

# Global Governance and Labor Rights: Codes of Conduct and Anti-Sweatshop Struggles in Global Apparel Factories in Mexico and Guatemala

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*Monitoring systems have recently arisen to verify compliance with corporate codes of conduct for labor. This article places codes in the context of broader debates on global governance and argues for an empowered participatory approach to international labor standards focusing on enabling rights. Based on ethnographic research in Mexico and Guatemala on the implementation of codes in the apparel sector and their use in cross-border organizing campaigns, it explores the effect of monitoring on worker empowerment and working conditions in global factories. The analysis highlights institutional designs and political strategies capable of contributing to the protection of international labor rights.*

**Keywords:** *governance; sweatshops; codes of conduct; transnational advocacy networks; international labor standards*

The protection of workers' rights is today at the center of scholarly and policy debates on globalization. As economic integration and export-led development have spread across the world during the past three decades, scholars, activists, and governments have become increasingly concerned with the effects of such pro-

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cesses on working conditions, particularly in the global South. Indeed, the growing evidence on exploitative working conditions in global factories—from sexual harassment and physical abuse against female workers in apparel factories in Central America and China to the use of child labor in soccer ball factories in Pakistan—has made sweatshop labor the object of heated scholarly and political discussions on the regulation of the global economy.<sup>1</sup> It has also spurred the formation of transnational advocacy networks (TANs) involving a wide range of actors and strategies aimed at reestablishing the link, blurred by global outsourcing, between brands and retailers in the North and workers in supplier factories in the South. For instance, nongovernmental organizations (NGOs), labor unions, student associations, consumer groups, and labor support organizations have forged transnational consumer-worker alliances seeking to put pressure on transnational corporations (TNCs) to comply with international labor standards, through strategies that range from boycotts to joint monitoring of labor conditions in supplier factories.<sup>2</sup> Recently, the economic and political salience of these and other initiatives has been further expanded through the integration of the issue of sweatshop labor in broader discussions on fair trade, ethical consumerism, and corporate social responsibility.<sup>3</sup>

Under pressure from TANs during the past decade, companies in several industries have adopted codes of conduct for labor to regulate relations with their suppliers in the South. A recent World Bank study estimates that there are 1,000 corporate codes in existence today stipulating the labor, human rights, and environmental requirements for suppliers.<sup>4</sup> In a survey of the world's 500 largest corporations, 98 percent of those responding reported having a code of ethics or a similar guideline, with nearly two-thirds of them having adopted it in the 1990s.<sup>5</sup> Similarly, numerous unions and NGOs in the North and the South have embraced codes of conduct as a potentially valuable mechanism for enforcing labor rights. From their point of view, articulated in a report by the Toronto-based Maquila Solidarity Network, “the real issue for labor and nongovernmental organizations in the North and South is not whether [they] support or oppose voluntary codes of conduct; it's how to effectively engage with and make use of these new regulatory instruments to promote greater respect for workers' rights.”<sup>6</sup>

Despite the proliferation of codes and monitoring systems and the growing interest in them in corporate, labor, and NGO circles, there is surprisingly little empirical research on the implementation of the codes and the operation of monitoring schemes.<sup>7</sup> The existing literature consists largely of studies of the letter of the codes, the negotiations between activists and corporations in the developed world that led to the adoption of the codes, and the process for standard setting within the monitoring systems.<sup>8</sup> Therefore, we lack evidence on the operation of codes of conduct and monitoring on the ground, the way codes are perceived and used by local actors (workers, unions, NGOs, government officials, firms, and

business associations) and, most importantly, the actual effects of codes on the enforcement of labor rights in global factories and the countries where they are located.

In particular, despite recurrent claims in the literature that “the voice of developing-country workers” is the “missing element” in the debate<sup>9</sup> and that “it is crucial that the voices of workers in developing countries be present” in it,<sup>10</sup> it remains to be studied how workers’ voices are in practice included or excluded in the processes of setting and implementing codes of conduct, and whether and how codes of conduct enable workers to organize and strengthen their voices in this and other debates. The literature thus mirrors the focus of most code-of-conduct monitoring systems on so-called “protective rights” (which concern such issues as health and safety, overtime, minimum wage, and so on) to the detriment of “enabling rights” (that is, freedom of association and the right to collective bargaining). Since, as Elliot and Freeman have put it, “these ‘enabling rights’ would allow sweatshop workers to decide for themselves what issues to pursue, trade-offs to make, and battles to conduct with their employers and would probably do more for improving labor standards than anything else,”<sup>11</sup> the lack of studies on the effects of codes on worker empowerment is an important omission in the literature.

The analysis of codes in action also sheds new light on broader theoretical debates, for codes of conduct are a prime example of an approach to regulation that has been recently theorized by a copious literature on governance in the global economy. As explained below, scholars in different fields have formulated novel forms of regulating the economy that rely on coordination among nonstate actors (firms, secondary associations, NGOs, etc.) rather than on top-down state regulation. The leitmotif in this line of research is the theorization of collaboration among nonstate actors as a third type of coordination mechanism (in addition to the market and the state) that has the potential of solving some of the regulatory dilemmas posed by globalization. However, as Jessop has noted, the literature underpinning this “rise of the governance paradigm” focuses on the promises of the model and has not sufficiently addressed the tensions and dilemmas of governance.<sup>12</sup> Put differently, while “market failure” and “state failure” have been thoroughly conceptualized and documented, we have yet to theorize and empirically examine governance failure. In particular, the governance paradigm has largely glossed over (or explicitly bracketed) the problems created by large power asymmetries among the nonstate actors—Northern TNCs and Southern workers in the case of codes of conduct—who are supposed to engage in deliberation and collaboration within governance systems. In the specific realm of codes of conduct, this omission is reflected in the inattentiveness to freedom of association and collective bargaining, the key institutional mechanisms to empower workers and thus mitigate power asymmetries.

In this article, I set out to contribute to addressing these empirical and theoretical shortcomings by bringing enabling rights to the center of the debate on codes of conduct and foregrounding the issue of power asymmetries in discussions of governance. Based on ethnographic research in Mexico and Guatemala on the implementation of codes of conduct in the apparel sector and the mobilization of codes by local workers and labor support organizations in alliance with TANs, I explore the effect of code monitoring systems on working conditions and worker empowerment in global factories.

My argument is threefold. First, contrary to sweeping assessments dismissing codes of conduct and monitoring systems as public relations ploys imposed from corporate headquarters in the North,<sup>13</sup> I argue that different types of codes and monitoring have different effects on the enforcement of labor rights. While critics are right to claim that most of the apparel industry still falls outside the reach of any serious monitoring system, evidence from Guatemala and Mexico suggests that the most stringent systems have the potential to supplement (not replace) national state labor laws in addressing the task of stemming sweatshops. Second, I claim that sustainable improvements in protective rights in global factories crucially depend on the promotion of enabling rights. Given the profound power asymmetries among actors in such global commodity chains as apparel, durable changes in working conditions hinge on the development of institutional mechanisms within monitoring systems that bolster the countervailing power of workers and local labor support organizations. Third, the move toward more effective and empowering code monitoring systems requires sustained cross-border political pressure. By engaging in what Keck and Sikkink have called “accountability politics,”<sup>14</sup> TANs act as key sources of countervailing power by holding TNCs to their codes of conduct and putting pressure on them to adopt more stringent rules and monitoring methods. Codes of conduct, therefore, must be viewed as part of an emerging transnational field of labor regulation that crucially includes other types of labor standards—national state laws, international treaties, unilateral sanctions, and social clauses in trade agreements—as well as the TANs that exert the requisite leverage for the formulation and enforcement of such standards.<sup>15</sup>

To substantiate these claims, I divide the remainder of this article into five parts. In the first part I present the methods. Next, I lay out the analytical approach by discussing the treatment of power asymmetries within the governance paradigm and suggesting an alternative approach that emphasizes empowered participation in the governance of labor relations. Then, I turn to the empirical examination of code-of-conduct compliance monitoring systems and their implementation in the fieldwork sites in Mexico and Guatemala. In the fourth section, I illustrate my argument on transnational mobilization and accountability politics with evidence from my research on two prominent cross-border organizing campaigns in global factories: Kukdong, a Nike contractor located in Puebla,

Mexico, and Choishin, a Liz Claiborne contractor located near Guatemala City, Guatemala. Finally, I offer some conclusions.

#### METHOD

This study is an instance of what Marcus has called “multi-sited ethnography:” a combination of qualitative methods applied to the study of different locales that aims to examine the operation of global processes shaping events in such sites.<sup>16</sup> Two methods—semistructured interviews and participant observation—were used during the two fieldtrips involved in this research. The bulk of the data were collected during the second fieldtrip in the summer of 2002 to Puebla and Guatemala City. I carried out in-depth interviews with a wide range of people who play important roles in the apparel industry and the monitoring systems in Mexico and Guatemala, be it as representatives of business associations, factory owners or managers, state regulators, corporate consultants, independent monitors, brand representatives, staff members of pro-labor NGOs, academic analysts, legal counsel, or leaders of unions and labor federations. I also interviewed the key actors in the two unionization campaigns—workers, union leaders, factory managers, brand representatives, staff from participating NGOs, legal counsel, and internal and independent monitors. Each of the thirty-four interviews lasted between one and three hours, with a mean of approximately ninety minutes. In 2003 and 2004, I also conducted follow-up interviews in the U.S. with members of unions and NGOs involved in code-of-conduct monitoring in general and in the two unionization campaigns in particular, as well as phone interviews with the Guatemalan workers and activists involved in the 2003 negotiations that led to the signing of a collective contract at Choishin/Cimatextiles, the Guatemalan factory that is the object of one of the case studies.<sup>17</sup>

In the first fieldtrip, I was also a participant observer in the other case study campaign—the unionization of workers at the Kukdong factory in Puebla, Mexico. I traveled to Puebla in March 2001 and worked for two weeks with organizers from the Centro de Apoyo al Trabajador (Center for Worker Support, CAT) and United Students Against Sweatshops (USAS), who at the time were doing the groundwork for the foundation of the independent union at Kukdong.

