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Complementary Labor Regulation: The Uncoordinated Combination of State and Private Regulators in the Dominican Republic

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Summary. — Although the ultimate success of labor regulation in many economic sectors depends on a combination of state and private actors, to date, researchers have not studied the interaction between state and private regulation. What happens when these forms of regulation meet on the factory floor? Based on a case study of labor inspection and code of conduct implementation in the Dominican Republic, this paper argues that the comparative advantages of state and private actors can drive complementary state–private regulation. These findings suggest that private-voluntary initiatives can reinforce, rather than displace, state regulation.

Key words — labor standards, codes of conduct, state–society relations, Dominican Republic, Latin America

1. INTRODUCTION

A hybrid system of protective regulation now governs the global economy, with state and private institutions working in parallel (Gereffi, 2006). In the 1980s and 1990s, activists who faced obstacles to strengthening regulation by reforming state institutions focused their efforts instead on creating regulatory institutions based in the private sphere (Bartley, 2003). Newly formed institutions—such as codes of conduct and forest certification systems—mimic state regulation by creating protective rules as well as organizations to secure compliance with those rules. A variety of types of private regulatory systems have proliferated rapidly and joined states in the task of social protection across a range of industries, thereby creating global systems of hybrid state–private regulation. Pressure from civil society for social protection is now aimed at two distinct types of institutions—state and private-voluntary regulatory institutions—each with its own regulatory apparatus, each attempting to secure compliance in the very same industries, and each with administrative staff working with the same firms.

Because the improvement of regulation is ultimately determined by the combined efforts of state and private actors, scholars have begun to ask how state and private regulation relate to one another. Despite claims that "there is a critical need to design [non-governmental regulation] initiatives to strengthen and complement, rather than replace or weaken local state regulation" (O'Rourke, 2006, p. 911), relationships between state and private regulation remain largely unexplored. *What happens when private and state regulation meet on the factory floor? How do these two forms of regulation interact? What drives complementary state and private regulation?*

This paper explores these questions through a study of two organizations, one state and one private, that regulate labor conditions in the very same factories: the Dominican Republic's Labor Secretariat (*Secretaría de Estado de Trabajo,* or SET) and a multinational firm that I will call ABC. Labor regulation in the DR's apparel industry offers a particularly useful place to examine the coexistence of state and private regulation. Campaigns to improve labor standards in the apparel sector of the DR have been directed both at the multinational companies that produce in the country and at the Dominican government (Frundt, 1998; Murillo & Schrank, 2005; Ross, 2005). These campaigns led to the coexistence of state and private regulation, which provides an opportunity to examine if and how complementary public–private relations develop. In the debates about international labor standards and governance, there are many arguments about the potential consequences of a hybrid system of state and private regulation, but there has been little empirical research to evaluate these arguments. This paper offers new insight into these debates by analyzing regulation in practice where state and private systems come together.

Although there is a wide variety of relations that may arise between state and private regulation (Trubek & Trubek, 2007), debates have tended to coalesce around two possible types of relationships. On the one hand, the literature on positive relations between state and private actors often points to intense, institutionalized interaction as the source of complementary relations (Evans, 1997). For example, theories of "co-productive" state–private relations emphasize the institutionalization of linkages among state and private actors to leverage comparative advantages (Joshi & Moore, 2004). This focus on institutionalized positive state–society relations is reflected in recent research on cases of labor regulation that successfully involve combining state and private actors, as evidenced by the ILO Cambodia Project (Polaski, 2006). These studies suggest that complementary relations are driven, in part, by coordination among governments, NGOs, and firms.

On the other hand, and in direct contrast to the view that state and private regulation can be mutually reinforcing, some scholars and activists argue that private regulation has become a threat to existing state regulatory structures rather

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than a potential partner. Indeed, it is common for scholarly works on labor regulation to note the potential of private regulation to have a negative impact on state regulation (e.g., Esbenshade, 2004; Gereffi, Garcia-Johnson, & Sasser, 2001; Jenkins, 2001; O'Rourke, 2003, 2006). Some scholars and practitioners worry that multinational firms are effectively pre-empting the formation of stronger governmental regulation by creating their own regulatory regimes. Private regulation, it has been argued, is a threat to local labor institutions (Frundt, 2001), international conventions (International Labour Organization, 1998), and unions (Justice, 2005). This view leads to a dire prediction: transnational activists may advance the privatization of regulation by focusing their efforts on the creation of flawed non-state regulation, thereby furthering the retreat of state authority and leaving a vacuum of regulation (Seidman, 2007; Strange, 1996). Despite a far reaching concern for "displacement," little empirical investigation has systematically examined the relationship between private and state efforts (for one exception, see Bartley (2005)).

Analysis of the Dominican case suggests a need to rethink the displacement hypothesis and broaden the search for institutional arrangements that can lead to complementary state–private relations in labor regulation. At the macro level, international pressure to improve labor conditions in the DR's export processing zones (EPZs) was applied to two distinct types of actors—the Dominican government and (by way of larger campaigns) multinationals doing business in the DR. Transnational campaigns focused not just on holding multinational companies accountable, but also on reforming state institutions. Pressure by social movements on both private and state actors is one key element of the story, but just as important are the ways in which private and state actors responded to pressure and deployed their resources to regulate working conditions. In the Dominican case, instead of displacing state labor regulation or causing state institutions to atrophy, private regulation relieves pressure on scarce state resources and complements state action within the factories in the EPZ. With fewer labor problems to address in EPZs that benefit from private regulation and the attention of international actors, state regulators are able to dedicate more resources to sectors of the economy that produce for the domestic market and have even poorer labor conditions.

