

# The Politics of Code Enforcement and Implementation in Vietnam's Apparel and Footwear Factories

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**Summary.** — What happens when transnational private regulation of labor standards is put into practice on the factory floor? This article addresses this question with field research data on Vietnam's apparel and footwear industries. The Vietnamese case shows that code enforcement and implementation are highly political processes fraught with conflicts and attempts at evasion. The consequences, moreover, contradict the conventional wisdom of low regulatory effectiveness; heightened legal awareness and strengthened labor law enforcement may result from these processes. This study illustrates two mechanisms (conflict and ritualistic compliance) that can raise the effectiveness of private regulation.

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## 1. INTRODUCTION

What happens when transnational private regulation of labor standards is put into practice on the factory floor? And what are the possibilities for positive change? These questions are central to a growing body of research into private regulation. Addressing them requires close attention to the factory-level interactive process of applying codes of conduct. However, few empirical studies have taken seriously the implications of such interactions for regulatory effectiveness, let alone the range of interactions between the regulated and regulators.

Existing research shows that private regulation has had even and unstable effects in terms of improving labor conditions (Barrientos & Smith, 2007; Locke, Amengual, & Mangla, 2009; Locke, Qin, & Brause, 2007; Vogel, 2005). The limited effects are ascribed to the shortcomings of private regulation, such as weak standards in codes of conduct, global corporations' low commitment to enforcing them, failures to detect and penalize violations, and the lack of incentives for the regulated to comply with codes (Esbenshade, 2004; Locke *et al.*, 2009; Ngai, 2005; O'Rourke, 2002). They are also attributed to the institutional conditions in the country of its operation, including conflicts between codes and legal standards and low levels of rule of law (Locke, Qin, *et al.*, 2007; Mamic, 2003). Explanations thus abound as to why private regulation does not work.

By contrast, fewer accounts exist as to under what conditions and through what mechanisms private regulation can work. These questions are important; positive effects of such regulation have also been found (Barrientos & Smith, 2007; Frenkel, 2001; Vogel, 2005; Weil, 2005). Private regulation is built on the assumption that global corporations influence their supplier factories' compliance, but their power does not necessarily ensure code compliance, as Locke, Qin, *et al.* (2007) show in their quantitative study of Nike suppliers. Focusing on the regulators' perspective, scholars increasingly regard the relationship between private and public regulation and certain characteristics of the former as critical to regulatory effectiveness. Some stress complementarity between private and state regulation (Amengual, 2010; Locke, Rissing, & Pal, 2012; Vogel, 2010). Others emphasize the way in which

private regulators can increase factories' ability and willingness to comply with codes, such as capacity building and joint problem solving (Locke, Kochan, Romis, & Qin, 2007; Locke *et al.*, 2009).

Existing accounts overlook, however, an endemic aspect of regulatory enforcement that scholars of organizations have long highlighted: the regulated try to guard their discretion when external actors attempt to influence them (Pfeffer & Salancik, 1978/2003). Moreover, they share a "technical" assumption that code enforcement and implementation are "a matter of getting the rules and incentives right" while at the same time downplaying the influence of the local (as opposed to global) institutional contexts that inform code enforcement and implementation (Bartley, 2011). However, understanding regulatory effectiveness requires a close inspection of the *interactive political* process of applying codes that is influenced by specific *local* institutional contexts. It is here that this study contributes.

The empirical focus of this research is the apparel and footwear industries in Vietnam. Private regulation has influenced the country since the mid-1990s. Sweatshop scandals in some of its largest shoe factories attracted worldwide attention, prompting the capitulation of global corporations such as Nike to anti-sweatshop activism. But the shortcomings of private regulation, as well as Vietnam's low level of rule of law and weak public law enforcement, lead us to expect little positive effect on the part of private regulation. But what actually happens during code enforcement and implementation on factory floors suggests different outcomes as well.

This study argues that the mechanism by which, and the local institutional conditions under which, codes are put into

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practice are crucial. Private regulation often encounters factory managers' attempts to manipulate the situation so as to guard their discretion, thereby triggering new conflicts on shop floors. We must understand the specific ways in which this happens. Factories often contest what they regard as excessive demands from private regulation by drawing on labor law. This forces social auditors to assume a law-enforcement function as well as to justify their demands in legal terms. The ways they do so are influenced by the country's legal environment. They do not merely fill the gaps in codes of conduct by searching for legal details. They also make legal adaptations by creating their own rules—rules that only partially relate to laws.

The baseline is important. Vietnam has adopted a number of detailed protective laws for workers since its transition to a market economy in the late 1980s. However, multiple legal rules often contradict each other, and different state agencies provide inconsistent legal interpretations (Bergling *et al.*, 1998, pp. 37–39; Gillespie, 2006). Moreover, public law enforcement has been far from adequate, leaving a number of legal provisions unenforced. This kind of legal environment is often found in developing countries, where the typical problem is not the lack of legal rules but weak public law enforcement (Bartley, 2011; Mamic, 2003, pp. 136–137). Such weak enforcement of detailed yet ambiguous laws fails to raise factories' legal awareness and compliance. It is within this local institutional context that private regulators' enforcement attempts challenge prevailing factory practices and make factory managers better aware of laws.

At the same time, when factory managers put up a façade of compliance with minimal actual change in labor practices, further clashes with workers are likely to happen. Ritualistic compliance requires workers' cooperation; social audits typically include verification of information and procedural formalities that involve workers. This interactive dynamic enhances workers' sense of rights and oppositional consciousness.