To get a sense of the actual conditions in global apparel factories and the way codes are implemented in them, during the second fieldtrip I visited several plants in the city of Tehuacán, in the state of Puebla, one of the main centers of apparel production in Mexico. Also, I visited Kukdong and Choishin with the authorization of the U.S. manufacturers (Nike and Liz Claiborne, respectively) that are their major clients. Factory visits lasted between three and four hours. I was given a tour of the factory by managers and interviewed the human resources director.

ANALYTICAL APPROACH: EMPOWERED PARTICIPATORY REGULATION  
AND INTERNATIONAL LABOR STANDARDS*The Governance Paradigm and Codes of Conduct*

Recent scholarly discussions on and practical experiments in governance share a diagnosis of the core problems of regulation in contemporary capitalism. According to this diagnosis, the “regulatory fracture” of the global economy stems from the divergence between extant regulations and current economic processes.<sup>18</sup> Such divergence results from the different scales at which global economic processes and national states’ regulations operate, and from the difficulties that national states face in applying their top-down regulatory logic to industries such as apparel whose highly decentralized and globalized system of production is based on a combination of market and network organizational logic. In this context, and in the absence of global governance mechanisms, states, in trying to counter market failures, can generate their own breed of failures—that is, “state failures.”<sup>19</sup>

The guiding question for theorists of governance is whether regulatory institutions can be established or revitalized so as to avoid market and state failures. From their viewpoint, the answer lies in a third type of organizational form, that is, collaborative networks involving the active participation of private actors—firms, unions, NGOs and other secondary associations—as well as state agencies. By following a reflexive logic that fosters continuous innovation and dialogue among the actors involved, these networks, it is argued, have the potential to overcome the regulatory dilemmas that markets (which follow the logic of exchange) and states (which follow the logic of command) cannot solve on their own.<sup>20</sup>

A vast and influential body of literature has developed during the past few years that theorizes and empirically studies the governance paradigm under a variety of labels, among them “democratic experimentalism,”<sup>21</sup> “post-regulatory law,”<sup>22</sup> “soft law,”<sup>23</sup> “responsive regulation,”<sup>24</sup> “collaborative governance,”<sup>25</sup> “outsourced regulation,”<sup>26</sup> “reflexive law”<sup>27</sup> or simply “governance.”<sup>28</sup> Drawing to different degrees on pragmatist social theory, analysts contributing to this line of research and policy have explored the potential of recent transformations in the governance of firms, such as benchmarking, innovation through deliberation within and among firms, simultaneous engineering and error detection, for dealing with regulatory problems in a wide range of institutional fields, from public school reform at the local level<sup>29</sup> to national environmental regulation,<sup>30</sup> regional regulatory coordination,<sup>31</sup> and global labor standards.<sup>32</sup>

For contributors to the paradigm, institutions embodying such innovations foster reflexive collaboration among actors at all levels—between employers and employees within firms; among firms and private associations; and among states, firms, associations, and international organizations. These institutional designs, it is argued, generate two types of economic and political benefits. First, they better

serve the coordination needs of the complex and unstable global markets that characterize post-Fordist capitalism than the type of command-and-control, centralized state institutions designed to regulate Fordist capitalist economies.<sup>33</sup> Second, since gains in economic and political efficiency result from the use of local knowledge, public institutions must be decentralized and opened up to the participation of all individuals and groups potentially affected by them. Deliberative democracy is thus expected to reinvigorate the public sphere and increase the legitimacy of state action.<sup>34</sup>

Notwithstanding its contributions to the rethinking of regulation and the revitalization of democratic theory, the governance paradigm has largely neglected the issue of power differentials among actors in deliberative democratic institutions. The deep inequalities characterizing the local and international contexts that pose the most difficult regulatory challenges (e.g., the inequalities between capital and labor in globalized production) are a far cry from the ideal conditions of deliberation underlying the paradigm. Some theorists of governance retort that power asymmetries among societal actors are not so profound as to impede genuine deliberation. Against “centralist egalitarian” critics who argue that mitigating bargaining inequalities through mechanisms for redistributing resources and power is a precondition for deliberation lest the latter breed co-optation and further inequity, they claim that “politics is vastly more complex, and the prospects for the have-nots far more open in historical perspective than this idea of the mechanical reproduction of inequality allows.”<sup>35</sup> From a pragmatist perspective, actors’ interests and values are defined during the deliberation process rather than given a priori by the actors’ unequal positions in the social field. Thus, the success or failure of governance institutions hinges on the details of each situation, rather than on a fixed set of preconditions such as mechanisms for offsetting power differentials. Within deliberative governance, “it is impossible to predict what persons or groups will do by looking at their interests, values, or institutions because the limits of these can always become the starting point of their redefinition.”<sup>36</sup> As a result, the governance paradigm tends to bracket power asymmetries and to view the public sphere as a rather depoliticized arena of collaboration among generic “stakeholders.”

The contributions and shortcomings of the governance paradigm are illustrated by its application to the issue of international labor standards, most compellingly developed by the “ratcheting labor standards” (RLS) model of codes of conduct.<sup>37</sup> In the RLS model, TNCs would sign on to codes, enforce them along their global supply chains, disclose the location of the supplier factories and allow monitors to conduct inspections in them. Commercial and independent monitors would rank firms according to the working conditions in their supplier factories. Finally, multi-stakeholder organizations such as the Fair Labor Association (FLA) and the Worker Rights Consortium (WRC), as well as international organizations (e.g., the ILO and the World Bank), would monitor the monitors and make

information available to the broader public. Consumers and investors would use this information in their purchasing and investment decisions. This would generate market incentives for firms to compete for better rankings and thus gradually ratchet up labor standards.<sup>38</sup>

Through a decentralized regulatory system that promotes transparency and participation by multiple actors, the RLS model reaps the political and economic benefits of the governance paradigm. Like the latter, however, it fails to deal with the deep power asymmetries among different actors—notably between transnational contractors and suppliers on the one hand, and workers and local labor support organizations on the other. In the RLS firm-centric approach, the improvement in labor standards is thought to come mainly from supplier-contractor relations through productivist mechanisms like benchmarking of best practices.<sup>39</sup> Hence the absence of institutional designs for including workers as fundamental actors and worker empowerment as a central goal of monitoring. Also, the social and economic pressure driving the RLS process originates principally in market decisions by individual ethical consumers and investors. Thus, the distinctly *political* countervailing pressure from the state and organized collective actors (consumer associations, unions, NGOs, and so on) is pushed to the background.

The bracketing of power asymmetries, I argue, is a key source of governance failure. As explained below, in the realm of code-of-conduct implementation this is illustrated by the limitations of monitoring systems that share with RLS the relative neglect of enabling rights and organized political pressure. This suggests the need for a different approach to governance and global labor regulation that puts the issues of countervailing political pressure and empowered participation front and center.

#### *Governance, Participatory Regulation, and International Labor Standards*

Some contributions to the debate on governance have recognized and sought to address the risk of failure resulting from power differentials. For instance, Fung and Wright's theory of empowered participatory governance is centrally concerned with the role of countervailing power in governance systems.<sup>40</sup> This view starts from the recognition of the possibility of governance schemes turning into window dressing, for "such schemes are often inattentive to problems of powerlessness and domination, thus seeming to suggest that if only the institutional designs can be constructed just right, then gross imbalances of power in the context of these institutions will be neutralized."<sup>41</sup> Thus, institutional mechanisms and political strategies are needed that facilitate the rise and exercise of countervailing power. As Fung and Wright put it, "writ large, the shift from top-down adversarial governance to collaborative governance, when there is no countervailing power or capacity, can amount in practice to a state-shrinking, deregulatory maneuver in which oppositional forces are co-opted and neutralized and the collaborative participation becomes mere window dressing."<sup>42</sup>

In the realm of international labor standards, the key theoretical and practical task, therefore, is to think of ways to move from elite, firm-centric governance (as currently embodied by most monitoring systems) to an alternative approach to codes as represented by some nascent experiences in independent monitoring, worker empowerment and cross-border labor organizing described later in this article. This alternative model, which I call empowered participatory labor regulation (EPLR), entails addressing three potential sources of governance failure. First, power differentials between transnational capital and local labor need to be reduced through institutional designs that effectively protect workers' rights to organize and collectively bargain. Second, the inequality of voices between Northern and Southern parties—NGOs, unions, consumer groups, etc.—within monitoring systems needs to be addressed through equitable decision-making rules and forms of transnational engagement that overcome the current dominance of Northern actors and build the capacities of labor support organizations in the South. Together, these two features of the model allow for the *empowered* participation of organized workers, local labor support organizations, and TANs and make possible the requisite countervailing power in EPLR schemes. Third, EPLR supplements rather than replaces state regulation. In contrast to code models such as RLS that see uniform basic standards as the product (not the starting point) of governance mechanisms,<sup>43</sup> EPLR takes national labor laws and core international labor standards (as recognized in ILO conventions) as the regulatory floor upon which codes must build and improve. I refer to the model as empowered participatory labor *regulation* to highlight such articulation and continuity between codes and national and international regulations.