Private regulation alone, however, is not sufficient, and many labor issues are left unaddressed by private actors. As a consequence of these limitations and the conflicts that they create, the state continues to regulate the export sector and inspectors frequently visit factories in the EPZs. Private and state regulators implement similar policies in different ways, at times making up for one another's failures and, in other cases, unwittingly supporting one another's efforts. In their co-production of regulation, the comparative advantages of private and state actors make their respective inputs non-substitutable and result in positive-sum gains (Ostrom, 1996). This finding suggests a key driver of complementary regulation, namely, the comparative advantages of state and private regulators to correct and prevent violations of labor standards.

This finding also highlights the need to move beyond a polarized debate between those who advocate for or against private regulation as an addition to state regulation and toward an analysis that recognizes the comparative strengths and weaknesses of these two approaches. In contrast to previous research on public and private regulation, which emphasizes coordination as the base of effective combinations of global and local forces, this case identifies the potential of the relative strengths and weaknesses of public and private actors to become a base for developing complementarities.

To develop the case of the DR, data were collected through in-depth interviews, observations, and documentation. Over 100 interviews were conducted with a wide variety of actors that included factory workers and managers, unions, local and international NGOs, ABC auditors and managers, and government officials. [1] In addition, audits by ABC and inspections in the EPZs by SET inspectors were directly observed, providing first hand data on the regulatory process. To supplement these data, 100s of auditing reports from ABC's internal databases as well as documentation on SET's planning, personnel, and inspections were analyzed.

2. THE RISE OF PRIVATE AND STATE REGULATION

The formation of the hybrid system of state and private regulation has its roots in the pressure that activists exerted in the 1990s on multinational firms to take responsibility for labor conditions in their supply chains. As one of the largest apparel and footwear firms in the world with nearly two billion dollars in revenue, ABC was among the first brands to be targeted by activists. In response to campaigns against labor abuses in its Central American factories, in 1991 ABC adopted one of the earliest "codes of conduct" in the apparel industry. ABC's code, like many others, has provisions recognizing freedom of association, limiting the amount of overtime, prohibiting forced labor, setting minimum age limits for child labor, mandating the legal payment of wages, and imposing basic health and safety standards.

A large number of multinational firms have created regulatory systems to secure compliance with their codes of conduct that function very much in the same way as state regulatory systems. Multinational corporations voluntarily adopt standards through a "code of conduct" and impose these standards on the factories in their supply chains. These standards are policed by the multinational firms themselves, by independent NGOs, or by a combination of both through a variety of "multi-stakeholder initiatives" (O'Rourke, 2003). If factory suppliers fail to meet the standards set by the multinational client, these factories risk losing orders, and, consequently, income. The underlying logic across all of these regimes is that the codes of conduct, if properly monitored and enforced, alters the incentives of rational factory managers by creating negative economic consequences for poor labor conditions. The effectiveness of private regulatory systems has been hotly debated in scholarly work (see, among others Esbenshade, 2004; Locke, Qin, & Brause, 2007; Rodriguez-Garavito, 2005; Seidman, 2007). Despite the surrounding controversy, codes of conduct have become the primary tools for improving labor standards in the apparel industry.

ABC's internal compliance system, which covered over 200 factories throughout the world in 2006 and which has involved 1000s of factories in its lifetime, is illustrative of one widely shared and contentious institutional arrangement of private regulation that functions within the context of other forms of non-state regulation (e.g., independent NGO monitoring). ABC has been implementing this system of private regulation in the DR since the 1990s by sending a team of auditors to conduct audits of new factories, and periodic audits of factories already in ABC's supply chain. In theory, ABC uses these audits to drive sourcing decisions, thereby creating incentives for managers in their supply chain to follow the code. Many other multinational firms, such as Nike and Levi's, use similar compliance systems in their supply chains, which, combined,

include hundreds of thousands of factories. The Fair Labor Association (FLA), a "multi-stakeholder" organization that undertakes "third-party monitoring," uses commercial firms and independent NGOs as monitors to provide an external form of accountability on ABCs internal compliance system. The FLA, which has certified ABC, publicly reports the results of external audits conducted on 5% of ABC's suppliers. Due to its limited scope (visiting only 5% of all factories), FLA auditors rarely visit factorie in the DR, and external auditors did not visit any of the factories producing for ABC during the period of study. The internal and external audits of factory compliance with the codes of conduct make up the core of ABC's regulatory system.

Just as private regulation was gaining salience during the 1990s, there was an increase in the strength of labor regulation in the DR (Murillo & Schrank, 2005; Schrank, 2005). The Labor Secretariat (*Secretaría de Estado de Trabajo*, or SET), responsible for regulating labor conditions in all parts of the DR (including the EPZs), has a 60-year long, and not always positive, legal, and administrative tradition of labor regulation (Alburquerque, 2003). For many years, the Dominican labor market was governed by a labor law that offered little protection to workers. Created during the Trujillo dictatorship, this law remained in effect until 1992, when international pressure on the Balaguer administration by the United States, combined with domestic pressure from unions, led to a more protective law and a reformed SET (Hartlyn, 1998; Murillo & Schrank, 2005). As a result, SET increased the number and quality of its inspectors, shifting from inspectors who were patronage employees with little education to lawyers selected through a competitive examination (Murillo & Schrank, 2005; Schrank, 2005). A transformed SET now boasts a corps of professional labor inspectors with a strengthened capacity to enforce labor law (Schrank, 2005).