This study draws on extensive field research data on Vietnam's fashion and footwear factories. Most of the data were collected during 2003–2005 as part of a larger research project; it is complemented by follow-up interviews conducted in recent years. They include (1) a survey of 124 factories with their management together with in-depth interviews with other factory managers; (2) in-depth interviews with 111 workers; and (3) interviews and conversations with eight social auditors and other relevant personnel.<sup>1</sup> These multiple sources of data are well suited to identify the interactive dynamic of code enforcement and implementation.

Below I first discuss the existing debate on regulatory effectiveness, which has centered on two issues: the relationship between private and state regulation; and the features of private regulation. I then describe Vietnam's state regulatory environment. In the two sections that follow, I show how code enforcement and implementation create conflicts on shop floors between factory managers and social auditors and between factory managers and workers, and I demonstrate how the conflict and ritualistic compliance that pervade code implementation can strengthen labor law enforcement. I conclude by highlighting several issues on which future research should focus attention for a better understanding of regulatory effectiveness.

## 2. DEBATE ON THE EFFECTIVENESS OF PRIVATE REGULATION

The relevant literature suggests two ways in which private regulation can be effective: its complementarity with state regulation and private regulators' efforts to raise the ability and

willingness of the regulated to comply. Below I discuss these two issues.

### (a) *The relationship between private and state regulation*

Three views prevail on the relationship between private and state regulation: substitution; displacement; and complementarity. The substitution thesis assumes a lack of state ability and/or state willingness to adopt or enforce legal standards. Private regulation is expected to substitute for the absence of state regulation, whether in the form of laws on paper or public enforcement (Fung, O'Rourke, & Sabel, 2001). Critics of private regulation, conversely, worry about the possibility of displacement; in other words, private regulation may lead to the state's retreat from regulatory domains (Esbenshade, 2004; Gereffi, Garcia-Johnson, & Sasser, 2001; Jenkins, 2001; O'Rourke, 2003, 2006; Strange, 1996). More recently, scholars argue that regulatory effectiveness requires securing complementarity between private and state regulation (Vogel, 2010).

Each of these views finds some support in empirical research. In the case of the substitution thesis, for example, Locke, Rissing, *et al.* (2012) showed that private regulation successfully filled the gap in legal rules and public enforcement. The displacement thesis is also partially supported by Bartley's (2005) finding that branded firms and retailers in the United States successfully obtained exemptions from the joint liability law for their contractors' labor law violations by advancing a self-regulatory alternative—their own codes of conduct and monitoring of contractors. The effectiveness of complementarity is ascertained in Amengual's (2010) case study of the Dominican Republic, in which the co-presence of private and state regulators' enforcement brought about reinforcing outcomes.

Yet a more complicated picture arises when different empirical studies are compared, suggesting the need to clarify several points. First, which requirements on paper are subject to enforcement attempts cannot be read off rules written on paper, either public or private. Bartley's (2011) study of the freedom of association issue in Indonesia shows that the mere co-presence of similar code and legal requirements on paper did not bring about reinforcing outcomes; neither private nor public regulators enforced them. Selective application of private or public rules is common. Empirical research, then, should inquire into which rules are subject to enforcement attempts, not merely which ones are included by codes and laws.

Second, the level of compliance with codes of conduct depends on the degree of the country's rule of law (Locke, Distelhorst, Pal, & Samel, 2012; Locke, Qin, *et al.*, 2007). This finding raises two questions regarding the state's role and its relationship with private regulation. Precisely which of the state's roles—its legislative function, its law-enforcement activity, or its control over public regulators' behavior—is significant in shaping the relationship between private and public regulation? How do its different regulatory roles influence the operation of private regulation? Locke, Rissing, *et al.* (2012) see private enforcement substituting for weak or absent laws and public enforcement. This view portrays the state as neutral toward the operation of private regulation. However, legal rules inconsistent with code standards, as well as behaviors in contravention of law on the part of public regulators, may also impede the operation of private regulation (Bartley, 2011; Yu, 2008). While global corporations' support for stronger laws in the countries of their operations may raise legal standards (Vogel, 2005), there is no guarantee that adequate enforcement will follow.

Finally, *domestic* civil society plays a key part in shaping the relationship between private and state regulation. Bartley's (2005) evidence of displacement, for instance, shows that brands and retailers' success in fending off laws enabled labor-rights activists to legally challenge the firms on the grounds that their monitoring of contractors made them knowingly benefit from the latter's violations of the law. Seidman (2007) describes how domestic NGOs in Guatemala bolstered the state's ability to enforce labor law by encouraging a "culture of compliance" in the industry rather than creating an alternative to weak state institutions. Locke, Rissing, *et al.* (2012) also demonstrate that a domestic labor NGO in Mexico linked private and state regulation by providing a remediation mechanism that was an alternative to the public mechanism and yet still worked through the state institution. The focus of these findings is firmly on civil-society actors who are operating outside the factories in a local context. But what happens to the relationship between private and state regulation without the presence of such an active civil society?

Existing studies thus show that the outcome of private regulation depends on which rules receive enforcement attempts, what role the state plays, and what part, if any, is open to domestic civil society actors. What is missing in these accounts is the interactive process of applying codes on the factory floor.

#### (b) *The characteristics of private regulation*

In explaining why private regulation has brought about limited positive impacts, albeit uneven across issues and unstable over time (Barrientos & Smith, 2007; Frenkel, 2001; Locke, Distelhorst, *et al.*, 2012; Locke, Qin, *et al.*, 2007; Locke, Rissing, *et al.*, 2012; Vogel, 2005), scholars have called attention to its various shortcomings. In doing so, they make certain assumptions about key actors in private regulation. Global corporations' power is assumed to determine factories' level of compliance with codes of conduct. Factory managers who attempt to guard their discretion in the face of private regulation conjure up the image of villains who succumb to pressures for compliance but who shrewdly subvert the regulatory process through evasion, deception, and resistance whenever opportunities arise. Social auditors are regarded as dummies who miss violations due to poor training and low competence (Esbenshade, 2004; O'Rourke, 2002), although in a more recent view they are reincarnated as an actor crucial to raising factories' ability and willingness to comply (Locke *et al.*, 2009).