Therefore, the application of the logic of EPLR to global commodity chains entails institutions and political pressures operating at two levels: 1) states, TANs, international monitoring organizations such as the FLA and the WRC, TNCs (putting pressure upon their suppliers), and international organizations (e.g., the ILO) create the political and legal conditions that allow 2) local workers, unions, labor support organizations, employers, and public authorities to engage in continuous monitoring and empowered negotiation over labor conditions. As will be seen below, the Choishin and Kukdong unions were the product of precisely this combination of countervailing pressure and local deliberation and negotiation involving both adversarial and collaborative tactics.

The argument for an EPLR approach to codes of conduct rests ultimately upon the belief that *sustainable* improvements in working conditions in global factories depend on worker empowerment. By allowing workers to decide for themselves the content and the pace of their struggles with employers and to participate actively in truly continuous monitoring in the every day operation of the factory, enabling rights hold the key to durable gains in protective rights. Thus, the case for EPLR rests not only on the intrinsic benefits of enhanced economic and political democracy that come with worker organization, but also on the crucial link

between enabling rights and tangible, sustainable improvements in working conditions in global factories.

The global public sphere envisaged by EPLR is a politicized one. Although, as in the governance paradigm, collaboration and dialogue among organized private actors (and between them and states and interstate organizations) plays an important role, this takes place against the background of a mobilized global civil society in which TANs and social movements exert pressure on TNCs, suppliers, states, and other dominant actors through contentious politics. Information campaigns, boycotts, teach-ins, and other adversarial tactics figure as prominently as collaborative deliberation and ethical consumerism and investment.<sup>44</sup>

The following sections ground the critical discussion of the prevailing approach to codes and the emerging signs of an EPLR alternative in the realities of monitoring and worker organization in global factories in Mexico and Guatemala.

#### THE CODES IN ACTION: THE CONTEXT AND THE OPERATION OF MONITORING SYSTEMS IN MEXICO AND GUATEMALA

Critics from opposite sides of the theoretical and political spectrum have dismissed codes of conduct for contrasting reasons. On the one hand, globalization enthusiasts have condemned stringent codes for threatening to disrupt the smooth flow of trade and investment that are supposed to be the best levers for raising labor standards in the South.<sup>45</sup> On the other hand, impatient with the realities of co-optation and the façade of regulation that characterize elite governance systems, some progressive critics have dismissed codes of conduct as public relations ploys orchestrated by TNCs in cooperation with market-oriented NGOs and consumer groups.<sup>46</sup>

What does the evidence from Mexico and Guatemala tell us about these criticisms? In this section, I tackle this question by first looking into the political and economic obstacles to effective state regulation that have led unions and labor support organizations in Mexico and Guatemala to experiment with codes. I then distinguish several systems of monitoring and examine their different impact on worker empowerment and sustainable improvements in working conditions in global factories.

#### *Why Codes of Conduct?*

One of the few points of consensus that can be spotted in the interviews with union leaders, factory owners, independent and commercial monitors, brand representatives, and labor advocates in Mexico and Guatemala is that, as things stand now, the state is not a reliable enforcer of labor laws. Even those who dismiss codes of conduct off-hand—like the Secretary of CUSG, a Guatemalan labor federation, for whom such codes are “a farce”—could not bring themselves to sound hopeful about the state as the sole regulator of labor conditions in global facto-

ries.<sup>47</sup> In the case of Guatemala, a country under reconstruction after almost four decades of civil war, the difficulties involved in building state institutions capable of enforcing labor laws in the short term are vividly illustrated by the labor attaché of the U.N. Verification Mission (MINUGUA), who has been responsible for overseeing the implementation of the labor law reforms mandated by the 1996 peace accords:

There are neither magic solutions nor shortcuts. You could say, “Well, what we have to do is improve labor courts.” Perfect. Let’s create twenty more courts. Great. But where are the judges? Are they going to come down from a flying saucer? Are they going to come from the international community? Are we going to have a Norwegian judge hold court in Guatemala? In this country there are no schools for training labor judges, there are *none*, let’s get this clear. And they cannot exist because there is no academia . . . it was all destroyed during the war. We are 30 or 40 years behind . . . so things cannot change overnight.<sup>48</sup>

In light of this situation, national and international labor advocacy organizations tend to hold a pessimistic view of the prospects for improving the state’s regulatory capacity in the near future and contemplate, even if hesitantly, the possibility of engaging in nonstate forms of regulation. This has led analysts to conclude that limited state capacity, exacerbated by neoliberal policies, is one of the key reasons why collaborative governance has gained momentum.<sup>49</sup> However, this conclusion needs to be qualified, for it tends to accept too hastily the view that state incapacity naturally flows from current transformations in the global economy. In fact, state (in)capacity is produced through practices and discourses to which state elites actively contribute, and is far from homogeneous across countries, even within the global South.<sup>50</sup> While some countries like Guatemala face the type of fundamental infrastructural problems suggested by the quote above, others like Mexico can rely on a state apparatus that, if put to the service of the protection of labor rights, can achieve a much higher level of compliance. Thus, the usefulness and desirability of codes of conduct as a mechanism to govern labor relations in specific contexts are to be regarded as a variable rather than as a constant.

In the Mexican and Guatemalan contexts, problems of state incapacity are compounded by corrupt practices associated with corporatist relations between the state, capital, and (in Mexico) co-opted organized labor, which have created a further incentive for workers, unions, and pro-labor NGOs to experiment with codes of conduct. In Mexico, such practices range from corrupt business unionism to the bribing of labor judges and inspectors.<sup>51</sup> In Guatemala, they include the violent repression of unions and an informal revolving door system whereby former labor inspectors are appointed as heads of human resources in apparel factories producing for export.<sup>52</sup> Hanging from the walls of labor federations’ offices, the portraits of the dozens of union leaders assassinated by security and paramilitary forces during the past decades are a harrowing reminder of the very high level of intimidation and repression.

A final reason prompting experimentation with codes of conduct is the concerted, and oftentimes violent, opposition to worker organizing on the part of factory owners and managers in the apparel industry. The unwavering opposition of Mexican *maquila* owners to the formation of independent unions has been well documented.<sup>53</sup> In Guatemala, industrialists collectively fight with all their might against unionization attempts at *any* factory. The head of FESTRAS, the Guatemalan labor federation that coordinated the Choishin unionization drive, remarked, “We know that we’re not fighting just Choishin, we’re fighting the whole apparel and textile sector, so we know that they will use all types of tactics, not because it is profitable . . . but because their main goal is to attack any worker organization so that no precedent is set.”<sup>54</sup>

Among such joint anti-union tactics are a readily available blacklist of “troublemakers” and a preemptive system of code-of-conduct monitoring organized by VESTEX, the national textile and apparel business association. This system employs commercial auditors and routinely certifies factories as in compliance with codes and labor laws.

In sum, state incapacity, corporatist practices, state repression and local capital’s anti-union strategies converge to create a blockage that has prompted experimentation with codes of conduct and led labor rights advocates to pursue transnational strategies. In what Keck and Sikkink have called a “boomerang effect,”<sup>55</sup> some unions and labor rights organizations in the two countries have circumvented the national state and networked with sympathetic NGOs, consumers, students, regulators, and universities overseas that have used codes to pressure governments and TNCs, which in turn have occasionally put pressure on Mexican and Guatemalan regulators and suppliers to enforce labor rights.

### *Monitoring Global Apparel Factories*

How are codes of conduct applied in practice? What effects do the monitoring systems have on workers’ capacity to organize and thus on the possibility of durable improvements in working conditions? In tackling these questions as they pertain to global factories in Guatemala and Mexico, I focus on third-party monitoring, which involves an external monitor that applies a code of conduct formulated by a multi-stakeholder umbrella organization such as the Fair Labor Association (FLA), the Worker Rights Consortium (WRC), Social Accountability International (SAI), or the Worldwide Responsible Apparel Production Certification Program (WRAP). Given the lack of credibility of first-party monitoring (in which a single manufacturer monitors compliance based on audits carried out by its own personnel or by a commercial auditor hired by it) and second-party monitoring (which involves a business association formulating a code of conduct and hiring commercial firms to report on compliance), it is with regard to third-party monitoring that the most consequential debates and experiments are taking place.