SET is organized, as are many inspectorates in Latin America, in a "unified" fashion: the inspectors are generalists who are responsible for the full breadth of labor regulation. In this system, the inspectors are "street level bureaucrats" who enforce the law in a "flexible" manner, balancing competing goals of economic growth and protection (Piore & Schrank, 2008). The inspectors perceive workers as their "clients" as well as citizens who need to be protected from exploitation; a part of SET's mission is to provide workers and employers services that help the labor market function smoothly. To undertake these tasks, SET (at the time of this research) employs approximately 170 inspectors and a local representative for each of its 38 local offices. These inspectors are officials of the state; they carry with them the right to impose sanctions on businesses in the form of fines, and their reports are treated as evidence in the judicial system. SET conducts preventative and complaint driven (or reactive) inspections (Jatobá, 2002), which totaled 50,000 in 2006. In 2002, 29% of the inspections were preventative, whereas in 2006, 63% of the inspections were preventative, thus marking a trend in the push for a more proactive approach to labor regulation. These inspections, described in detail below, provide both service and enforcement roles, and are the core actions of SET.

In sum, starting in the 1990s both state and private actors developed increased capacity to regulate labor conditions in the DR as a response to public pressure to improve labor practices in export factories. The manner in which private and state actors responded to this pressure, of course, was highly distinctive. On the one hand, ABC developed a compliance system that operates through the supply chain and privileges the threat of sanction to protect the rights of workers. On the other hand, SET developed an inspectorate in the "organic statist" Latin American tradition, in which the government's role is to resolve conflicts between labor and capital and to protect the citizenship rights of workers (Wiarda, 1978). The public and private roots of these regulators result in diverse practices (discussed in the next section), which form the basis for the complementary hybrid system of regulation discussed in the conclusion.

3. DIVERSE PRACTICES OF REGULATION

This section describes the actual practice of regulation by inspectors and auditors, and highlights their respective approaches to similar tasks. While the rules that ABC and SET enforce overlap nearly completely[2]—like most codes of conduct, part of ABC's code requires that factories producing for ABC comply with local law—the ways that ABC and SET enforce these rules differ greatly. These differences lay the foundation for complementary relations between state and private regulation in the DR. To contrast ABC and SET in detail, this analysis parses the practice of regulation into four components: (1) monitoring, (2) sanctions and rewards, (3) pedagogy, and (4) conciliation and adjudication. These components were derived inductively and from the literature on regulation (e.g., Hawkins & Thomas, 1984; Kelman, 1981). Table 1 below summarizes these differences, which will then be discussed in detail.

(a) *Monitoring*

The information base from which the inspectors and auditors work affects all downstream actions; regulators do not remedy issues that they do not find. Due to the importance of monitoring, this section describes the differences between ABC and SET in close detail. ABC relies on preventative audits to monitor factories. Its strategy can be characterized as "police patrol," using active surveillance by a centralized body to ensure accountability (McCubbins & Schwartz, 1984). In full-day audits, the auditors investigate all aspects of compliance with the code through a review of documentation, a physical inspection, and interviews with workers and managers. These audits take place about once a year in ABC's Latin American region (at a minimum, factories are audited once every 18 months). In most cases, the factory management is notified before the audit, but ABC also conducts surprise audits. The audit was designed in dialog with the FLA, and as ABC's code of conduct became more extensive, the audit has expanded in breadth. As a result, the number of items that auditors are instructed to check well exceeds the time that they have to conduct the audit. Consequently, the auditors exercise discretion, focusing more or less attention on different questions in their audit tool. They spend the majority of their time reviewing documentation and often find violations of the code in the process, but the quality of this information depends on the honesty and diligence of management. The next most time-intensive part of the audit is the factory walk-through. The auditors check that basic standards, such as functioning bathrooms, fire exits, and reasonable temperatures, are met. The last source of information, to which the least time is dedicated, is the worker interviews because most of the information that the auditors have to gather about issues in the factory (e.g., records of payments, locations of fire exits, and non-discrimination policies) cannot be learned from the workers. The auditors take steps to prevent the managers from seeing whom they interview and to protect the workers from retribution, but workers often remain reticent. Worker interviews do provide

Table 1. *Comparison of SET and ABC's regulatory practices*

	SET	ABC
Monitoring	*Fire alarm*: In the free trade zones, SET relies on complaints of workers, unions, and NGOs	*Police patrol*: ABC conducts preventative, timed, audits of factories, as well as follow-up audits
Sanctions and rewards	SET rarely imposes small and monetary administrative penalties. SET is tied into the larger judicial system that can impose larger sanctions, but this system is highly uncertain. SET does not have a policy of rewards	ABC can stop purchasing from the factory, but rarely does so. ABC fees for follow-up audits act as a de facto penalty for non-compliance. There is an informal policy to continue working with factories while they improve conditions, rather than immediately penalize the factory by severing relations. ABC does not have a policy of rewards
Pedagogy	Inspectors teach factories about the content of the law and obligations	Auditors teach factories how to manage production and maintain basic health and safety conditions in the factories
Conciliation and adjudication	Inspectors often conciliate conflicts between workers and management. If solutions cannot be found or a legal question needs to be resolved, inspectors adjudicate these conflicts	Auditors do not conciliate or adjudicate conflicts

information, such as whether or not workers are getting the required days off, and are occasionally successful in uncovering serious issues such as harassment. Despite their efforts to make themselves available to workers, the auditors do not receive complaints from the workers directly, and, as one auditor explained, workers are "*afraid…if they talk…they are going to lose their job*" either because the factory will be closed due to ABC's leaving, or because the auditor will tell the management. This fear was confirmed with interviews conducted in the factories and through interviews held with local NGOs. A leader from a local women's rights NGO stated that the workers do not complain to multinational auditors because "*the workers have a lot of fear that they will be fired if they complain.*" Instead, she explained, workers go to SET when they have problems.