Underlying all these views is the assumption that the regulatory outcome is largely attributable to what regulators do. But this assumption overlooks the actions of the regulated, which are informed by the local institutional context as well as the nature of external influence attempts. These may range from avoidance to mere acquiescence, from adaptation to the reshaping of demands (Pfeffer & Salancik, 1978/2003). Code enforcement and implementation present factories with conflicting demands and ambiguous definitions of compliance. This creates a great deal of room for discretion and contestation, a situation which is usually regarded as a shortcoming of private regulation (Mamic, 2003). As the interaction between regulators and the regulated ultimately shapes the regulatory outcome, regulatory effectiveness cannot be fully understood without attending to factories' diverse responses and their consequences.

Two issues are important here. First, one needs to distinguish between intentions and consequences; attempts on the part of the regulated to manipulate the process do not necessarily bring about the desired results. Second, building a fac-

ade of compliance requires workers' cooperation precisely due to the way that social audits are conducted. Here it is necessary to discard the victimized image of workers. While an activist image of workers is sometimes presented (Rodríguez-Garavito, 2005), workers are more often depicted as unwilling accomplices in factory managers' manipulations (Ngai, 2005). Beyond these polarized images, there are no adequate accounts of how ordinary workers assess private regulation and especially how they view managers who try to create a fiction of compliance. Workers' recognition of the decoupling between promise and practice increases the chance of them mobilizing on their own and seeking external redress for their grievances (Fuller, Edelman, & Matusik, 2000). The consequence of private regulation thus needs to be viewed in terms of its influence on labor-management relations as well.

### 3. THE VIETNAMESE REGULATORY ENVIRONMENT

The period in which private regulation extended its influence to Vietnam coincides with that of establishing a legal framework for labor protection. The country adopted the Labor Code in 1994 (which took effect in 1995), with a number of strong protective laws enacted subsequently (Phan, 2001; Walsh, 1995). Enabling rights such as the freedom of association are restricted, in that only one union organization, the Vietnam General Confederation of Labor (VGCL), is permitted and all enterprise unions are required to be affiliated with it. However, the right to strike as well as the right to collectively bargain are legally recognized. Vietnam's labor laws are considered more detailed and stronger than those of neighboring China, a similarly authoritarian polity (Chan & Nørlund, 1998; Chan & Wang, 2004).

But these developments on paper have not been followed by adequate public enforcement. The weak labor inspection system and low penalties for legal violations are endemic problems. As a VGCL official told me in 2005,

Clearly, the law is not very strict, the government is weak, and the inspection is inadequate. ... You know, for example, the Ministry [of Labor, Invalids, and Social Affairs (MOLISA)]... has 356 [labor inspectors] for the whole country. ... The law also says that you may inspect [an enterprise] only once a year. It would take 660 years to return to it the second time. ... We did the calculation for Ho Chi Minh City. The number is even greater. There are only four or five inspectors, but nearly 40,000 new enterprises have been set up since 2000. So they wouldn't be able to inspect all of them even in 1,000 years! (O6)

The VGCL's president also heavily criticized low penalties for legal violations at a National Assembly hearing in 2007, citing an example of a company with 5,000 workers which made social insurance contributions for only 2,000 of them. The company saved US \$187,500 (3 billion VND) through this legal violation, but labor authorities imposed only a US \$1,250 (20 million VND) fine on the firm, subsequently letting the company continue to breach the law (United States Department of State, 2004).

A more serious problem which the VGCL officials did not highlight is inadequate control over illicit or illegal behavior by government officials. Interviews with factory managers reveal highly uneven and sometimes compromised public enforcement. Some factory managers reported fairly professional conduct on the part of labor inspectors, but others mentioned demands for bribes. One factory manager who had visits by the local government's labor inspection team two or three times a year, for instance, described the situation as follows: "[The team] first drafts and shows a list of citations for

violations. We then negotiate a deal. ‘Let’s leave this and that out’ and [they] then demand money [usually in the range of US\$20–30]’ (M18).

The ineffectiveness of law enforcement is aggravated by detailed, yet ambiguous, laws and regulations. Numerous protective clauses are scattered across different documents. While some legal requirements such as the minimum wage, limits on overtime hours, and social insurance contributions are widely known, it is not uncommon for factory managers to be unaware of other provisions. This also seems true of workers. According to a survey in 2009, only 7.2% of workers in domestic private enterprises and 5.6% of workers in foreign-invested enterprises had a clear idea of the Labor Code (Quốc, 2009).

It is in this type of domestic regulatory environment that private regulators and the regulated interact on the factory floor. Such an environment plays an important part in shaping the political process of code enforcement and implementation.

#### 4. INTERACTIONS BETWEEN FACTORY MANAGERS AND SOCIAL AUDITORS

A great deal of room is available for factories’ discretion during code enforcement and implementation. This derives from the way private regulation operates in practice and also the characteristics of the domestic regulatory context. This section looks at social auditors’ enforcement attempts and factory managers’ diverse responses, and it analyzes their consequences for regulatory effectiveness.

##### (a) *Factories’ discretion in code implementation*

Private regulation has affected a large number of apparel and footwear factories in Vietnam. Nearly three-quarters of the factories I surveyed in 2005 (82/111) had been audited at least once by the time of the survey.<sup>2</sup> This has to do with several factors: an increase in the number of global firms that subscribe to private regulation; the development of multi-stakeholder codes such as Social Accountability 8000 (SA8000) or Worldwide Responsible Accredited Production (WRAP); and the rise of monitoring initiatives by industry associations in importing countries. In my sample, 13 factories submitted to multi-stakeholder codes (12 to SA8000 and one to WRAP). Interestingly, all of them also were audited by their buyers.