The four sticking points in third-party monitoring are the content of the codes, the independence and comprehensiveness of monitoring, the transparency of the system, and sanctions for noncompliance. The combination of these factors allows for a comparison that yields a range of systems that go from the most stringent to the most permissive ones. As an approximation of this typology and as a guide for the assessment of the potential of each system for worker empowerment, I have constructed a ten-point score based on the four above-mentioned factors. Each of the three first factors is broken down into several questions, while the issue of sanctions is addressed in one question. I have given one point to the monitoring system for every question answered in the affirmative. Given that most systems share basic rules and principles and that general surveys of the origins and characteristics of the systems are available in the literature,<sup>56</sup> here I focus on the issues on which they part ways and make a crucial difference with regard to enabling rights. The questions used to construct the score are as follows:

1. *Enabling Rights*
  - 1.1 Does the code include a clause unambiguously guaranteeing freedom of association and the right to collective bargaining?
  - 1.2 Does the code establish a functioning mechanism enabling workers to submit complaints directly to monitors or the umbrella organization?
2. *Independence and Comprehensiveness of Monitoring*
  - 2.1 Does the umbrella organization (rather than the manufacturer) choose and pay the monitors?
  - 2.2 Are most accredited monitors independent (as opposed to commercial organizations)?
  - 2.3 Are visits unannounced?
  - 2.4 Does the system entail systematic monitoring of a sample of factories along the supply chain (as opposed to self-selected individual factories or a few individual factories handpicked by the umbrella organization)?
  - 2.5 Are factory evaluations based on continuous monitoring (as opposed to one or a few visits)?
3. *Transparency*
  - 3.1 Are manufacturers required to disclose the name and location of their supplier factories?
  - 3.2 Does the umbrella organization periodically publish information on manufacturers' performance with regard to code compliance?
4. *Sanctions*

Does the umbrella organization have the power to impose sanctions other than denial of certification (e.g., exclusion from the system, termination of contracts, etc.)?

The score yields the comparison of the main U.S.-based systems portrayed in Table 1. From left to right, the systems are ordered from most to least stringent.

Table 1  
*Comparison of Third-Party Monitoring Systems*

	WRC	FLA	SAI (SA8000)	WRAP
Freedom of association and collective bargaining?	Yes	Yes	Yes	No
Worker able to file complaints?	Yes	No <sup>a</sup>	No	No
Does umbrella organization choose and pay monitor?	Yes	Yes	No	No
Are most monitors independent?	Yes	No	No	No
Are visits unannounced?	Yes	Yes	Yes	No
Is monitoring systematic?	No	Yes	No	No
Is monitoring continuous?	Yes	No	No	No
Are manufacturers required to disclose name and location of suppliers?	Yes	No	No	No
Does umbrella organization publish reports?	Yes	Yes <sup>b</sup>	No	No
Does umbrella organization have sanctioning capacity?	Yes	Yes	No	No
Total	9	6	2	0

*Source:* Organizational Web sites and MSN, “Codes Update.” WRC = Worker Rights Consortium; FLA = Free Labor Association; SAI = Social Accountability International; WRAP = Worldwide Responsible Apparel Production Certification Program.

a. The FLA code includes rules on workers’ filing of complaints, but they have yet to be systematically implemented.

b. The first FLA report—which still relies heavily on companies’ self-reporting—was published in 2003.

This comparison aims at highlighting the general trends in monitoring, rather than ranking the existing systems with precision. Specifically, precise measurement of the relative merits of the systems is difficult with regard to the two most stringent ones—that is, the WRC (founded in 1998 at the initiative of USAS and joined by universities and unions) and the FLA (created in 1996 under the auspices of the U.S. government and joined by major manufacturers but not by unions). The difficulty lies in the fact that they embody two different approaches to monitoring, rather than two varieties of the same approach. The WRC does not certify factories or brands, nor does it carry out yearly inspections of a random sample of supplier factories. Instead, it conducts in-depth, continuous investigations on a limited number of factories selected through a bottom-up process whereby workers and local NGOs lodge complaints on violations of codes of conduct. Industry is not represented in its governance board, which is composed of delegates from university administrations, USAS representatives and labor experts. Thus, the WRC’s role has been variously called that of a “confronter,”<sup>57</sup> “vigilante,”<sup>58</sup> or “fire alarm operator.”<sup>59</sup> In contrast, the FLA certifies brands based on external monitoring of a larger sample of “high-risk” factories. It seeks to work collaboratively with industry, which is well represented on its governance board. In April 2002, under the pressure of competition from the WRC, the FLA made important changes, which are reflected in Table 1, regarding the independence

and transparency of its monitoring program. Contrasting with the terms used to describe the WRC approach, it has been called an “engager,” “verifier” or “collaborator.” Thus, the central trade-off underlying the contrast between these two approaches is between stringency and coverage of monitoring. In Table 1, each of these aspects has been weighted equally, with the WRC scoring for stringency but not for systematic coverage, and the FLA scoring for coverage but not for stringency. (The WRC, however, ranks higher in transparency and worker involvement, which explains its higher score). Nonetheless, putting the contrast in these terms—as has been common in the heated debates on the FLA and the WRC approaches—drives attention away from the fact that, from the point of view of the effective protection of labor rights, both stringency and coverage in monitoring are needed. In the actual practice of monitoring, as shown below in the examination of the Kukdong and Choishin unionization campaigns, these two contrasting approaches can play complementary roles in the enforcement of labor standards.

These complications notwithstanding, Table 1 clearly brings out four general trends supported by recent studies and my own ethnographic research. First, the most widely used systems of code compliance verification (WRAP and SAI) are also the least protective and conducive to worker empowerment. In particular, the fact that WRAP, an initiative of the American Apparel Manufacturers’ Association, is the program preferred by U.S. manufacturers producing for large discount stores like Wal-Mart means that most of the market for apparel still falls outside the reach of any serious compliance verification system. Second, commercial auditors dominate the practice of monitoring. For instance, according to the 2003 MSN report, “in 2000, Pricewaterhouse Coopers (recently spun off as Global Social Compliance) alone carried out more than 2,000 social audits.”<sup>60</sup> As O’Rourke has shown, Global Social Compliance’s monitoring suffers from such fatal flaws as relying largely on data provided by management, as well as on evidence from superficial factory visits and interviews with workers conducted under management supervision.<sup>61</sup> Commercial auditing firms are also dominant in FLA monitoring. For example, out of the 63 external monitoring visits conducted at Nike’s facilities during the year 2002–2003 under the FLA system, virtually all were carried out by commercial firms.<sup>62</sup>

These two trends are perceived by workers, labor leaders, and worker advocates in Guatemala and Mexico as important obstacles for the effective enforcement of codes. Several interviewees pointed out that monitoring currently gets only at the “tip of the iceberg,” in that it reaches only export-oriented factories producing for high-profile branded merchandisers and focuses on isolated violations of protective rights rather than on the promotion of enabling rights.<sup>63</sup> As several of them noted, even getting consistently at the tip of the iceberg would require replacing commercial with independent monitors.<sup>64</sup> A handful of pioneer independent auditors—notably COVERCO in Guatemala and the Grupo de

Monitoreo Independiente (GMIES) in El Salvador—have arisen that can play this role. However, as shown by COVERCO's travails in getting brands and the FLA to accept the conditions it has set to guarantee the accuracy and ensure the credibility of its reports (e.g., continuous access to the audited factory for at least six months and the possibility of publishing the reports), there is still a long way to go before independent monitoring becomes the rule.

The third trend suggested by Table 1 is more auspicious for the cause of the protection of workers' rights and worker empowerment. Albeit still incipient, some experiments in code compliance verification—notably the WRC, but also the FLA in the recent Choishin and BJ&B cases—have moved in the direction of EPLR. Two key features of the WRC system have brought in workers and gradually strengthened its participatory component. First, the WRC has worked with local NGOs and labor organizations on joint investigative teams. This practice was first tested in the Kukdong case and implemented with success most recently in the case of the BJ&B factory in the Dominican Republic, a Nike contractor producing caps bearing the emblems of U.S. colleges. This case entailed a collaborative effort between the FLA and the WRC and culminated in the formation of an independent union and the signing of a collective contract in March 2003.<sup>65</sup> Also, by working collaboratively with local labor advocates, the WRC has helped build the capacity of worker support organizations that are playing an important autonomous role in organizing campaigns and in pushing for effective monitoring. The collaboration between the WRC and the Centro de Apoyo al Trabajador (CAT) in Mexico, an organization that played a key role in the Kukdong negotiations, is a case in point. The importance of worker support organizations cannot be overemphasized. Indeed, they are key participants in TANs and play a crucial role in local communities. Many of them—like Factor X in Tijuana (Mexico); the Centro de Orientación de la Mujer Obrera (COMO) in Ciudad Juárez (México); and La Mujer Obrera in El Paso, Texas—are feminist organizations that are independent from but work collaboratively with unions.<sup>66</sup>

Second, the WRC has also engaged individual workers by setting up training and popular education programs and by creating mechanisms for channeling complaints directly filed by them. Interestingly, SAI has also moved in this direction in recent years by collaborating with the global apparel union—the International Textile, Garment, and Leather Workers Federation (ITGLWF)—on a training program for workers in different parts of the world.<sup>67</sup> These efforts address a fundamental flaw in the extant monitoring systems evident in interviews and factory visits. The large majority of workers simply do not know about the existence of codes of conduct, let alone the mechanisms that they can use to make them effective. For instance, union leaders at Kukdong and Choishin described how workers generally associate the term “codes of conduct” (*códigos de conducta*) with rules on what the company expects *their* behavior (*conducta*) to be. Even

labor lawyers, factory owners, and NGO activists—except those directly involved in monitoring factories—know very little about the codes.