The results of the auditing process are highly uneven, but the auditors almost always find enough problems that factories rarely pass the initial audit and are not "approved" by the compliance system. The way the auditors use their discretion reflects the informal goals of the ABC system; in the words of an ABC manager:

> "*[1] Our main goal is the health and safety of the workers… [2] Ensure that the factory does not have mandatory overtime. [3] They are not verbally or mentally abusing the workers. [4] That they are paying what they should be paying.*"

With their attention focused on a sub-set of the issues included in the code, the auditors fail to uncover many problems. There are some issues, such as freedom of association, which the auditors do not investigate in depth unless they have heard of a problem beforehand. For example, although their policy is to ask the workers if they are free to form a union, the auditors exercise discretion and do not always follow this policy. In one factory audit that we observed, the auditor asked a group of workers simply if there was a union, not whether the workers were discouraged from forming a union. However, the interviews of workers in this factory revealed that the workers were told that they are not allowed to form a union, and that they would be reprimanded if they mentioned organizing (a violation of the code, and the law). The auditors also miss much information because they do not talk with people outside the factories, such as people affiliated with labor unions or NGOs. For example, auditors failed to discover a 3-year old pending court case against a factory for firing workers that were trying to organize a union largely because one could not get this information from within the factory.

All regulators, whether state or private, miss some violations in the process of information gathering; the critical aspect is not the existence of missed violations, but the pattern of information that the auditors systematically overlook. Indeed, the auditors are aware of their limitations, but the auditing system itself makes it difficult for them to find many problems despite their best efforts. Studies of private labor regulation in a wide variety of contexts have noted similar weaknesses in detecting and addressing specific issues such as freedom of association (Barrientos & Smith, 2006; Mamic, 2003). The result is a distorted view of labor conditions based on a monitoring approach that is highly sensitive to certain issues—such as health and safety, payment and documentation of wages, and mandatory overtime—while remaining insensitive to other issues, such as freedom of association.

SET uses a different monitoring strategy in the EPZs, which results in a distinct pattern of identified and missed violations. Instead of conducting programed preventive inspections in the EPZs, SET relies almost entirely on complaints from workers and requests from management for inspections. Internal planning documents reveal that SET's top objectives, such as eliminating child labor and informality, prioritize preventative inspections in sectors outside of the EPZs. During interviews, inspectors explain that the relatively better conditions and more formal nature of EPZ factories (when compared to other sectors) contribute to the fewer preventative inspections in the free zones. The inspectors attribute the difference in conditions between EPZs and other sectors to the presence of private regulators. The inspectors adjust their practices accordingly, focusing their efforts on the sectors of the economy that have worse working conditions and no private regulatory pressure for improvements.

Similar to the way that ABC's audits privilege certain types of violations over others, SET's reliance on complaints in the EPZ distorts the inspectors' views of labor problems in the zones. Many requests for inspections come from employers and usually involve a problem that an employer is having with a worker, the most common of which is excessive absenteeism. In addition to management requests, there is a constant stream of workers, unions, and NGOs who request inspections in the form of complaints about specific violations of labor law in the EPZs. Although the inspectors encounter a wide variety of problems through complaints, they are not exposed to the full

range of problems that arise in the factories. As with the auditors, they have little time for many inspections, a fact that limits their ability to go beyond the matter at hand. Common problems that the inspectors find in the EPZ factories include underpayment for overtime, union discrimination, and firings without cause. There is a limit to what regulators uncover when they rely so heavily on complaints. For example, one inspector explained that overtime violations are discovered only when there is also a problem with pay because "*If they [the managers] don't pay, the workers come in to complain. If they pay, the workers don't come.*" Similarly, some health and safety issues go undiscovered; the workers do not complain about many issues that the auditors from ABC find, such as missing fire extinguishers and blocked aisles that hamper evacuations.

Regulators who cannot be in factories at every moment of every day will inevitably miss violations. The strategies that they use to monitor factories, as shown above, determine the types of problems that they come across. With different styles of regulation and varying types of competencies at the point of information gathering, private and state regulators already have distinct comparative advantages in identifying poor labor standards that shape the remainder of regulatory action downstream. With SET's focus on complaint-driven inspections, inspectors do not discover consensual violations of the law, such as long overtime hours and health and safety standards. In contrast, ABC is blind to violations that cannot be discovered in relatively short audits or that require investigation beyond the factory walls, such as freedom of association violations. While neither private regulators nor state regulators find all violations, each has comparative strengths in the types of violations they discover and, consequently, the types of violations they can potentially remedy.

(b) *Sanctions*

The remainder of the analysis is focused on what the auditors and inspectors do when they encounter violations. When auditors confront an intractable factory, they continue to conduct follow-up audits until the factory achieves an acceptable level of compliance. For each follow-up audit, the factories pay a US $2,000 fee, which is a small deterrent for violations, but there is no limit to the number of follow-up audits. Beyond audit fees, the only real sanction leveraged by ABC is termination of ABC's relationship with the factory, an act that can carry significant costs for factories that depend on ABC's business. ABC's sanctions are blunt instruments, used only in a binary "drop" or "do not drop" way. Sanctioning does not stick beyond the end of the business relationship; once ABC has pulled production out of a factory, there is no way for it to influence the management.

