the Ministry of Labour or the Supreme Court, not the Human Rights Commission—he would rather close the factory than reinstate the dismissed union leaders. In research interviews at the time the dismissed Perbupas leaders told Connor that Panarub managers had been telling other workers at the factory that the dismissed Perbupas’ leaders’ campaign for reinstatement was putting the jobs of all the workers at the factory at risk, a strategy which was successfully making the dismissed union leaders unpopular with many workers at the factory.

Panarub’s approach also had an impact on Adidas, which decided not to make its ongoing business relationship with Perbupas conditional on the union leaders’ reinstatement because of the danger that more than 11,000 workers at Panarub would lose their jobs. Instead Adidas indicated it would not increase current order levels to Panarub until the issue of the workers’ dismissal was satisfactorily resolved. Facing financial difficulties, in January 2007 the fired trade union leaders accepted severance packages and gave up their campaign for reinstatement at Panarub. In June 2007, the Perbupas union re-formed in the factory with new leaders and a new name (SBGTS). Both unions continue to function with significant membership at the factory and SBGTS’ leaders continue to express concerns about discrimination against members of their union by Panarub management.

This case also highlights the ability of Asian manufacturers to resist networked pressure from local trade unions, international NGOs and even MNC customers. But Panarub’s reluctance to reinstate the dismissed Perbupas leaders must be interpreted in light of its overall economic relationship with Adidas. Those union leaders had been outspoken in resisting pressure on their members to work at high intensity for long hours; allowing those leaders to continue in that role would have made it more difficult for Panarub to compete with other factories in meeting Adidas’ delivery deadlines. Rather than rewarding Panarub with more orders or higher prices for implementing the recommendations of the WRC report during 2004 and 2005, Adidas appears to have expected Panarub to continue to compete on an equal footing with other factories that had not adopted similar labour reforms. In fact in mid-2006 Adidas significantly reduced orders to the factory on the grounds that it was falling behind other Adidas suppliers on quality and delivery times. After the Human Rights Commission’s finding in favour of the dismissed trade union leaders, Adidas’ labour compliance team made considerable efforts to persuade Panarub to reinstate the workers, but those efforts were arguably undermined by the overall economic relationship between Panarub and Adidas (for an extended discussion see Connor, 2008: 250-251).

Like other large German companies, Adidas is required by German law to ensure its supervisory board has significant representation by elected representatives of Adidas’ direct employees. While this structure may well increase the seriousness with which Adidas approaches labour rights, cases like Panarub suggest that putting representatives of European workers on the board of a European MNC may not be enough to ensure the MNC is willing to place a higher priority on the rights of Asian workers in the company’s supply chain than on the MNC’s desire to maximise the efficiency and quality of production.
Case study three: Spotec and Reebok

From the late 1990s until January 2006, when Reebok was purchased by Adidas, Reebok’s Asian human rights team took a more proactive approach to persuading suppliers to respect trade union rights than either Nike or Adidas. An example is Spotec, also located in West Java, which produced sport shoes exclusively for Reebok. Early in 2003 a branch of Perbupas was established at the factory in competition with a union that had previously been part of SPSI. In April 2003 the newly elected chairperson and secretary of Perbupas were asked to go to a room in the factory. When they arrived more than 20 people, including members of a local preman gang, attacked them with glass bottles and forced them to sign a document saying they would disband their union. The Perbupas union chairperson later told Connor that on the five nights following this attack people came to his house at midnight and threatened him with violence, and at the time a local businessman publicly claimed he could have him killed for IDR100,000 (approximately US$11).