Social audits are accompanied by different standards of compliance. According to factory managers, specific requirements for compliance are often different, even though major ones, such as no child labor, are similar. Moreover, enforcement of private rules does not necessarily aim at full compliance. For instance, some audits determine pass or fail by applying a scoring system with a checklist (Mamic, 2003). According to managers, 70–75 points out of 100 are usually required to pass an audit (M5, M24). This system allows them to choose items for compliance. As a factory owner put it bluntly, “I give up on some [requirements]. I just need to get the score necessary to pass” (M24).

Duplicate audits are generally regarded as a cause of audit fatigue and a sign of regulatory inefficiency (Locke *et al.*, 2009; Mamic, 2003). What is overlooked is that multiple rules and diverse audit practices serve as a source of discretion by means of which factory managers attempt to moderate private regulation.

##### (b) *Social auditors*

The nascent social auditing profession does not have the benefit of professional authority. Learning by doing is the

most common way of acquiring job skills, and there are no widely recognized professional certificates. In this context, social auditors in Vietnam have devised two auditing models partly by drawing on their employers’ policy: the policing and the consulting model.

The policing model is characterized by no benefit of the doubt, which is illustrated by a footwear brand’s compliance officer. He visited factories without prior notice. In his view, pre-scheduled visits enable factories to cook the books. If a factory denied access by claiming that the staff in charge were absent, even after he argued that he could work with another member of the staff, it was automatically treated as a case of document falsification; as far as he was concerned, the factory only did so because those who were not in charge might bring real, instead of falsified, documents when requested. In such cases, he simply reported “Denied Access,” which would result in termination of business with that factory. Factories unwilling to comply were ones that “I don’t have to work with,” as he repeatedly said (A2).

The consulting model is characterized by emphasis on the benefits of compliance. As a garment brand’s compliance officer described it, “[O]ur approach is not policing.... It’s easy to say, ‘This is [the brand’s] code of conduct. Just do it.’ But I never ask factories to implement anything just because of its requests and demands.” Describing her approach as “collaborative,” she said her job was “to help improve the management system and to help improve factory conditions.” She added, “I have to find out what’s the benefit for factories to implement my suggestions.” For example, she had to convince factories to install safety devices that would reduce accidents (and thereby save them money) or to provide disposable cups in their on-site clinics (and thus prevent transmittable diseases such as bird flu). While her company promoted a “partnership” approach to its suppliers, it did not provide any specific instructions on how to translate this philosophy into action (A1). Persuasion backed up with a good argument was an implementation guideline of her own making.

These two approaches are consistent with the compliance- and commitment-oriented model that Locke *et al.* (2009) identify. They argue that the latter improves regulatory effectiveness. However, both models have limitations. As for the policing model, business relations are rarely terminated due solely to audit results (Amengual, 2010; Locke *et al.*, 2009), which compels social auditors to continue to work with recalcitrant factory managers. As for the consulting model, the requirements for which the auditors cannot find a good rationale are likely to be left out of enforcement: the aforementioned social auditor, for instance, “leaves them pending rather than asking factories to implement [them] right away” (A1).

Social auditors often face factory managers’ contestation. As an auditor of Better Work Vietnam put it, “If you do an assessment [audit], the factory really hates you. You have to fight with them, confront them, or argue with them” (O21).<sup>3</sup> Precisely how do social auditors handle factory managers’ contestation?

Two approaches are common: invoking self-interest or invoking labor law. The former is similar to the consulting model: “You know, they’re not kids. If I really want [them] to do something, I have to show them the reason. ‘This is really good for you’” (A4). However, factory managers generally view code compliance merely as raising operating costs. It is difficult to convince them of the benefits of compliance. Social auditors in Vietnam thus also draw on labor laws to justify their demands. A similar dynamic is found by Mamic (2003). When challenged, social auditors “simply admonish factory

managers to ‘follow the law of the land’” because “[i]t’s easier if we [social auditors] tell them we’re just following the rules promulgated by their own government” (pp. 136–137).

Social auditors do not shy away from law enforcement roles. Some of them explicitly refer to legal provisions on paper, claiming that legal rules themselves are detailed enough for enforcement (A3). Others contact government offices to obtain legal clarification (A1, A7). Still others create their own legal interpretations (A2). But enforcement is influenced by the legal environment.

Even ostensibly straightforward legal provisions may not prove to be so in practice. An example is the issue of a paid break during standard working hours. The Labor Code states, “An employee who works for 8 hours consecutively shall be entitled to a break of at least half an hour which shall be included in the number of hours worked” (article 71.1).<sup>4</sup> A social auditor noted this clause in the Labor Code. When he attempted to enforce it, factory managers challenged the demand. In response, he contacted a government agency. The latter said that employers should provide a paid break only to those employees who work for 8 hours *consecutively*, but not to virtually all garment and shoe workers as they break for lunch or dinner (A7). Obviously, this legal interpretation contravenes the spirit of the law. More importantly, this type of legal environment provides space for contestation when social auditors assume law-enforcement roles.

In doing so, social auditors may end up creating their own legal rules. One such example is the minimum wage for enterprises with *de facto*—but concealed—foreign ownership which are registered as domestic businesses. Before legal change in late 2011, higher minimum wage rates were applied to foreign-invested enterprises. A footwear brand’s auditor decided that the nominally domestic enterprises should pay the higher minimum wage rates, just like the enterprises formally registered as foreign-invested (A2). Neither codes of conduct nor labor law had any stipulation for such contingencies. It was the auditor who interpreted the law in a way that he deemed appropriate.