In practice, ABC rarely drops factories. In fact, many factories exist in a state between compliance and being dropped despite ABC's clear policy of not doing business with such factories. As of 2006, in Latin America, 26% of the active factories were not in full compliance with ABC's code of conduct, but many were still receiving orders. While the sanctions seem insufficient (especially in light of continuing non-compliance), the system is not completely toothless. Interviews with factory managers, auditors, and labor inspectors reveal that there is a concern among factory managers that clients will leave because of poor working conditions, and factories do make costly investments to come into compliance when violations are found.

Sanctioning by SET is also very limited and taken only as a last resort. The labor inspectorate can impose administrative sanctions on firms, but the maximum fine of $1,593 (at the time of this research) is not severe enough to constitute a real deterrence. Inspectors admit that it is often cheaper for the management to pay than to fix the problem, but the inspectors keep looking for ways to get businesses to remediate. Many inspectors perceive that multinational firms have more leverage over factories than SET because the cost of losing business is much greater than the cost of the fine—one inspector stated "*Factories sometimes prefer to pay the fine…and continue the same thing…but when the clients [demand]…they act.*" In addition to fines, the inspectors play an important role in deciding whether or not factories have to pay severance to workers. While not a direct sanction, this provides a form of leverage that inspectors can use to punish factories for noncompliance because severance pay adds up to a sizeable amount of money.

Overall, the power of state and private regulators to penalize factories is weak and infrequently applied. However, state and private regulators each have comparative advantages that make their sanctioning power an effective deterrent under different conditions. In factories heavily dependent on ABC for their survival, ABC's even mildly credible threat of dropping factories induces action to improve working conditions. For factories that have ceased to produce for ABC, and for individual workers with contractual issues, SET sanctions are the only punitive check on firm behavior. Therefore, even in the highly limited area of sanctions, there are readily identifiable comparative advantages between the circumstances within which SET and ABC can use sanctions to motivate factories to comply.

(c) *Pedagogy*

Both SET and ABC rely more on pedagogical or tutelary methods than on sanctions to improve labor conditions in factories. These practices, although often overlooked in studies of global labor regulation, result in many tangible improvements in factories. To improve "*sustainability*" of compliance with their code, the auditors "*explain to [factory managers] why [they] have to do this stuff and the benefits [of compliance].*" When conducting an audit, the auditors suggest solutions to the problems that they find. They often make suggestions aimed at improving health and safety conditions, such as changing production floor layouts to facilitate emergency evacuations and improving ventilation of chemically intensive operations by relocating them within the factories.

The auditors visit many different factories in the course of their work and are able to disseminate ideas from factory to factory. For example, an auditor encountered a factory that had a simple solution to the recurrent of problem of sewing machines missing needle guards that protect workers from injuries. Missing protective needle guards is a common problem because highly pressured workers often remove the guards in order to work faster. In one factory, the managers found a way to weld the needle guards on to the machines so as to prevent workers from removing them. The auditor photographed the solution to demonstrate to other factories how they can keep needle guards in place. Another auditor spoke of the benefits of reducing forced overtime by strengthening production planning and developing systems to select workers fairly for overtime, stating: "*You do that to kill two birds with one stone,…you create a voluntary program [for overtime], and you require the management to go through an exercise of evaluating their planning techniques.*" Additionally, auditors help factories come into compliance with documentation requirements. Simple tasks such as improving record keeping are

the precursors to compliance with overtime rules. For ABC, these changes often mean better business practices as well as better labor conditions. Factories that are more "*organized*" are factories that can better meet the demands of quality production, stay economically sustainable, and comply with labor standards.

Pedagogy is also a central part of SET's practice,[3] but instead of teaching factories how to comply by changing internal practices and production, inspectors focus on teaching "*what the law is.*" The inspectors recognize that many of the problems that they encounter arise from misunderstandings of the law, rather than from willful non-compliance. As one inspector describes, "*the businesses that we visit have to be guided...they have to be taught, because there are many who don't know the law here... In the EPZs, as well, the people in charge of the human resources...don't know the [labor] code.*" The inspectors see pedagogy as essential to preventing problems and believe that they have to "*teach the workers more...because...a worker who truly knows the law, is a worker who isn't going to create problems... We are going to have a better labor harmony...[and] the inspectors can manage it more easily.*" The inspectors do, at times, go beyond giving legal advice in their pedagogy, but they are limited in their capacity to intervene with matters of production in professionally run factories in the EPZs. One inspector describes the difficulties of giving suggestions, saying "*sometimes I can't manage it all because sometimes I don't have the knowledge necessary. I can suggest, but in the end the business is in charge.*"

While both ABC and SET engage in pedagogy to engender compliance, they do so in vastly different ways, demonstrating comparative advantages for solving certain problems. Whereas ABC auditors often intervene with production planning, which helps avoid excessive overtime, the inspectors do not. In the words of one inspector, "*We don't have the capacity or the authorization to intervene in the problem of high or low production because it is a problem between the clients and the factories.*" On the one hand, ABC clearly has a comparative advantage in providing the type of pedagogy that can make production processes more aligned with better labor conditions. On the other hand, ABC auditors have more difficulty giving advice to workers about their rights and obligations under the law in a systematic way. Most notably, the auditors feel that the workers should have the right to form a union and that it is the auditors' responsibility to protect this right. They do not believe, however, that it is their role to encourage unions; as one auditor cautioned, "*you don't want to be an advocate for unions*." Auditors are in an awkward position because they need to implement a policy that prevents violations of freedom of association without taking a pro-union stance, and, even if they did want to take a pro-union stance, local unions are skeptical of working with the auditors. For example, a factory that produced for ABC closed down without paying severance soon after a union organized. The auditors contacted the union leaders in the course of looking for solutions to make the factory management pay (at this point ABC had little leverage because the factory had closed and ABC could no longer use its ability to cancel or give orders to a factory that had closed down). The union refused to collaborate with the auditors and instead directed its attention to the state inspectors. While many SET inspectors are (at best) ambivalent about unions, SET inspectors are not afraid to get involved with freedom of association or to actively give workshops to unions about workers' rights, and ultimately remain well-connected to unions through the complaints channeled to the inspectors.