Reebok’s human rights team investigated and insisted Spotec’s managers post a statement in the factory indicating they regarded Perbupas as a legitimate union. In the following month, June 2003, Reebok intervened in a planned retrenchment which would have seen two thirds of the 150 members of Perbupas lose their jobs. Following Reebok’s intervention only nine members of Perbupas were retrenched. Reebok’s various interventions ensured that the Perbupas union was able to establish itself and operate relatively freely at Spotec until after Adidas purchased Reebok in 2006, when financial difficulties caused the factory to close. Adidas discouraged the new owner of the factory premises from discriminating against trade unionists when recruiting staff, but a number of the former union leaders at Spotec have found it impossible to get work with the new owner.

Between 2001 and 2005 Reebok’s Asian human rights team also worked with Hong Kong-based labour rights organisations on an innovative program that provided training and education in trade union election processes to workers in seven Reebok supplier factories in mainland China (Connor, 2008: 197; Chan, 2009). In an anonymous phone interview conducted on 6 July 2011, a former member of Reebok’s Asian human rights team told Connor that the team’s efforts to promote labour rights compliance by suppliers was generally supported by other Reebok staff in Asia because the company as a whole had made a strong public commitment to human rights, so it was seen as an organisational priority. For example Reebok’s buying teams were willing to increase the price paid per shoe for factories which complied with the FLA code. This public commitment was reflected in the company’s marketing messages which drew attention to the annual Reebok Human Rights Award and to Reebok’s donations to human rights groups around the world (see also Connor, 2008: 260-262). These marketing messages were interpreted cynically by many activists, and indeed in 2004 Reebok strongly opposed the formation of trade unions in two of its own distribution centres in the US (see Connor, 2008: 239). Rather than a unitary actor acting with a single goal, this suggests different motivations drove different actors within Reebok. Senior management’s decision to publicly identify with the human rights movement may well have been driven primarily by the hope that this would attract customers, but that public identification created space for motivated leaders within Reebok’s Asian human rights team to strongly encourage Reebok’s suppliers to respect workers’ rights, at least until Reebok was purchased by Adidas.

Conclusion
It is not the case, then, that theories of networked governance have nothing to contribute. In most of the above case studies networked regulation helped create space for independent factory-level unions to operate, at least for a number of years. However these cases also demonstrate that mobile, flexible and intensely competitive global production networks pose at least as many, if not more, challenges for networked governance as they do for regulation by states. Like states, the networked governance systems considered in our cases also have jurisdictional boundaries: they are limited to particular aspects of the production networks of particular MNCs. As our cases demonstrate, such jurisdictions are not necessarily more difficult to evade than state jurisdictions, although in these cases it was Asian manufacturers rather than Western MNCs that jumped jurisdictions.

Given this ability of manufacturers to jump jurisdictions, networked governance of human rights abuses within global supply chains would arguably be more effective if it focused on reward rather than punishment. In some of our cases threats by Western MNCs to cut orders unless the FLA code was respected were not only ineffective, they were also turned against dismissed union leaders: factory managers told other workers that the dismissed union leaders were deliberately risking the other workers’ jobs by continuing to push for reinstatement. If Western MNCs offered significant incentives to suppliers who fully respect freedom of association, union leaders could then argue their organising efforts were not putting workers’ jobs in jeopardy but rather assisting their factories in the competition for orders.

Of course, most structuralists would laugh at the suggestion that MNCs would ever voluntarily offer their suppliers incentives to give trade unions more freedom. However, the role played by different representatives of Nike, Reebok and Adidas in our cases was more complicated than a straight structural analysis would predict. In particular, up until 2005 Reebok’s Asian human rights team was able to take advantage of Reebok’s publicly marketed commitment to human rights—and of particular legal reforms in Indonesia and China—to push a more proactive approach to labour rights compliance than has been followed by Nike or Adidas, or the overwhelming majority of other Western MNCs. However Reebok’s marketing messages did not solve its financial difficulties and the company was taken over by Adidas in 2006. If significant numbers of consumers and investors could be mobilised to reward MNCs if they improved their social and environmental performance, then potentially some MNCs in turn could be motivated to offer significant incentives to their suppliers.