This proactive stance, however, has made it more difficult for the WRC to gain the cooperation of companies under investigation. Also, the limited scope of WRC monitoring means that most factories are not covered. For those reasons, an equally encouraging trend, the fourth one highlighted by Table 1, is the reciprocal “pull effect” that the WRC and the FLA are having on each other. While the high credibility of the WRC has forced the FLA to make substantial changes to its rules—mainly by moving to directly choose and pay the monitors rather than having member firms do it and by making preliminary efforts to increase the transparency of its monitoring practices—cooperation between delegates from both organizations in joint investigative teams (notably in the BJ&B case) has created the type of mix between the pro-worker, adversarial strategy and cognitive framework that characterizes the WRC, and the more collaborative strategy and framing typical of the FLA. Therefore, from the point of view of the effective protection of labor rights through codes of conduct, the coexistence of confronters such as the WRC and engagers such as the FLA is an asset rather than a liability. As Elliot and Freeman have shown, the optimal strategy for advancing the twin goals of stringency and coverage in monitoring is some combination of adversarialism (to put continuous pressure on TNCs and suppliers to comply with codes) and collaboration (to promote the diffusion of higher labor standards along global commodity chains).<sup>68</sup>

Recent surveys of trends in monitoring around the world corroborate the mixed picture emerging from my research and support the case for developing the nascent institutional mechanisms embodying an EPLR approach. While noting the lack of a critical mass of brands committed to stringent monitoring and the continuing dominance of commercial auditors, the 2004 MSN report documents increasing discontent on the part of unions, labor rights NGOs, and some brands with the “policing” or “checklist” model of monitoring, as well as growing experimentation with empowered participatory approaches and collaboration among the more stringent monitoring systems.<sup>69</sup> Some of the specific institutional mechanisms conducive to an EPLR model documented by these surveys are the proliferation of labor rights–training initiatives, civil society and worker participation in monitoring, the promotion of worker representation in such organs as health and safety committees, and incipient efforts at effectively guaranteeing the right to collective bargaining in global factories.

In sum, experimentation with institutional designs that facilitate the entering of countervailing voices (notably those of workers and local worker organizations) has already shown the potential of EPLR. Thus, it comes as no surprise that the first two collective contracts signed in Latin American global factories (Kukdong and BJ&B) producing for brands that have adopted codes of conduct

resulted from WRC-sponsored participatory investigations, and that the most recent case (Choishin) involved an organization (the FLA) that has felt the pressure to move in this direction.

As argued above, together with propitious institutional designs, effective political mobilization is a central component of EPLR. In light of the continuing resistance from most brands, suppliers, and umbrella organizations to creating the conditions to enforce even basic protective rights, ratcheting up monitoring systems to tackle issues of worker empowerment ultimately depends on the efficacy of the countervailing power exercised by cross-border anti-sweatshop networks and by national states and international organizations under pressure from these networks. Given the deep power differentials among actors in the apparel global commodity chain, such external pressure is needed to establish the political conditions for workers and labor support organizations to engage in EPLR-style monitoring of labor standards. In the next section I move from institutional design to this closely related but analytically distinct issue of political mobilization by documenting the use of codes by the TANs supporting the unionization of workers at Kukdong and Choishin.

CODES OF CONDUCT AND ACCOUNTABILITY POLITICS:  
AN ILLUSTRATION FROM THE KUKDONG AND CHOISHIN CAMPAIGNS

On January 9, 2001, more than 600 out of the 850 workers of Kukdong International—then a Nike and Reebok contractor—occupied the yard of the factory. They had three demands: the cafeteria food, so often rotten and worm infested, must be improved; the corrupt, company-sponsored union must be replaced by an independent union to be formed by workers; and the company must reinstate the five supervisors who were fired for helping organize a boycott of the cafeteria a few weeks earlier.<sup>70</sup>

Management refused to negotiate. Instead, they brought criminal charges against the workers, which were swiftly processed by the state's courts. To avoid further "damage to private property," the police raided the factory on the night of January 11. Against the background of the screams of horrified parents who had come to bring food and clothing, nearly 400 young workers—most of them women in their teens and early twenties—were violently evicted from the factory. Three workers were hospitalized and at least thirty were wounded. On January 13, work at the factory resumed, but management did not allow several workers to go back to work in retaliation for their leadership during the work stoppage. Many other workers did not return to the factory for fear of being beaten again. When I visited their houses that March, their parents, in tears, still refused to let them return to where they had been so badly beaten, despite reassurances from other workers and organizers.

With the end of the strike, the status quo seemed to have been restored at the flagship apparel factory in the state of Puebla—the state heralded as the vanguard

of the “maquila revolution” sweeping across Mexico and Central America. A local newspaper quoted Kukdong managers as saying that nothing had happened and that things had gone back to normal.<sup>71</sup> For once, however, things did not go back to normal. Nine months later, on October 8, *The New York Times* reported the signing of the first collective contract ever between an independent union and an apparel factory in Mexico.<sup>72</sup> The factory was Kukdong and the workers were the same ones that had courageously participated in the strike. What happened in between, a chain of protests and negotiations in the U.S. and Mexico, made the difference. Most importantly for our purposes, such protests and negotiations crucially involved the mobilization of Nike’s and Reebok’s codes of conduct and monitoring systems by a TAN including a wide array of local and international actors (see Table 2) using the strategies of accountability politics.

Things did not go quite so well for the nearly 1,100 workers at Choishin, the two-factory maquiladora complex embedded in a region of volcanoes and poor villages on the outskirts of Guatemala City. Working conditions at the factory were not different from those at Kukdong and the maquiladora sector in general. Forced overtime, low wages, and verbal and physical abuse against the largely female labor force had become the norm.<sup>73</sup> After two years of clandestine organizing, on July 9, 2001, a group of twenty workers filed for state recognition of their newly formed union.

Management’s response illustrates vividly the above-mentioned obstacles that unions face in the apparel sector in Guatemala. According to the report by COVERCO, the independent NGO that had been verifying compliance with Liz Claiborne’s code of conduct at the factory, the very same day that workers filed for official recognition of the union, a team of lawyers hired by the Guatemalan association of apparel producers (VESTEX) visited the factory to dissuade workers from joining the union and invite them to join a preemptive “solidarist” association.<sup>74</sup> Management also prompted supervisors to spread the rumor that the existence of the union would lead to the closing of the factory.

Things turned violent shortly thereafter, in events that bore all the marks of Guatemala’s recent history. On July 18, workers wielding bats and chains surrounded the leaders of the clandestine organizing drive.<sup>75</sup> In a scene that, according to workers and independent monitors from COVERCO, was reminiscent of the lynchings that have plagued the Guatemalan countryside since the worst years of the civil war, anti-union workers hit and threatened to spray gasoline on the union leaders and to set them on fire. Under such pressure, some of the leaders signed blank letters of resignation and were swiftly dismissed by management. Others refused to sign and managed to escape the factory premises. Throughout these events, the anti-union workers had the active or passive support of management, who claimed that they had no control over the situation.<sup>76</sup>

A few days later, after Liz Claiborne’s representative in Guatemala and COVERCO intervened to stop the violence, the union leaders were allowed to go

Table 2  
*Actors in the Kukdong and Choishin Cases*

	Kukdong	Choishin
Local actors		
Workers and local community	Workers (united, initiated campaign); families and local community (provided moral and material support)	Workers (divided; initiated campaign)
Unions and labor support organizations	CAT (NGO; provided logistical support)	FESTRAS (union federation; provided logistical and financial support)
State authorities	State of Puebla (authorized union under pressure from TAN and brands)	National state (forced negotiations between all parties to establish union)
Suppliers	Kukdong (signed contract under pressure from brands and TAN)	Choishin (signed contract under pressure from brand, national state, and TAN); VESTEX (represented local industry in negotiations)
Monitors		COVERCO (investigated and reported on code violations)
International actors		
Unions	AFL-CIO (provided logistical and financial support to local organizations); Korean House for International Solidarity (pressured Kukdong in Korea, sent delegation to Mexico)	ITGLWF (provided logistical and financial support to FESTRAS, participated in negotiation); AFL-CIO (provided logistical and financial support to local organizations)
Labor support organizations	USAS, WRC, ILRF (sent delegations; reported violations; mediated in negotiation)	US/LEAP, MSN, STITCH (sent delegations, reported violations, mediated in negotiation)
Brands	Nike, Reebok (pressured supplier to sign collective contract)	Liz Claiborne (pressured supplier to sign collective contract)
Suppliers	Kukdong International (Korean TNC; pressed Mexican factory to sign contract)	Choi & Shin International (Korean TNC; pressed Guatemalan factory to sign contract)
Monitors	Verité WRC (reported violations of freedom of association)	FLA (put pressure on brand and factory to negotiate contract)

*Note:* CAT = Centro de Apoyo al Trabajador FESTRAS = Federación Sindical de Trabajadores de la Alimentación, Agroindustrias y Similares TAN = Transnational Advocacy Network VESTEX = Comisión de Vestuario y Textiles COVERCO = Commission for the Verification of Codes of Conduct ITGLWF = International Textile, Garment and Leather Workers Federation AFL-CIO = American Federation of Labor- Congress of Industrial Organizations US/LEAP = *US/Labor Education in the Americas Project* MSN = Maquila Solidarity Network WRC = Worker Rights Consortium, STITCH, FLA = Free Labor Association

back to work and the state labor officials authorized the formation of the union, the first in the Guatemalan apparel sector. For two years, however, the union was on the brink of dissolution. It did not grow beyond its original small membership, and thus was unable to sign a collective contract. At the time of fieldwork (August 2002), workers were disillusioned and management saw the union as a mere annoyance that was fully under control.