(d) *Conciliation and adjudication*

The remaining two practices, conciliation and adjudication, are primarily undertaken by SET and not ABC. This difference highlights the practices of the state that private regulators simply do not undertake. Conciliation involves intervening in conflicts between actors (e.g., workers, management, and unions) to restore order in a way that is consistent with the rights of the actors. Adjudication is the determination of which side is correct in a conflict and what path should be taken to resolve a dispute. While ABC does conciliate conflicts that escalate and gain ABC's attention, they do not conciliate the daily conflicts that arise in the factories. Despite ABC's efforts to reach out to workers, most do not know that they could come to auditors to complain about issues, a fact that pre-empts any possibility of conciliation.

Conciliation of disputes is central to SET's conception of the role of inspectors (Alburquerque, 2003). The inspectors try to retain "*harmony*" in the work place to keep the employment relationship going. One example that is emblematic of the inspectors' use of conciliation involved a "blacklisted" worker who complained that she was denied a job because her national identification number matched that of a union member. The inspector went to the factory where the worker was previously employed to investigate collusion in anti-union discrimination. The inspector explained that he did not accuse this factory of blacklisting, but instead asked the factory to give the worker a letter stating that she was a good employee and recommending her to other factories so that she could get another job. In the inspector's view, his intervention was successful. This example illustrates the goal of the inspectors to reconcile problems and restore harmony, not to investigate violations of freedom of association, or even to teach the factories about the law of freedom of association. If conciliation does not work, the inspectors assume a more adjudicative role. As one inspector describes:

> "*Our principal role is to mediate between the parts, to come to an agreement so that there aren't so many cases that go to the courts...When there comes a time when we can't mediate, we use the labor law, and we find the person who is responsible*."

This approach turns inspectors' practice from conciliation to adjudication, whereby inspectors act more like judges than mediators. These tasks, adjudication and conciliation, are essential for the smooth running of labor relations in the EPZs.

4. COMPLEMENTARY REGULATION

What happens when state and private regulation meet on the factory floor? This section argues that there is no evidence of displacement of state regulation in the DR, nor evidence that there is coordination among state and private actors. Instead, when public and private regulators are in the very same factories, the comparative advantages outlined above can result in complementary state and private regulation. Moreover, when the broader economy of the DR—including both export and domestic sectors—is taken into account, it becomes clear that private regulation can indirectly support state regulation in sectors that do not draw the attention of international actors. These findings suggest two ways in which private regulation can complement state regulation: (1) by freeing up state resources to address labor problems outside the EPZs and (2) by combining efforts within the EPZ factories in ways that draw on the comparative advantages of state and private regulators.

The evidence from the DR does not support the argument that private regulation is displacing state regulation. As stated above, labor law and resources for inspection were strengthening as private regulation was growing in the DR (Murillo & Schrank, 2005; Schrank, 2005). Key to this development was the political and economic pressures by international activists on both private and state actors (Seidman, 2007). However, the strengthening of state and private regulatory regimes is not the whole story because these two forms of regulation interact. Inside the EPZs, demands for state inspectors from employers have, if anything, increased as a result of private regulators. Among other things, private regulators request that factories have correct documentation and, at times, certifications that they are in compliance, thereby creating an increased demand on SET. Moreover, because the private regulators are largely insulated from individual workers, private regulation has had little impact on the action of individual workers, who continue to see the state as *the* place to go for recourse for their grievances in the workplace. In the time that private regulation has grown in the EPZs of the DR, there has been an increase in the number of requests that workers make for SET inspectors (from 204,056 in 2002 to 293,073 in 2006). In summary, private regulation has not caused the state to atrophy or prevented the state from having enough of a presence in the EPZ to monitor labor conditions.

Just as important, and a critical point often missed in discussions of displacement, is that the presence of the private regulators has changed the ways that state regulators act outside the EPZs. Although SET continues to have a strong role in the EPZs, the inspectors adjust in an uncoordinated fashion to the actions of the private regulators and are able to dedicate more resources than they would have otherwise been able to outside of the EPZs. On the one hand, SET allocates its resources to focus on issues in the EPZs that private regulation generally struggles with—such as freedom of association and conciliating individual conflicts. These issues continue to be brought to SET by workers and union representatives who do not directly go to private regulators with their complaints. An inspector explained that:

> "*Relatively, the EPZ factories benefit from the fact that they have advisors and…that many clients demand certifications of them. They try to have the things in a certain … order, but this doesn't mean that aren't EPZ factories that violate many laws*."

On the other hand, the presence of private regulators reduces the pressure on state regulators regarding some key issues, such as health, safety, and excessive overtime. SET focuses many of its preventative inspections on serious labor standard violations such as child labor and informality that are much less common in the EPZs than other sectors, such as agriculture. By the estimate of inspectors themselves, conditions in the EPZs are better largely because of private regulation. In a typical explanation of the effect that private regulation has on SET's distribution of inspections, one inspector said:

> "*You see, what happens is that many EPZ factories are supervised. The EPZ factories need to be certified that they comply with the minimum norms of salary, pay of overtime, and health and safety…When the businesses apply for work, they have to have this certification, if they don't have it, [the clients] send the work to others*."