Our analysis also suggests that while the mobility of global corporations may well influence the way Asian states regulate them, this does not render Asian states powerless, nor mean that states can be effectively bypassed or superseded by networked systems of governance. Instead the state’s influence and the influence of its history permeated all of our cases. This was most obvious in Nike and Adidas’ reluctance to make a judgement as to whether trade union rights had been breached until the cases had been considered through official state processes. But, more fundamentally, without the post-1998 legal reforms none of the independent trade unions considered in our cases would have even had the legal right to register and, conversely, had it not been for Suharto’s trade union policies the new independent unions would not have faced a competing legacy union in the factory. Of course the Indonesian state’s criminalisation of anti-union practices has rarely been enforced, and there are serious concerns about corrupt and biased enforcement of other industrial laws by both the executive and the judiciary. But the fact that the relevant legislation has not been repealed since its introduction in 2000 at least suggests that progressive organisations and political parties are not now completely powerless. Similarly the Indonesian Human Rights Commission’s willingness to find in favour of trade union leaders and to criticise the
Department of Labour’s handling of their cases, demonstrates that state bodies are not unitary in their goals or strategies, different state institutions—and different individuals or factions within those institutions—have varying and sometimes conflicting goals with regard to the implementation of state laws. Of course, the pro-human rights political parties and institutions within the Indonesian state are far from currently being the dominant forces driving the state’s interaction with corporations. But without the post-1998 legislative reforms achieved by these progressive forces, particularly the legalisation of trade unions, the achievements of networked regulation in our cases would have been even more limited. Rather than being able to displace the state, networked regulation is likely to be most effective when it draws from, and operates to strengthen, sympathetic elements within the state’s regulatory apparatus.

In short, our cases indicate that those concerned with preventing harms by powerful corporations need to retain considerable respect for traditional structural analysis—with its focus on economic and political forces such as the power of the state and the profit-driven influence of capital. Further, scholarship that wants to give theoretical emphasis to other, networked, sources of power, (whether arguing from a radical or networked regulatory tradition) should pay careful empirical attention to the actual effectiveness of these networked processes and how they are sustained or not over the long term when measured against the successes of capital. Our analysis suggests that any long-term success of networked regulation in assisting (and/or helping to persuade) industrialising states to protect trade union rights will depend to a significant degree on large-scale mobilisation of consumers and investors to reward those MNCs which genuinely respect these rights. Alternatively, sustained change may require a re-structuring of business where the workers whose rights are at stake have a more genuine influence in the direction of a particular company (e.g. active positions on company boards, or a cooperative business structure) in order to help mollify the corrosive influence of current capitalist relations.4

Notes

1. By comparison in 2011 Canada scored 8.7, Germany 8, Malaysia 4.3, the UK 7.8 and the USA 7.1 (Transparency International 2012).
2. Antasari was found guilty of arranging for someone to be murdered. Butt believes this allegation was concocted in order to undermine the KPK’s effectiveness and he questions the impartiality of the court which heard the case.
3. For this case the factory name and names of workers are pseudonyms.
4. Networked regulation of trade union rights in Indonesian sports ware factories is currently entering a new phase. Indonesian trade unions, major global sports brands and major Indonesian footwear manufacturers have negotiated a ‘Trade Union Rights Protocol’ and they are in the process of establishing a joint company/union monitoring committee to deal with complaints when trade unions believe the Protocol is being breached (Gardener 2012). We are both involved in a research project which will be watching this initiative closely as it evolves. While it is too early to judge whether this Protocol will be effective, it has the advantage of being negotiated locally rather than in the US or Europe. To the extent that lessons can be drawn from the cases reviewed in this paper, the success of this new initiative will likely depend in large part on whether the global sportswear companies provide their suppliers with sufficient incentives for complying with the Protocol—and sportswear companies’ willingness to provide such incentives will likely largely depend on whether they believe doing so will enhance their reputations among consumers and investors.


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