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From the Hope of Transcendence to Dreams of Domestication? Contribution to SER symposium on Tim Bartley, *Rules without Rights: Land, Labor, and Private Authority in the Global Economy* (OUP, 2018)

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Contribution to SER symposium on Tim Bartley, *Rules without Rights: Land, Labor, and Private Authority in the Global Economy* (OUP, 2018)

From the Hope of Transcendence to Dreams of Domestication?

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Rules without Rights by Tim Bartley is a comprehensive and deeply researched book building on more than fifteen years of research on the development of transnational private governance in forest and labor in different world regions, including the USA, Europa and Asia. Today the topic of the book is even more salient than when Bartley started it with a lot of foresightedness. The growing economic interdependence of the global economy makes it increasingly impossible for nation states to regulate the negative externalities of transnational companies' production models in isolation from each other; yet, multilateral governance has been facing stalemate in many policy fields for more than a decade. In this situation, transnational private governance has been considered, promoted and established by some as one possible avenue to harness and combat negative effects on the environment and on the working conditions of labor in global production chains. But to what extent is it able to deliver the promised results?

Within the by now rich and extensive research on transnational private authority, *Rules without Rights* addresses hitherto less explored issues of compliance and enforcement on the ground. The book seeks to identify the factors and processes that influence whether and how transnational rules are applied, monitored and made effective in far-distant places such as garment factories and forest concessions in Indonesia and China. These two countries are well-chosen because they not only account for significant shares of global production in the sectors under study but also allow for the comparison of a democratizing and a continuously authoritarian political regime.

Based on one of the few existing comparative longitudinal studies of the transnational governance fields of labor and forest, and combining it with a granular analysis of the processes through which auditors, lead and supply firms construct (non)compliance with standards, Bartley's book provides a unique and original perspective on the implementation of transnational rules in two countries of the global South. The book's contribution is to show how transnational rules are socially negotiated and re-negotiated over time, how they travel through production networks and are retranslated on the ground in ways that produce unintended and paradoxical outcomes. The empirical chapters give a comprehensive account of the problems of enforcement and implementation in the two countries chosen for analysis. The comparative analysis of these cases over time provides a rich empirical base for identifying processes which might foster or hamper the effectiveness of transnational standards where they 'touch down'.

The dense material on certification and auditing of corporations in the forest and labor sector in Indonesia and China presented in the empirical chapters provides evidence for the limited capacity of this type of transnational private governance to foster the rights of local communities and workers in conflicts over land tenure and collective labor rights in Indonesia

and China. These case studies provide a very well-informed analysis of the development of the rules of two specific transnational private governance schemes, SA8000 in labor and the FSC in forest, and those of their transnational and national competitors over the period from the 1990s to the early 2010s.

The book's findings highlight the limits of forms of transnational private governance that aim to transcend or sidestep public authority in the countries of production. Its arguments and findings support what has become the generally accepted state of the art among many scholars of transnational governance: that transnational rules are most effectively implemented by global companies in first-tier suppliers with durable contractual relationships, and where there is less mobility of production, such as for example in the forest as compared to labor sector; that they have greater impact in places where there are strong civil society actors, including unions, that monitor whether rules are implemented on the ground and if not, campaign for improvements; and that international and transnational rules are more effective in practice when domestic public actors have the capacity and willingness to support implementation and enforcement, which in turn might invigorate civil society and private initiatives.

Bartley adds a double twist to these findings. He shows that what is considered in audits as compliance with transnational rules can mean very different things in different places across the world. He highlights the contradictions inherent in the auditing system and points to the importance of watchdogs on the ground, while reminding us that the likelihood of contentious politics is unevenly distributed around the globe. As a result, closed political space in authoritarian regimes render the implementation of transnational private governance easier as far as the establishment of managerial processes is concerned, while the possibilities for contentious politics in open political spaces in democratic systems make negotiations about the implementation of transnational private governance more complicated but may lead in the end to more substantive behavioral change.

The more general purpose of *Rules without Rights* is to develop a substantive theory of transnational (private) governance that addresses and fills in what the author considers as important gaps in the existing literature. Rather than focusing exclusively on the sphere of transnational rule-setting and treating implementation in low and middle-income countries as happening in "empty spaces of un-governance," Bartley seeks to develop a sociological theory of compliance that makes claims about what kinds of outcomes of transnational (private) governance are to be expected under what conditions (55). Accordingly, a theory of transnational (private) governance should not restrict itself to the flow of rules and assurances from lead to supplier firms (the production network) but also encompass the political construction of compliance at the intersection of transnational and domestic governance as well as the content of rules (54). This substantive theory has been developed, as Bartley states, "through a back-and-forth of ideas from prior research ... and the events and patterns" discovered in his own case studies (54). It seeks theoretical generalization of the relationships observed in the case studies, and takes the form of eight propositions about how outcomes of transnational private governance are affected by a) the flow of rules and assurances through global production networks, b) intersections with domestic governance, and c) the content of rules and structure of transnational governance fields. While it would go beyond the space limitations of this review to discuss these propositions in detail, it is worth mentioning that they focus primarily on explaining whether and how certification and auditing lead to procedural and behavioral changes in companies.