The same auditor also modified the private rule by explicit reference to labor law. His company, for instance, allowed a maximum of a 68-hour workweek during peak seasons for no more than 3 weeks a year, a rule that was applied to all its suppliers globally. As Vietnam sets the legal limit at 64 hours a week, he decided to permit a 64-hour workweek for 5 or 6 weeks instead (A2). It is not clear whether his employer explicitly allowed social auditors to adjust the global requirement to national labor laws. What is important here is that conflicting standards on paper between codes and labor laws in themselves do not necessarily cause a regulatory problem; in practice, social auditors may make local adjustments.

### (c) *Factory managers’ responses to private regulation*

Factory managers’ diverse responses to private regulation can be viewed in terms of Pfeffer and Salancik’s (1978/2003) typology of organizational behaviors under external influence attempts: avoidance; acquiescence; evasion; contestation; and the shaping of demands. Among these, avoidance is a possibility for factory managers in Vietnam, whereas the shaping of demands is not. The presence of clients who do not submit to private regulation enables factories to take the avoidance option. A few factory managers indeed refused production orders from clients that they considered to make excessive demands on labor conditions and yet offer unacceptably low prices (M53, M63). However, factories cannot shape the demands of private regulation; they do not participate in the cre-

ation of codes and social audits. It is instead the battle between anti-sweatshop activists and global corporations that influences codes and social audits. For factories, their sphere of influence is the implementation process. While acquiescence is a possibility, the more dominant responses are contestation and evasion.

#### (i) *Acquiescence*

Acquiescence depends on the nature of specific demands. Acquiescence is likely when the issue at stake is perceived to be easily changeable, and even more likely when it is also a legal requirement.

An example is the calculation for the premium payment for overtime work. The law sets the overtime premium on standard working days at 150% and the night-work premium at 130% the regular rate. However, factories often do not know about the night-time premium, not to mention the government-set rule on how to calculate the premium for night work during overtime hours. Factories that were aware of the night-time premium paid a 180% premium by adding 50% and 30%. However, the MOLISA stipulates 195% by multiplying 150% and 130% (TT12/2003/BLĐTBXH). It was social auditors who drew attention to this little-known provision.

A garment factory, for instance, had paid 150% the regular rate for all overtime work on standard working days. As the manager dourly said, social auditors required a 195% pay for overtime work at night (M11). The factory complied with this requirement. According to a worker from this factory who, at the time of the interview, had been working from 7:15 am to 10:45 pm 5 days a week for almost 5 months consecutively, her overtime rate for each hour from 8:45 pm to 10:45 pm had suddenly jumped from VND4,500 to VND5,900 several months earlier (W46).

But simple acquiescence is rare. Securing compliance takes more than informing factories of legal requirements. Contestation and verification with the government are often prior steps. An example is the statutory requirement that an extra allowance be paid to sewing workers as such work is considered heavy and taxing. When social auditors noted that this is law, some factory managers previously unaware of this provision contacted the relevant government agency to verify the claim (M10, M60). In one factory that contested this demand, social auditors even showed the government document containing details of the regulation (M10). Both factories grudgingly paid this allowance.

#### (ii) *Contestation and evasion*

More common than acquiescence are attempts to manage external constraints. Existing research has well documented such attempts at manipulation by factories and portrayed them exclusively in a negative light. But the Vietnamese case shows that contestation and evasion can bring about positive consequences.

In cases where neither private regulators nor the regulated know about legal requirements, contestation centers on the discrepancy between multiple private rules. An example is a conflict over shopfloor temperature that revolved around a costly water-cooling system. As a factory manager recounted the story, he had recommended the system when the factory was under construction, but the top manager rejected his proposal. A client demanded the same equipment a year later. He said,

Now I had to study its shortcomings... The client would just insist on it: ‘If you don’t install it, I won’t give you orders.’ So I did research. As it turns out, first, water vapor from the water-cooling system makes the shop floor humid all the time, so it does harm to workers’ health. Sec-

ond, water vapor affects the machines. If they could [typically] run for up to 5 years, the machines would break down just in 1 year because they get rusty. (M26)

Neither party in this conflict was aware that there is a legal requirement for maximum permitted workplace temperature of 30–34 °C (QĐ3733/2002/BYT). To counter the demand, the manager drew on the guideline of a brand to which the client (a trading company) acted as a supplier: no higher than 35 °C. Although it took back the demand in the end, the client still insisted on lowering the temperature. After experimenting with different methods, the factory installed sprinklers on the roof: “When the sun is high, around two or three in the afternoon, we turn on the sprinklers. The temperature does go down” (M26). It is private regulators’ enforcement attempts that drew the factory’s attention to the temperature issue and forced it to take action. And the consequence is the lowered temperature.

Factory managers sometimes contest private regulation by enlisting government support. They may win. For instance, a factory faced a charge by social auditors that it violated the law by deducting an allowance for disciplinary purposes. The factory obtained an interpretation from a local government office that its internal policy was not against the law and successfully resisted the demand to abolish this policy (M64). Another example is the case of termination of employment for a worker who had just returned from a maternity leave. A personnel manager of the factory decided not to renew her contract (which was soon to expire) on the grounds of below-average productivity. The worker, however, thought that she was being discriminated against for having an infant and contacted the factory’s client to lodge a complaint. When the client insisted that the factory reinstate her, the manager turned to the provincial government, which ruled that his decision complied with the law. The factory thus successfully warded off the demand (M29).