Nearly all the inspectors interviewed in this research echoed the comment of this particular inspector, as did higher officials within SET. With fewer basic problems in the EPZs, SET inspectors concentrate their preventative inspections (which tend to focus on ensuring registration of payrolls with the state) in areas with lower compliance rates and no private regulators. The counterfactual is that without private regulation, conditions in the EPZs would be marginally worse and SET inspectors would have to dedicate more time to EPZs (e.g., spending time registering workers), which would leave less time for other sectors of the economy. As discussed above, however, in this case, freeing up state resources does not mean that the state is completely substituted because SET inspectors regularly visit the EPZs and the demand for inspections in the EPZs remains high enough to provide a constant stream of information about working conditions. By continuing to have a presence in the EPZs, state regulators can identify and correct some violations when the private regulators fail. These findings suggest a need to rethink the displacement hypothesis and to develop a more nuanced framework for understanding the relationship between private and state regulation. Such a framework should take into account the responsibility of state regulators for sectors of the economy that are not included in private regulatory regimes as well as ways by which private regulation can relieve pressure on state regulators without crowding out the state.

A second driver of complementary regulation occurs within the EPZs, where SET and ABC directly support one another's efforts and where their passive interaction and comparative advantages generate positive-sum gains. ABC and SET developed their regulatory systems in response to different political constituencies, and building upon different organizational structures, they effectively varied their approaches to regulation described above. Congruent with Ostrom's (1996) model of positive-sum gains in "co-production," this variation results in the ability of state and private actors to offer different inputs into the production of regulation. The combination of two inputs that are not perfectly substitutable creates positive-sum gains between private and state actors. For example, ABC requires its factories to provide their workers with written legal contracts. Although not mandatory, written contracts make it easier for SET to resolve conflicts that inevitably arise between workers and managers. Contracts serve as another piece of evidence for inspectors to use during conflicts over severance, but contracts can only help workers if the documentation is accurate. Workers are skeptical of new contracts and often initially refuse to sign them for fear of being tricked into signing away some of their rights. ABC auditors do not have the legitimacy to convince the workers that contracts are indeed fair, but, in response to ABC's requirement, the managers of the firms who need the reluctant workers to sign the contracts call SET and request an inspector. SET inspectors check and legitimize the initial contracts, but they do not check the contracts after the initial approval. This is the task of ABC auditors, who spot check the contracts during their periodic audits and ensure that the contracts include the correct hours and pay structure. ABC's spot checks are not caused in any way by the lack of continuing oversight by SET; rather, they are the result of audit procedures designed to monitor compliance with company code, which were developed to respond to the pressures of international NGOs. This example illustrates the way different practices and sources of legitimacy combine to be mutually supportive. SET uses its legitimacy to approve "legal" contracts—a task that is seen as appropriate for government inspectors—and ABC uses its legitimacy to demand contracts that are not required by law. None of this action is coordinated; ABC requires contracts because of its code of conduct, not necessarily to consciously help SET. However, their efforts are intertwined, and the result is that SET and ABC unwittingly support one another's actions.

Take, for instance, one single factory that at the time of this research was being prosecuted for union busting by SET while being pressured by ABC to reduce the temperature of the factory and improve fire safety. By improving health and safety conditions, ABC is helping the factory meet national laws on occupational health. At the same time, by prosecuting the factory management for violations of freedom of association, SET is supporting compliance with ABC's code. SET has a comparative advantage to prosecute freedom of association violations because inspectors are in a position where union officials can seek them out, and SET is seen as a legitimate arbitrator of these types of disputes. The union organizers who spearheaded the complaints against this factory did not have any channels to ABC that they could use to complain to auditors and simply do not see multinationals as legitimate partners.

This driver of complementary regulation is comparative advantage, not coordination. Complementary regulation occurs when the actions of state and private regulators are mutually supportive of one another's efforts and, because of the different organization forms and the different pressures on these actors, they bring different tools to the task of regulating.[4] The code of conduct and laws overlap nearly entirely, which prevents them from competing with one another. If SET and ABC demanded conflicting actions in the factories, one would have to win out, but there is no evidence that this occurs in the DR. Although having similar rule bases is essential, SET and ABC are most strongly complementary because the diversity in their approaches renders them more effective than if they simply were to duplicate each other's efforts. When each regulatory system focuses on issues that each is better suited to address, the comparative advantages create a positive-sum gain (Ostrom, 1996). For example, ABC can show factories how to better manage their production to reduce overtime, while SET can instruct workers on how overtime laws protect them—this results in better regulation than if, for example, ABC and SET were simply redundant.

These comparative advantages derive from the regulators' institutional histories and positions in the public and private spheres. It is beyond the scope of this paper to provide a full account of the origins of the practices that have resulted in these comparative advantages. The task in this paper, rather, is to challenge the displacement hypothesis and identify the drivers of complementary regulation. However, the growing literature on Latin American labor inspectors and on private regulation in practice suggests that the practices that lead to comparative advantages are widespread (Locke, Amengual, & Mangla, 2009; Locke & Romis, in press; Piore & Schrank, 2008; Pires, 2008). State and private actors are ultimately influenced by, and accountable to, different political constituencies. Evidence from the DR indicates that when these differences translate into different regulatory logics and, consequently, trigger comparative advantages, complementary regulation may be obtained.