It thus took an unexpected event to revive the TAN and the union. On June 3, 2003, the Guatemalan Ministry of Labor announced the closing of Choishin for “labor law violations.” The government’s announcement was intended to put pressure on Choishin to negotiate a contract with the union and thus put an end to the case, whose international visibility had become an obstacle for Guatemala’s participation in the US–Central American Free Trade Agreement (CAFTA) that was eventually signed in December 2003.<sup>77</sup> The announcement touched off an intense round of negotiations involving numerous national and international actors, which culminated in the signing of a collective contract on July 9 and the government’s decision, on July 16, to accept the contract and cease the threat of sanctions against Choishin.<sup>78</sup> Table 2 lists the actors in the two cases and summarizes the role that each of them played in the signing of the collective contracts.

What explains the outcomes of these two cases? What sets these cross-border organizing campaigns apart from the myriad of others that have failed to form independent unions? A systematic answer to these questions would require a detailed examination of the characteristics of the participating actors, the relative vulnerability of the targeted brands and the suppliers, and the model of cross-border organizing in each case, as well as a comparison with unsuccessful cases. In light of the specific analytical goals of this article, I will not pursue such a detailed comparison here. Rather, I focus on the effect of a single factor—the use of codes and monitoring institutions by TAN actors—on the exceptional outcomes of the Kukdong and Choishin cases. This focus is aimed at illuminating unrealized possibilities for the enforcement of international labor standards as well as providing empirical grounding for an EPLR approach to codes that can contribute to the realization of such possibilities. In the concluding section, I elaborate on this potential by connecting the lessons from the two cases with other promising developments in code monitoring around the world.

As Keck and Sikkink claim, a key factor enhancing the impact of TANs is the possibility of using institutionalized procedures and rules to which target actors have publicly agreed. Once TNCs, states, and other target actors have publicly committed to changing their position and complying with a set of rules or principles—in our cases, with regard to the protection of labor rights in global factories—coalitions can use the tactic of accountability politics to hold those actors to their stated rules or principles.<sup>79</sup> The potential of this type of politics as a source of countervailing power lies in the fact that it can exploit the gap between discourse and practice to embarrass target actors for not keeping their word. When the target

actors are highly dependent on their image—as global brand merchandisers such as Nike, Reebok, and Liz Claiborne are—the politics of shame may be highly effective. In these cases, as Naomi Klein has put it, “the brand, Brand Image, the source of so much corporate wealth, is also, it turns out, the corporate Achilles’s heel.”<sup>80</sup>

Accountability politics works best when target actors have committed to precise rules and enforcement procedures rather than to vague principles with weak enforcement mechanisms. Herein lies the potential of stringent codes of conduct and effective monitoring schemes to facilitate the entering of the countervailing voices of workers and local labor support organizations in cooperation with TANs. No matter how reluctantly brands first sign on to codes of conduct and monitoring systems, once they do they become exposed to accountability politics, which creates a further opportunity for cross-border mobilization and worker organization. Monitoring systems that entail an unequivocal commitment to enabling rights and facilitate the entering of countervailing voices—such as those of workers, local NGOs, and organized consumers in the WRC system—expand furthest the opportunity for cross-labor organizing. But even in less empowering, more collaborative systems like the FLA, such mechanisms as the use of independent monitors (as opposed to commercial auditors), when combined with pressure from TANs, can facilitate the rise of empowered worker organizations, as the case of the Choishin union bears witness.

Thus, codes of conduct may contribute to the rise of what Collins has called “new international communities of accountability,” embodying a nascent global public sphere capable of checking the power of TNCs and providing the requisite background conditions and political leverage for local workers and labor support organizations to meaningfully participate in the governance of labor relations.<sup>81</sup> Table 2 portrays this combination of external pressure and local empowerment that is central to the EPLR approach to the enforcement of codes. The rise of unions at Kukdong and Choishin resulted from the joint effect of international pressure on brands and suppliers by U.S., Korean, and global unions and NGOs along with local processes of deliberation and negotiation that involved Guatemalan and Mexican unions, labor support organizations, and state authorities, as well as the international actors that sent representatives to the factories to directly mediate in the negotiation. Without international pressure, the political conditions for overcoming the entrenched resistance of brands, local suppliers, business associations, and state authorities would not have been obtained. Without the local effort, the difficult—and, in the Choishin case, protracted—process of worker organizing would not have resulted in the formation of a union and the signing of a contract. The process and the outcomes of the two campaigns, in turn, further expanded the possibilities for empowered participation in the enforcement of the codes, since the newly formed unions and the preexisting local actors involved in the cases gained new or improved capacity to influence monitoring

with the support of the international actors with which they forged close ties during the campaigns. Finally, another element evident in Table 2 that embodies an EPLR approach to monitoring is the key role played by independent monitors (COVERCO at Choishin and Verité at Kukdong) in collaboration with umbrella-monitoring organizations (the FLA and the WRC respectively) that decisively pushed forward the negotiations resulting in the formation of the unions.

This combination of external pressure and local dialogue was vividly illustrated by the mix of actors participating in the intense round of negotiations leading to the signing of the Choishin contract. The four meetings organized by the government in Guatemala City were attended by the Minister of the Economy, the Minister of Labor, a representative from the Korean Embassy in Guatemala, the president of Choi & Shin International (the Korean TNC that owns the factory), the union representatives, the secretary general of FESTRAS, the secretary general of the ITGLWF, a representative from US/LEAP (a transnational advocacy NGO), a delegate from COVERCO, Liz Claiborne's sourcing manager, VESTEX's labor expert, and the director of the FLA.<sup>82</sup> Similarly, the February 2001 meetings that resulted in the rehiring of the leaders of the work stoppage at Kukdong and opened the way for the formation of the independent union involved both international and national actors, namely a pro-labor Mexican academic representing Reebok, three Korean-born Kukdong managers, a Nike representative, and a delegate from FROC-CROC (the corrupt union federation to which the factory's business union was affiliated). Tellingly, the task of coordinating the meetings and translating from Spanish into Korean and vice versa was done by a delegate from the Korean House for International Solidarity (KHIS), a Korean-based NGO that seeks to hold Korean companies accountable for their labor practices around the world. As in other cases, the KHIS pressured the company both in Korea and in the producing country by publicizing the case in the Korean Congress and media and sending a delegation to Mexico.

The potential of codes to generate these effects was clear to all members of the Kukdong and Choishin organizing campaigns. In choosing these plants as targets, the fact that the factories produced for brands that were part of monitoring systems and thus sensitive to accountability politics loomed large in organizers' minds.<sup>83</sup> In the Kukdong case, Nike and Reebok, under pressure from a TAN using the tactics of accountability politics, played an important role in getting their supplier factory to allow the formation of an independent union and sign a contract. In commenting on the Kukdong campaign, the director of the AFL-CIO Solidarity Center nicely described the opportunities and tensions intrinsic to the use of codes of conduct in organizing drives:

Nike and Reebok played an instrumental role in bringing about a positive resolution at Kukdong. They probably didn't do that for altruistic reasons, but that's OK, they're businesses. They promulgated codes because they got pressure from students and also from the

Clinton administration at some point . . . So, they found it in their interest to have a code, and have one that could be enforced. So, because they saw it as in their interest to have their suppliers really enforcing and respecting the conditions that they established, when they became aware that these conditions were not being respected, they put a lot of pressure on their suppliers. So, the businesses effectively became, I mean, I don't think they were necessarily natural or organic allies of the workers . . . but for practical purposes they were allies.<sup>84</sup>

Similarly, the fact that Liz Claiborne had signed the FLA code of conduct and hired an independent NGO (COVERCO) to monitor labor conditions at Choishin created an opportunity that was seized by the TAN supporting the formation of the union. Given the FLA code's commitment to freedom of association and the presence of COVERCO at the factory to document violations to it, Liz Claiborne was under additional pressure to stop the most overt forms of anti-union activity, notably violence against union leaders. Liz Claiborne's representative in Guatemala intervened promptly to put an end to the violence and threatened to end business relations with the factory unless management brought anti-union mobs under control.

However, as argued earlier, different monitoring systems create different opportunities for the exercise of countervailing power and worker organizing. The mechanisms embedded in the WRC system to put pressure on target actors and sustain it over time entailed a more propitious institutional context for the thriving of the Kukdong union than the mechanisms of the FLA did in the Choishin case. Whereas Kukdong workers could count on mobilized consumers (U.S. college students organized by USAS) effectively represented by the umbrella monitoring organization (the WRC) to keep the pressure beyond the initial strike and negotiations, the fact that the umbrella organization in the Choishin case (the FLA) sets less stringent conditions on its member firms, together with the fact that it does not embody continued pressure from organized consumers, meant that the initial opportunity for the formation of the union could not be sustained and expanded so that the union could increase its membership and get a contract. Absent sustained, institutionalized pressure, the Choishin management resorted to more subtle but equally effective union-busting strategies while Liz Claiborne could claim to be in full compliance with its code of conduct. It was only during the June–July 2003 negotiations that the FLA finally adopted a proactive stance vis-à-vis Liz Claiborne's and management's reluctance to guarantee the right to collective bargaining. By threatening to ask all its member brands not to contract with Choi & Shin International if the factory was closed and relocated, the FLA reduced the viability of the exit option.