It is not clear whether such legal interpretations from government offices are fully lawful. But private regulators’ enforcement attempts at least make people in the factories better aware of legal requirements that might otherwise remain unknown. A contrast with another legal provision that received few enforcement attempts makes this point clear: statutory annual leave for sewing workers. The Labor Code stipulates that employees with at least 1 year of service receive a 12-day paid annual leave and those doing “heavy and taxing” work, 14 days (article 74). Most of the factories that provided any annual leave at all gave only 12 days to their sewing workers, even though sewing is included in the list of heavy and taxing jobs.<sup>5</sup> It is possible that some factory managers knew about this requirement but ignored it. But most factory managers interviewed were unaware of it, and few mentioned the issue as being brought up in social audits. Therefore, legal rules that receive private regulators’ enforcement attempts at least attract factories’ attention.

When the legal rule related to an auditor’s demand is ambiguous, evasion also happens. An example is the payment for unused annual leave days. As noted earlier, the Labor Code clearly mandates paid annual leave for employees with at least 1 year of service. But the Code itself and implementation details do not specify whether and how much such workers should be paid for unused annual leave days. A compliance officer for a footwear brand required a 300% payment for each day of annual leave remaining by year’s end, an amount that in his view would be commensurate with the legal overtime rate for public holidays (A2). According to workers from two shoe factories that produced this brand, one factory paid 200% the regular rate (W65), while the other got around it by making workers use

up their annual leave in low seasons (W34). The first factory manufactured for multiple shoe brands, which perhaps permitted outright dismissal of the requirement. The second factory, for which the brand was its sole client, probably had to evade it more discreetly. But the response of both factories—to evade the auditor’s demand—is similar.

An interesting change, however, is found in recent years. A department belonging to the MOLISA issued an official letter in response to a company’s query on the aforementioned issue (CV45/2005/ATLD-CSQP). It states that the 300% payment is required only when the employer fails to prepare an annual leave plan or asks employees to forgo leave days. If private regulators’ enforcement attempts motivated the company to seek legal clarification from the government, as in the other cases mentioned earlier, this indicates that private regulation can bring about elaboration of law.

The interaction between social auditors and factory managers shows different ways in which laws are brought into the operation of private regulation. Social auditors actively assume a law enforcement role. In response to factory managers’ contestation, they also justify private regulation in legal terms. Factory managers on their part contest private regulation by enlisting the support of government, at times by exploiting the inconsistency between multiple private rules. While contestation and evasion often occur during code enforcement and implementation, they do not necessarily lower regulatory effectiveness. By challenging existing practices, private regulators demand factories’ attention and action. They also raise factory managers’ legal awareness of—and sometimes respect for—labor law. In this way private regulation strengthens labor law enforcement.

## 5. RITUALISTIC COMPLIANCE AND ITS CONSEQUENCES FOR LABOR-MANAGEMENT RELATIONS

The above discussion has focused primarily on the interplay among auditors, factory managers, and government in the implementation of private regulation. But what part do workers play? From the perspective of labor activists, workers subject to private regulation are expected to have greater consciousness of their rights, with codes of conduct serving as an educational tool (Wick, 2005). From the perspective of private regulators, they are expected to provide information that enables auditors to raise factories’ level of compliance. Both views overlook the new challenges that private regulation brings to labor-management relations.

### (a) *Workers’ awareness of private regulation*

Do codes of conduct raise workers’ rights consciousness? The answer depends on the extent to which workers are aware of private regulation in the first place. Factories in Vietnam often have multiple codes of conduct on the wall or the bulletin board, some only in English and some in both Vietnamese and English. Not many workers pay attention to them. As one of the workers who did notice the codes on the bulletin board said,

Yeah, factory internal labor rules, clients’ regulations, but I don’t read [them]. They post a lot and [there are] so many words, so I hate to read them. I rush to work in the morning, [work], have lunch, and then find a place to lie down [for siesta]. How can I find time to read them? (W89)

Among 96 workers in 56 factories who answered relevant questions in the interviews for this study, slightly over half (57%) had some notion of private regulation. While 32% were aware of both codes and social audits, 19% were aware of only audits but not codes, and 6% knew about codes but not audits.

Table 1. *Factory workers' awareness of social audits and codes (unit: persons, percentage in parentheses)*

		Awareness of codes		
		Yes	No	Total
Awareness of social audits	Yes	31 (63.3)	18 (36.7)	49 (100.0)
	No	6 (12.8)	41 (87.2)	47 (100.0)
	Total	37 (38.5)	59 (61.5)	96 (100.0)

Source: Interviews with factory workers in 2005.

Note: Workers' awareness of codes of conduct and social audits is determined based on their answers to three interview questions: (1) whether they have heard about clients' requirements about labor conditions; (2) whether they have ever heard or seen people interview workers in their current workplaces; and (3) if so, who those people are.

Workers were more aware of social audits than codes (51% versus 39%) (see Table 1).<sup>6</sup>

Social audits are thus an important channel by which workers learn about private regulation. Workers generally heard about clients' requirements on labor conditions through verbal explanations over the loudspeaker or through line leaders on the shop floor. Such explanations were usually in preparation for social audits involving worker interviews, one of the standard auditing procedures; worker interviews happened in over four-fifths of the 81 audited factories in my sample. Some workers returned from the interviews and spread news to coworkers. The information about codes and social audits was also relayed to other factories through networks of friends and relatives (W4, W40, W81).

Few workers, however, regarded codes as an instrument to protect their rights. In an authoritarian context there are no civil society actors who could enable workers to recognize the human rights norms underlying these codes. Furthermore, we must consider what meaning of codes is conveyed to workers during code training inside factories—one of the demands that labor activists made of global corporations (Wick, 2005).