The overall argument of the book is that transnational governance has failed to produce compliance on the ground because of misleading “hopes of transcendence” of private authority, the private and voluntary character of regulation and its de-territorialized implementation. These features of transnational governance have created global rules without rights – hence the title of the book – that have had only very limited impact, and sometimes even perverse effects, on labor and environmental conditions in the producing countries.

In the remainder of this review, I would like to discuss and suggest some friendly criticisms and extensions that relate to this theory of transnational governance. I wonder how well the critical presentation of transnational governance as relying on misleading “hopes of transcendence” accurately characterizes the developments of research and policy in the field over the last decade. Certainly, as documented by the author himself, there was a period in which actors put high hopes on sidestepping blockages in international arenas and domestic politics by targeting companies directly with transnational standards. But the research field of transnational governance encompasses many other forms of regulation, including some, such as municipal networks in climate change that involve public actors, and transgovernmental networks of public administrators that do not seem to fit the image of the “hope of transcendence”. Similarly, transnational governance schemes themselves vary in the degree to which they include private, civil society and public actors. Many require that their rules conform to domestic regulation, thereby explicitly recognizing national law. When it comes to transnational standard-setting initiatives, an important distinction is to be made between standards that are exclusively set at a global scale and those that foresee national standards (and related national fora) under a broader roof of a global initiative. Recent research suggests that the latter is more likely to produce interactions with the local context (Malets and Quack 2017). Indonesia, for example, agreed to a national FSC standard in 2009, which came into effect in 2014, while the competitor scheme PEFC also approved an Indonesian national scheme that year. These developments coincided with a major expansion of private forest certification in Indonesia (see Zeitlin in this Symposium) and raise the question for future research whether the introduction of a national standard influences implementation as well as adoption.

Moreover, developing a theory from case studies raises the question of its scope and generalizability. What is the population of cases to which the theoretical propositions of this book can be applied? While the book claims to provide a theory of transnational private governance, what it delivers is a more narrowly bounded theory of transnational certification and auditing. The theory is further limited in scope because it focuses on *certification impacts* understood as the changes for the certified entity and related value-chain actors, which have already been shown to be mixed to limited by other studies. As a consequence, research has moved towards scrutinizing the systemic effects of certification, as well as its interactions with public regulation. Similarly, practitioners are increasingly monitoring such *systemic effects* (WWF and ISEAL 2018). Examples are changes in knowledge, capabilities, norms and attitudes that occur over time in a society or its parts through transnational multi-stakeholder initiatives; or changes in public regulation or in transnational standards that result from interactions between private, civil society and public actors in such fora. In my view, the suggested theory of transnational governance would have benefited from a more comprehensive consideration of both certification *and* systemic effects, because it would have provided a more solid basis for the claim of failure to generate changes beyond the point of production. Certainly, the case studies presented in book provide a carefully situated account and make reference to intersections with the societal environment, but they do so with a focus on the

social construction of compliance in audits. They do not consider how certification interacts more broadly with national law, or multi-stakeholder initiatives with public rule-making and monitoring.

Disappointed with the failure of a transnational private governance driven by the “hope of transcendence”, Bartley’s suggestions for better labor and environmental conditions in global industries operating in low and middle-income countries focus on the improvement and better implementation of domestic law on the books, as well as political changes that expand the relevant rights and protections (p. 262). Hardly anybody would disagree that these are important drivers of change. However, by replacing the “hope of transcendence” with dreams of domestication the author projects rather ambitious goals on governments and public administrations, which we know from the literature that they often lack enforcement capacity, are corrupt or authoritarian in nature. The reasons and arguments for these dreams of domestication” are not well-explained in the book. Moreover, the empirical case studies do not seem to provide much evidence that such a re-centering on state governance are likely to produce improvements in the countries under study. In Indonesia, it was the state itself that until 2013 did not recognize the rights of indigenous people to land, and thereby made national legislation incompatible with FSC standards. In China, too, it is the state that is unwilling to recognize collective labor rights which in turn makes it hard for auditors to fulfil the requirements of SA8000. How can a re-centering on Chinese domestic politics and the implementation of labor law provide a superior outcome in terms of recognition of the right of association than the attempt to foster it through transnational labor standards?

Nonetheless, *Rules without Rights* provides an original in-depth account of the inherent contradictions in transnational private governance through certification and auditing. With its comprehensive comparative analysis of two governance fields, labor and forest, over the time period from the 1990s until the early 2010s, as well as the study of social construction of compliance in two low and middle-income countries in Asia, Indonesia and China, the book will become a standard reference for scholars and practitioners in the field. At a theoretical level, the book raises important questions about the relationship between rules and rights, and the dynamic interactions between transnational and national rule-setting and implementation for future research.

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