Finally, has the existence of the unions made a difference with regard to working conditions at the factories? The case for the focus on enabling rights through an EPLR approach to codes hinges not only on the benefits of worker empowerment per se but also, crucially, on the potential for *sustainable* improvements in protective rights. Thus, the longer life of the Kukdong union makes for better evi-

dence on this key issue. Working conditions at the factory improved dramatically after the signing of the collective contract. The contract meant a 40 percent pay raise—which, albeit still insufficient, is considerably better than the average in the industry.<sup>85</sup> Long-term investments contributing to sustainable changes in working conditions were evident during the visit to the factory. A new cafeteria was built and costly equipment was installed in the sewing area to improve health and safety conditions.<sup>86</sup> In coordination with Nike and the union, management has also taken several steps to improve worker awareness of their rights under the code and Mexican labor law. The first thing that meets the visitor's eye upon entering the factory is a framed poster containing Nike's code of conduct. Stickers with the text of the code were also posted on every sewing machine. Importantly, the supervisor in each line is a union member, and union representatives participate in labor rights training for new workers. These changes have reduced the fear and the sense of insecurity among workers and thus enabled them to further organize to push for continuing improvements in wages and conditions at the factory.<sup>87</sup> Although it is too early to determine whether the Choishin union has had a lasting impact on protective rights, there is already evidence that it has become an effective mechanism for processing individual workers' grievances that would have otherwise gone unattended. In light of persistent practices at the factory that violate legal and code standards on overtime compensation, benefits and severance payments, the union has provided workers with the necessary support to get management to redress violations on a case-by-case basis. Also, in fulfillment of the terms of the collective contract, a child-care facility has been built, and a union office and bulletin board have been set up.<sup>88</sup> Whether these gains will be lasting in the face of continuing antiunion strategies on the part of management remains to be seen.

#### CONCLUSION

The empirical examination of codes in action illustrates the risks of governance failure stemming from power differentials. Overwhelmingly focused on the successes of collaborative networks and their prospects for economic efficiency and political legitimacy, dominant theories of governance have largely glossed over this issue. As shown by the realities of firm-centered code monitoring schemes, when there is no countervailing power, governance systems can become deregulatory strategies that, while serving the needs of image-sensitive TNCs, are deleterious to the task of protecting workers' rights in the global economy. In this article, I have argued for an alternative EPLR approach to international labor standards and highlighted some seminal manifestations of it. I have focused on two related but analytically distinct topics that are central to EPLR: institutional designs that facilitate the entering of countervailing voices and strategies of cross-border organizing capable of seizing the opportunities created by

such institutions through the use of accountability politics. In what follows I conclude by summarizing the evidence of an emergent EPLR approach offered by my research and other recent studies.

First, with regard to issues of institutional design, the study of code implementation in Mexico and Guatemala and recent developments in the field point to the emergence of initiatives and mechanisms involving different actors that, if systematically incorporated into monitoring schemes, have the potential to facilitate worker organization and sustainable gains in working conditions. Some mechanisms have already shown to be particularly conducive to the bolstering of the countervailing voices of *workers*. Concerning individual workers, popular education and training programs, combined with mechanisms for the direct filing of complaints by workers, are useful tools for raising awareness about labor rights and for putting pressure on umbrella monitoring organizations to get involved in cases of violations of the codes. Some initiatives in this direction are the popular education programs sponsored by the AFL-CIO in Mexico; training programs conducted by Hong-Kong NGOs in Adidas, Nike and Reebok's footwear factories in China;<sup>89</sup> and the WRC's system of processing individual workers' complaints in collaboration with local organizations. Concerning workers as a collectivity, a number of initiatives hold out the prospect of enhanced protection of enabling rights. Among them are the involvement of umbrella organizations in transnational organizing campaigns (as illustrated by the Kukdong and Choishin cases) and experimentation with empowered workplace health and safety committees in Chinese factories.<sup>90</sup>

Similarly, some institutional designs and initiatives offer incipient signs of the inclusion of the equally important countervailing voices of existing *unions and local labor support organizations*. Building the capacity of unions and local civil society organization is a constitutive feature of the WRC and of such experiences as the SAI-ITGLWF program to train garment sector union leaders in ten countries around the world in the use of codes to defend workers' rights.<sup>91</sup>

In addition to giving more attention to enabling rights, *monitors and umbrella monitoring organizations* need to tackle continuing problems of independence and transparency. Although some progress has been made—e.g., the founding of a few independent monitoring organizations such as COVERCO and the publication of some of data on audits in the FLA's annual reports and tracking charts—, the widespread use of commercial auditors and the opacity of monitoring systems pose some of the most serious obstacles to EPLR. Replacing commercial auditors with independent monitoring organizations, disclosing the location of supplier factories (as currently done in the WRC system), and publishing the results of the audits are specific institutional mechanisms conducive to the type of reliable data that is necessary for systematically incorporating processes of informed international and local engagement into monitoring systems.

Some *states and interstate organizations* are also experimenting with institutional designs that embody countervailing pressures at the local, national, and international scales. For instance, some local and national governments in the U.S. and Europe have introduced a legal requirement in procurement policies whereby government contractors have to report to shareholders and stakeholders on labor issues.<sup>92</sup> If expanded to include a requirement that firms be independently certified on compliance with international labor standards, including enabling rights, these policies would provide strong leverage for an EPLR approach to codes. Also, the International Labor Organization has slowly moved to get involved in monitoring, as its pioneer experience of monitoring Cambodian apparel factories in the context of the U.S./Cambodia Textile Agreement bears witness. As in EPLR, these efforts supplement rather than replace the enforcement of ILO standards and national labor laws.

Secondly, with regard to the issues of political mobilization that are central to EPLR, the study of the Kukdong and Choishin campaigns shows that the exercise of accountability politics, by mobilizing institutionalized rules and procedures to which global manufacturers have committed, can be a useful tool for TANs seeking to advance the cause of international labor rights. As Evans has put it in his review of forms of counter-hegemonic globalization, even institutions that were not originally designed to effectively protect the needs of labor—as is the case with most codes of conduct—may still turn into “points of countervailing political leverage”<sup>93</sup> if counter-hegemonic actors exploit the gap between discourse and practice through strategies of accountability politics. Together with propitious institutional designs, these strategies may contribute to the ongoing struggle against sweatshop labor in the global economy.

#### NOTES

1. See, among others, Kimberly Elliot and Richard Freeman, *Can Labor Standards Improve Under Globalization?* (Washington, D.C.: Institute for International Economics, 2003); Theodore Moran, *Beyond Sweatshops* (Washington, D.C.: The Brookings Institution, 2002); Archon Fung, Dara O'Rourke and Charles Sabel, *Can We Put an End to Sweatshops?* (Boston: Beacon Press, 2001); Ellen I. Rosen, *Making Sweatshops: The Globalization of the U.S. Apparel Industry* (Berkeley: University of California Press, 2002); Edna Bonacich and Richard Appelbaum, *Behind the Label: Inequality in the Los Angeles Apparel Industry* (Berkeley: University of California Press, 2000).

2. Mark Anner and Peter Evans, “Building Bridges Across a Double Divide: Alliances Between US and Latin American Labour and NGOs,” *Development in Practice* 14, no. 1–2 (2004): 34–47; Dana Frank, “Where are the Workers in Consumer-Worker Alliances? Class Dynamics and the History of Consumer-Labor Campaigns,” *Politics & Society* 31, no. 3 (2003): 363–79; Liza Featherstone and USAS, *Students Against Sweatshops* (London: Verso, 2002); Andrew Ross, ed., *No Sweat: Fashion, Free Trade and the Rights of Garment Workers* (London: Verso, 1997).

3. Margaret Levi and April Linton, “Fair Trade: A Cup at a Time?” *Politics & Society* 31, no. 3 (2003): 407–32; Morton Winston, “NGO Strategies for Promoting Corporate Social Responsibility,” *Ethics & International Affairs* 16, no. 1 (2002): 71–87; Daniel

Litvin, *Empires of Profit: Commerce, Conquest and Corporate Responsibility* (New York: Texere, 2003).

4. World Bank, "Company Codes of Conduct and International Standards: An Analytical Comparison" (October 2003), 2.

5. Andrew Wilson and Chris Gribben, *Business Responses to Human Rights* (Ashridge: Ashridge Centre for Human Rights, 2000), 9.

6. MSN, "Codes Update," no. 13 ([www.maquilasolidarity.org](http://www.maquilasolidarity.org), 2003). From the union side, see Neil Kearney and Judy Gearhart, "Workplace Codes as Tools for Workers," *Development in Practice* 14, no. 1–2 (2004): 216–23.