A laminated card of 6.5 cm by 9 cm that is distributed to workers in a factory indicates the meaning of codes from the perspective of Vietnamese workers. One side with the buyer's logo on the top says,

[Brand's name] and your factory agreed on management regulations, which are posted at many places in the factory. These regulations are to ensure that you will be treated fairly and properly while working for the factory by way of providing the following.

The card then lists a safe working environment; full wages and benefits according to the Labor Code of Vietnam; the right to join the trade union and collectively bargain; pay increase and promotion to be based solely on workers' ability; and limits on working hours. The remaining part provides the details of limits on daily, weekly, and yearly overtime hours (which are based on both the brand's code and labor laws) and mentions simply the right to receive a detailed pay slip and full statutory benefits. At the bottom is information on the internal channels for lodging grievances.<sup>7</sup>

The card explicitly mentions labor law several times without referring to the buyer's code of conduct or human rights norms. Moreover, the code is presented as the factory management's promise rather than as a tool workers can use to ensure

their rights and have their grievances redressed. Code training may raise workers' awareness of their legal rights and of managerial promises to abide by them. However, this type of code training rarely happens in practice.

#### (b) *Ritualistic compliance*

More common is ritualistic compliance that comes from factory managers' attempts at evasion. It requires workers' cooperation to hide undesirable conditions from social auditors. Two issues are important here: precisely what factory managers do to deceive social auditors; and how workers evaluate a management that tells them to lie. It is worth noting that factory managers take worker interviews seriously, even though the interviews may be conducted in a cursory and formalistic manner (O'Rourke, 2002) and receive much less attention from social auditors than other procedures such as documentation checks and visual inspection of production areas (Amengual, 2010). As a factory manager put it, it is "easier to pass" audits without worker interviews (M24).

Coaching of workers in preparation for social audits is well known. Scholars regard this practice merely as calling into question the accuracy of information (Locke *et al.*, 2009; Ngai, 2005; O'Rourke, 2002). Little recognized is the fact that factory managers may inadvertently bring labor laws into this process. Well-prepared factories systematically train workers in falsified answers.<sup>8</sup> An example is a garment factory that distributed the following coaching sheet to its new hires. Under the heading "Twenty questions by [factory name] for new workers to memorize in order to pass the test by [client's name]," the coaching sheet says:<sup>9</sup>

1. *Is there a clinic? How do you maintain production safety in your workshop?* There are a doctor and a nurse in charge of emergency and physical examinations. Each section has a first-aid kit, and each workshop has a person in charge of production safety.
2. *How many days a week do you work? How many hours a day do you work?* I work 6 days a week, and 8 hours a day.
3. *Why does your time card show that you did overtime?* Because the order is large. My company will let me take time off on another day.
4. *Do you get paid the premium rate when doing overtime? How is it calculated?* Yes. For overtime work, it's 1.5 times, and for Sunday work, it's twice [the regular rate].
5. *How much is your total wage? Is money deducted from your wage?* No.
6. *Does your company show you the wage slip and ask you to sign it?* Yes, it shows it and asks me to sign it.
7. *Does the foreman/forewoman in the workshop hit workers?* No.
8. *Is there discrimination between men and women? Are women harassed?* No.
9. *Do they force you to do overtime?* No.
10. *After work, do they limit your freedom?* No, after work, I can go home.
11. *Do they limit water drinking during work hours?* No.
12. *How many days do you have for annual leave?* I take 4 days off at Lunar New Year and take April 30, May 1, and September 2 off.
13. *Is there a limit to the number of toilet visits during work hours?* No.
14. *When you have errands to run at home or when you are sick, are you allowed to take a leave? Are pregnant women allowed to take a leave?* Yes.
15. *When getting your job, did you pay money?* No.

16. *How many company ID cards do you have to swipe? One card.*

17. *Is there a union? Yes. When I have grievances (ý kiển), I can submit them [to the union] or drop them into the grievance box anonymously.*

18. *Do you get fined for violations [of factory rules]? No.*

19. *Do you practice fire drills? Yes, every quarter.*

20. *Did you sign a labor contract? Yes.*

Interestingly, most questions in this list are legal stipulations, although this factory suggested the wrong answer about annual leave. This coaching sheet gives a great deal more detail than the aforementioned card on a brand's code. This type of coaching is tantamount to legal training; it tells workers what management should provide them, although it is unclear whether workers regard the items as their rights (if not necessarily legal rights) rather than the client's arbitrary demands. But this example of coaching that involves laws is apparently not an isolated case. Lee (2007, p. 171) found that in China memorizing falsified answers in preparation for social audits was some workers' first encounter with labor laws.

Private regulation sometimes creates procedural requirements for demonstrating compliance. One example is the demand that "factory management should ensure that overtime is voluntary" (A1). Procedurally, this means collecting workers' signatures on the consent form for overtime work. As a worker said,

The company writes clearly on the form, 'The company does not force workers to do overtime.' No forced overtime, huh! It says so, but if you don't sign it, the company calls you in and calls names. ... It doesn't let you go home. (W46)

This worker noticed the discrepancy between promise and practice, and she was highly critical of the management.

Private regulation brings new challenges to labor-management relations in three ways. First, by involving workers in social audits, private regulation renders the gap between management's promise and practice visible to workers. Second, ritualistic compliance such as coaching and consent forms can inadvertently raise workers' sense of what management should provide them. Finally and most importantly, it is likely to lead workers to negatively assess their management and thus heighten their oppositional consciousness.

## 6. CONCLUSION

The contribution of this study is twofold. It adds a new country case to a literature which still lacks rich country cases to permit cross-national comparisons. It does so by detailing how code enforcement and implementation in fact operate on factory floors. More importantly, it identifies two mechanisms by which the local, political, and interactive process of applying codes may have positive consequences. These serve

as a corrective to "transcendent" and "technical" assumptions in the literature (Bartley, 2011).