5. CONCLUSION

Whether or not labor conditions will be improved will depend not on state or private actors alone. Instead, the "interactive ecology"[5] of various state and private actors will determine how workers are protected from the negative impacts of market forces. An analysis of one case and one particular form of private regulation in the context of a wider array of regulatory approaches—for example, self-monitoring or independent third-party monitoring—cannot answer all the questions that arise from the interactions of different private-public combinations. However, through a detailed empirical analysis of regulation in practice, this paper has attempted to demonstrate the existence of complementary regulation and to identify the drivers of complementary relations between one particular, widespread, form of private regulation and labor inspection. This paper concludes with considerations for the literature on labor standards and state–society relations.

Notwithstanding the scarcity of research on state labor regulation in developing countries, there have been studies that indicate that state, private, and international actors can work together in complementary ways under very different conditions than those in this study. The cases of Kukdong in Mexico and Choishin in Guatemala illustrate that crises and acute attention by third-party monitors can bring governmental officials, brands, unions, and factory managers to the table to improve compliance with labor standards (Rodriguez-Garavito, 2005). In these cases, as in the Dominican case, state and private actors provided different competencies in the task of regulating labor conditions. Although the competencies of third-party monitors are much different from those of ABC (i.e., mediating negotiations), they too complement state actors. The ILO Cambodia project provides additional empirical support for the argument that state and private actors can work together toward successful regulation. In this coordinated project, ILO monitors collect information about labor conditions. This information is then used to determine the access to the United States market allotted to Cambodian producers (Polaski, 2006). In addition, the ILO reports on firm compliance have been used by private firms to inform sourcing decisions. This innovative program uses the credibility of the ILO to gather unbiased information along with the market power of the United States and purchasing firms to create incentives for factories to comply. Again, the combination of state and private actors leverages the comparative advantages of each set of actors to improve the performance of the hybrid system of regulation.

When placed in the comparative context of these cases, two important aspects of the Dominican case come into relief. On the one hand, with different types of private regulation (e.g., third-party monitoring), private regulators in these cases excel in areas where ABC has deficits. Notwithstanding these differences, the broad pattern of a mixture of comparative advantages of private and state actors still obtains and drives the complementary relations across the spectrum of different types of non-state regulation. Moreover, these cases demonstrate that complementary relations occur across a range of political contexts. On the other hand, these examples are more limited than the Dominican case because of the exceptional nature of the institutional arrangements that underpin the positive relations. The experimental ILO Cambodia project is difficult to replicate due to the intense resources it draws on from the ILO and other partners. Cases of international mobilization, like the Kukdong factory, demonstrate that in times of crisis, state and private regulators can collaborate, but they are limited to a handful of factories since only dozens of factories have received such a high level of attention. Most factories never see such campaigns and are primarily regulated by multinational firms and states. The findings of the Dominican case are broadly congruent with these examples, but remain unique because of their everyday quality and because they do not require formal coordination. The regulators studied in the DR were not engaged in crisis management or experimental programs. Instead, they acted in a way that reflects regulation in tens of thousands of factories that never draw the direct attention of labor rights activists, as opposed to the dozens

of factories that are subject to international campaigns. The findings from the DR indicate that even without coordination, in places where state and private regulators are shaped to have comparative advantages toward achieving the same ends, there are likely to be complementarities between their actions.

This last finding identifies the need to broaden the search for drivers of complementary state–society relations. Like the few studies on combinations of state and private regulators, the state–society relations literature often focuses on ties between the state and private actors as essential ingredients to complementary relations (Evans, 1997; Joshi & Moore, 2004). While various scholars have convincingly argued that coordination is important, and, in some settings, even critical, their exclusive focus on highly coordinated organizational environments limits the scope in which complementary relations can be found. Coordination is resource intensive and, at times, not politically expedient. However, this paper has argued that coordination is not necessary for complementary relations. Crucially, this line of research privileges the development of an understanding of the ways in which marginal variation in implementation of similar policies by different actors contributes to more or less complementary relations.

The possibility of complementary relations without coordination does not mean that we should expect complementary relations to exist in all countries and all sectors where private regulators are active. Complementary regulation requires both state and private actors to have *some* capacity to regulate—government must have a minimally functioning labor enforcement bureaucracy and private regulators must take their role seriously. Furthermore, complementary regulation benefits from the comparative advantages of state and private actors to correct violations of labor standards. Taking this into account, research on global labor standards and private regulation should be oriented in two directions. First, researchers should be explicitly attentive to the conditions under which private and state regulation develop capacity as well as to how these conditions shape the way regulations are implemented in practice. Second, researchers should not analyze these actors in isolation, but should specify ways in which private and state actors interact. As a policy prescription, this research suggests that developing ways by which the comparative advantages of state and private regulators can be strengthened and institutionalized should improve overall levels of global labor regulation. If scholars can find ways by which regulatory institutions can be shaped so as to take full advantage of complementary relations, policies can be designed so that the rise of private regulation will more likely result in the strengthening of social protection than in the undermining of what little regulation currently exists.

NOTES

1. Interviews included the respondents from the Dominican government (16), ABC (20), workers and managers from factories in the DR (47), Dominican unions and NGOs (10), international labor rights organizations (6), and local business associations (3).

2. Both ABC and SET require that factories limit the total number of overtime hours, have minimally safe working conditions, do not discriminate against unions, do not require overtime, pay legal wages, and pay legally required severance.

3. See Schrank (2005) for a fuller account of pedagogy at SET.

4. This builds on previous theories of Evans (1997) and Ostrom (1996).

5. Peter Evans used this phrase at the 2008 meeting of the American Sociological Association.

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