7. Some notable exceptions are Dara O'Rourke, "Monitoring the Monitors: A Critique of Corporate Third-Party Monitoring," in R. Jenkins, R. Pearson, and G. Seyfang, eds., *Corporate Responsibility and Labor Rights: Codes of Conduct in the Global Economy* (London: Earthscan, 2002): 196–208; Dara O'Rourke, "Outsourcing Regulation: Analyzing Non-Governmental Systems of Labor Standards Monitoring," *Policy Studies Journal* 31 (2003): 1–29; Jill Esbenshade, "The Private Social Accountability Contract: Private Monitoring from Los Angeles to the Global Apparel Industry," *Labor Studies Journal* (Spring 2001): 98–120.

8. Tim Bartley, "Certifying Forests and Factories: States, Social Movements, and the Rise of Private Regulation in the Apparel and Forest Product Fields," *Politics & Society* 31, no. 3 (2003): 433–64; Litvin, *Empires of Profit*; Fung, O'Rourke and Sabel, *Can We Put an End to Sweatshops?*

9. Elliot and Freeman, *Can Labor Standards Improve Under Globalization?*, 69.

10. Fung, O'Rourke and Sabel, *Can We Put an End to Sweatshops?*, 28.

11. Elliot and Freeman, *Can Labor Standards Improve Under Globalization?*, 31.

12. Bob Jessop, "The Rise of Governance and the Risk of Failure: The Case of Economic Development," *International Social Science Journal* 155 (1998): 29–45.

13. See, for instance, Trihne Duong, "Codes of Conduct Don't Work: A View from the Factory Floor," *Human Rights Dialogue* 4 (2000): 5–6.

14. Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998), 24.

15. This view of the global regulation of labor as resulting from the struggle between TANs and TNCs is developed in César A. Rodríguez-Garavito, "Nike's Law: The Anti-Sweatshop Movement, Transnational Corporations, and the Struggle over International Labor Rights in the Americas," in B. Santos and C. Rodríguez-Garavito, eds. *Law and Globalization From Below: Toward a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005). See also David Trubek, Jim Mosher and Jeffrey Rothstein, "Transnationalism in the Regulation of Labor Relations: International Regimes and Transnational Advocacy Networks," *Law and Social Inquiry* 25 (2000): 1187–1210.

16. George Marcus, "Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography," *Annual Review of Anthropology* 24 (1995): 95–117.

17. The Choishin and Cimatextiles factories, albeit physically and legally independent from each other, actually form a single productive complex owned and controlled by Choi & Shin International. For that reason, the unions at each factory (SINTRACHOI and SINTRACIMA, respectively) resulted from the same organizing drive and negotiations with management. Their fates are thus inextricably linked. To simplify the discussion, hereafter I will refer to the factory as Choishin and treat the unions as a single entity.

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19. Bob Jessop, *The Future of the Capitalist State* (Cambridge: Polity Press, 2002), 226–27.

20. Jessop, *The Future of the Capitalist State*, 230.
21. Michael Dorf and Charles Sabel, "A Constitution of Democratic Experimentalism," *Columbia Law Review* 98, no. 2 (1998): 267–473; Charles Sabel, "Learning by Monitoring: The Institutions of Economic Development," in Neil Smelser and Richard Swedberg, eds., *The Handbook of Economic Sociology* (Princeton: Princeton University Press, 1994): 137–65; Charles Sabel, "Bootstrapping Reform: Rebuilding Firms, the Welfare State, and Unions," *Politics & Society* 23, no. 1 (1995): 5–48.
22. Gunther Teubner, "After Legal Instrumentalism? Strategic Models of Post-Regulatory Law," in G. Teubner, ed., *Dilemmas of Law in the Welfare State* (Berlin: De Gruyter, 1986): 299–326.
23. Francis Snyder, "Soft Law and Institutional Practice in the European Community," in S. Martin, ed., *The Construction of Europe* (Boston: Kluwer, 1994): 197–227.
24. Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992).
25. Jody Freeman, "Collaborative Governance in the Administrative State," *UCLA Law Review* 45, no. 1 (1997): 1–98.
26. Dara O'Rourke, "Outsourcing Regulation."
27. Gunther Teubner, "Substantive and Reflexive Elements in Modern Law," *Law and Society Review* 17, no. 2 (1983): 239–85; Ralf Rogowski and Ton Wilthagen, eds. *Reflexive Labour Law: Studies in Industrial Relations and Employment Regulation* (Boston: Kluwer, 1994).
28. Michael Mac Neil, Neil Sargent, and Peter Swan, eds., *Law, Regulation, and Governance* (Don Mills, Ontario: Oxford University Press, 2002); Joseph Nye and John Donahue, eds., *Governance in a Globalizing World* (Washington, D.C.: Brookings Institution, 2000);
29. James Liebman and Charles Sabel, "A Public Laboratory Dewey Barely Imagined: The Emerging Model of School Governance and Legal Reform," *NYU Journal of Law and Social Change* 28 (2003-2004): 183-305.
30. Bradley Karkkainen, "Environmental Lawyering in the Age of Collaboration," *Wisconsin Law Review* 2002, no. 2: 555–74.
31. Jonathan Zetlin and David Trubek, eds. *Governing Work and Welfare in a New Economy: European and American Experiments* (Oxford: Oxford University Press, 2003).
32. Fung, O'Rourke and Sabel, *Can We Put an End to Sweatshops?*
33. Dorf and Sabel, "A Constitution of Democratic Experimentalism"; Jessop, *The Future of the Capitalist State*.
34. Joshua Cohen and Charles Sabel, "Directly-Deliberative Polyarchy," *European Law Journal* 3, no. 4 (1997): 313–42; Dorf and Sabel, "A Constitution of Democratic Experimentalism."
35. Dorf and Sabel, "A Constitution of Democratic Experimentalism," 409.
36. Sabel, "Learning by Monitoring," 158.
37. Fung, O'Rourke and Sabel, *Can We Put an End to Sweatshops?*
38. *Ibid.*, 5.
39. Archon Fung, personal communications to the author.
40. Archon Fung and Erik Olin Wright, "Countervailing Power in Empowered Participatory Governance," in A. Fung and E. Wright, eds. *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (London: Verso, 2003): 259–89; Archon Fung, "Deliberative Democracy and International Labor Standards," *Governance* 16, no. 1 (2003): 51–71.
41. *Ibid.*, 259.
42. *Ibid.*, 265.

43. See Fung, O'Rourke, and Sabel, *Can We Put an End to Sweatshops?*, 29.
44. See Rodríguez-Garavito, "Nike's Law."
45. Jagdish Bhagwati, "Why Nike is on the Right Track" ([www.columbia.edu/~jb38](http://www.columbia.edu/~jb38), 2000)
46. A biting and theoretically sophisticated assessment of this type is Ronen Shamir, "Corporate Social Responsibility: A Case of Hegemony and Counter-Hegemony," in B. Santos and C. Rodríguez-Garavito, eds. *Law and Globalization From Below*.
47. Interview with CUSG Secretary General, Guatemala City, August 1, 2002.
48. Interview with Ricardo Changala, Guatemala City, August 2, 2002 (his emphasis).
49. See, for instance, Bartley, "Certifying Forests and Factories."
50. See Peter Evans, "The Eclipse of the State? Reflections on Stateness in an Era of Globalization," *World Politics* 50, no. 1 (1997): 62–87.
51. Interview with Arturo Alcalde (union-side labor lawyer), Mexico City, July 15, 2002; interview with Samuel Porras (Kukdong's union's lawyer), Puebla, Mexico, July 15, 2002.
52. Interview with UNSITRAGUA (national labor federation) leaders, Guatemala City, August 1, 2002; interview with CUSG Secretary General.
53. See, for instance, Huberto Juárez, *Allá...Donde Viven los más Pobres: Cadenas Globales y Regiones Productoras en la Industria Maquiladora del Vestido* (Puebla: BUAP, 2005); Dan La Botz, *Mask of Democracy: Labor Suppression in Mexico Today* (Boston: South End Press, 1992).
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56. MSN, "Codes Update;" O'Rourke, "Outsourcing Regulation."
57. Morton Winston, "NGO Strategies for Promoting Corporate Social Responsibility."
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60. MSN, "Codes Update," 17.
61. O'Rourke, "Monitoring the Monitors."
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63. Interview with Arturo Alcalde; interview with FESTRAS General Secretary; interview with Ken Kim (COVERCO), Guatemala City, August 2, 2002.
64. Interview with Huberto Juárez (Autonomous University of Puebla), Puebla, Mexico, July 8, 2002; interview with Luis Galicia (Avanco), Guatemala City, July 29, 2002.
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67. Kearney and Gearhart, "Workplace Codes as Tools for Workers."
68. Elliot and Freeman, *Can Labor Standards Improve Under Globalization?*, 50, 64.
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76. Collective interview with leaders of Choishin/Cimatextiles union; interview with FESTRAS General Secretary. See also COVERCO, "Un Informe Especial."
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80. Naomi Klein, *No Logo* (New York: Picador, 2000), 343.
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82. Phone interview with Choishin union leader, July 17, 2003.
83. Interview with Blanca Velásquez and David Alvarado (CAT), Atlixco, Mexico, July 10, 2002; interview with FESTRAS General Secretary.
84. Interview with the Program Director of the AFL-CIO's Solidarity Center for the Americas, Dallas, March 28, 2003.
85. Interview with the Program Director of the AFL-CIO's Solidarity Center for the Americas.
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