The Vietnamese case shows that complementarity between private and state regulation is possible even without adequate public law enforcement and an active civil society. Factory managers' attempts to fend off private regulatory pressures have inadvertently brought labor laws into code enforcement and implementation. They have also raised workers' awareness of what management owes; workers take away at least a vague sense of some rules out there. At the same time, the gap between management's promise and practice that necessarily results from ritualistic compliance is likely to raise workers' oppositional consciousness. To the extent to which workers act on such consciousness—which in fact increasingly happens (Kerkvliet, 2011; Tran, 2007), private regulation can strengthen law enforcement via workers' actions which are in turn mediated by factory managers' response to the former.

Code enforcement and implementation in Vietnam are not merely an unintended consequence story; it is also an institutional story. Due to weak public law enforcement, a large number of detailed and yet ambiguous laws in the country remain unknown to, or ignored by, factories. Such an institutional environment not only makes private regulation an important supplement to public law enforcement but also leaves much room for disagreement and contestation. It is in this context that private regulators attempt to enforce laws and codes and factory managers attempt to contest and evade private regulation.

The Vietnamese case suggests that conflict and ritualistic compliance can have positive consequences, despite conventional wisdom to the contrary. This does not imply, however, that these mechanisms always lead to the desired regulatory outcome, or are better than others in securing regulatory effectiveness. As such processes and institutional context are not unique to Vietnam but are likely to be common in other developing countries, identifying the possible mechanisms for positive change under those conditions is the first step toward improving private regulation.

This study leaves several issues yet to be addressed. Its findings call attention to the different consequences of conflictual and ritualistic processes. Outcomes are likely to vary depending on precisely how factory managers engage in contestation and evasion as well as how social audits are conducted. Whether, and to what extent, those being regulated and those regulating bring labor laws into code enforcement and implementation is also likely to influence the regulatory consequences. Moreover, how private regulation affects, directly and indirectly, labor-management relations needs to be investigated more fully than this study has done. These questions suggest avenues for future research. Addressing them will lead to a better understanding of the local, interactive, and political processes that can improve regulatory effectiveness.

## NOTES

1. Throughout this article, I mark the source with a letter followed by a numeric code. Each of the letters indicates the following: A refers to social auditors; M to factory managers; O to other interviewees; and W to factory workers (see Appendix 1 for the full list of the interviewees mentioned in the text).

2. The survey covered 124 factories which were selected from a target population of factories with at least 100 employees that manufacture finished shoes, garments, hats/caps, bags, and gloves in Vietnam's southern industrial centers. The response rate was 43%.

3. The Better Work Program is the International Labor Organization's monitoring and capacity-building initiative; it operates in Vietnam and six other countries.

4. This article is drawn from the 2001 Labor Code, which was in effect at the time most of the data for this study were collected. Since its first adoption in 1994, Vietnam's Labor Code has undergone three major revisions in 2001, 2006, and 2012.



5. The list of heavy and taxing jobs is in a 1996 regulation by the MOLISA (QĐ1692/1996/BLĐTBXH) which does not receive as much attention as the Labor Code.
6. The reports of 36 workers from 24 audited factories (whose managers confirmed the experience of audits) reveal a similar discrepancy. The respective levels of awareness of both codes and audits, audits only, and codes only are 36%, 17%, and 11%.
7. This card was given by a worker at this factory who participated in my recent survey of workers.
8. In the factories I studied, systematic coaching of workers seems exceptional. Workers said that typically line leaders would simply hint that workers called in for the interview should give “acceptable” answers. However, it is common for factories to instruct workers not to tell auditors about excessive overtime hours (Better Work, 2012) and to doctor the payroll and work hours records (O21, M23, M60).
9. A worker who was not interviewed for this study gave this information to my research assistant in June 2005. As the factory instructed new recruits to memorize the content and return the sheet without showing it to outsiders, the worker allowed jotting it down by hand but not photocopying it.

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## APPENDIX 1

Appendix 1. *The list of interviewees*

Code	Interviewee type	Date
A1	Vietnamese compliance officer of a US garment brand	September 16, 2005
A2	Vietnamese compliance officer of a US footwear brand	May 22, 2005
A3	Vietnamese compliance officer of a US footwear brand	July 4, 2005
A4	Vietnamese compliance officer of a European brand	August 6, 2003
A7	Full-time social auditor of a social auditing firm (personal communication)	October 2, 2004
M10	Top manager of a foreign glove factory	March 2, 2012
M11	Top manager of a foreign garment factory	August 2, 2005
M18	Top manager of a foreign footwear factory	August 6, 2005, December 17 & 19, 2011
M23	Owner of a foreign garment factory	August 9, 2005
M24	Owner of a foreign garment factory	August 13 & September 9, 2005
M26	Manager of a foreign garment factory	August 12, 2003
M29	Personnel manager of a foreign garment factory	August 4, 2003
M53	Top manager of a foreign garment factory	April 5, 2012
M60	Personnel manager of a foreign shoe factory	December 15, 2011
M63	Top manager of a foreign garment factory	March 1, 2012
M64	Owner of a foreign garment factory	February 28, 2012
O6	VGCL official	June 21, 2005
O21	Staff member of Better Work Vietnam	August 31, 2010
W4	Worker at a footwear factory	June 4–5, 2005
W34	Worker at a foreign footwear factory	September 9, 2005
W40	Worker at a foreign gloves factory	August 20, 2005
W46	Worker at a foreign garment factory	June 18, 2005
W65	Worker at a foreign footwear factory	July 20, 2005
W81	Worker at a foreign footwear factory	August 7, 2005
W89	Worker at a garment factory	August 14, 2005

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