

SYMPOSIUM ON THE ANTHROPOLOGY OF INTERNATIONAL LAW

CORPORATE ACTORS AS TRANSLATORS IN TRANSNATIONAL LAWMAKING

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International legal scholars have long been concerned with the transnational lawmaking process, including the development, interpretation, and implementation of international norms. Yet there has been insufficient attention devoted to the micro-level details by which international law operates. Anthropologists can shed unique insights to this process by uncovering power dynamics, disaggregating institutions and actors, and revealing local practices on the ground. In this essay, I will analyze global supply chain governance through an ethnographic lens in order to examine the role of corporate actors as translators of international law.¹ I argue that an anthropological approach can illuminate how corporations shape international law in practice by uncovering technologies of governance, relations of power, and chains of translation in the transnational lawmaking process.

Disaggregating the Corporation and Its Influence on International Law

Corporations have long played an important role in transnational governance, as multinational companies increasingly wield power over state and international politics.² Businesses shape transnational lawmaking through multiple mechanisms, including lobbying legislators for policy changes, exerting influence over administrative rule-making, and using litigation to affect the interpretation and elaboration of laws over time.³ Scholars have examined the role of business entities in the development of public and private international law, including the making of international rules governing such areas as trade, investment, antitrust, intellectual property, and telecommunications.⁴ They have also analyzed the influential position of corporations in the international treaty-making process, including their design, drafting, negotiation, adoption, ratification, and implementation.⁵

While existing international legal scholarship is devoting increased attention to the important role of corporations in transnational governance, it would greatly benefit from the insights provided by anthropological theory and ethnographic methods. Anthropologists have called for an “effort to pluralize, relativize, and

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¹ This discussion draws from Galit A. Sarfaty, *Translating Modern Slavery into Management Practice*, 45 LAW & SOC. INQ. 1027 (2020).

² See John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 AJIL 819 (2007).

³ Gregory C. Shaffer, *How Business Shapes Law: A Socio-Legal Framework*, 42 CONN. L. REV. 147 (2009).

⁴ See, e.g., Jose Alvarez, *Are Corporations Subjects of International Law?*, 9 SANTA CLARA J. INT'L L. 1 (2011); Julian Arato, *Corporations as Lawmakers*, 56 HARV. INT'L L.J. 229 (2015); Melissa J. Durkee, *Astroturf Activism*, 69 STAN. L. REV. 201 (2017); Paul B. Stephan, *Privatizing International Law*, 97 VA. L. REV. 1573 (2011).

⁵ Melissa J. Durkee, *The Business of Treaties*, 63 UCLA L. REV. 264 (2016).

contextualize corporate forms geographically and historically.”⁶ This includes a disaggregation of these actors to analyze their multiple legal and organizational forms (e.g., partnerships, sole proprietorships, limited liability companies, industry associations, and platform businesses), as well as their social forms (e.g., their “circulating narratives, rituals, practices, beliefs, and worldviews”).⁷ Thus, understanding how corporations shape international law requires an analysis of corporate personhood, where corporations are treated as “actors embedded in complex relations, and entities that produce and undergo transformation, with all the friction that entails.”⁸

There is a growing body of anthropological work on corporations. I will highlight two key themes that relate to the role of these actors in shaping and translating international law. A first theme is the growing power of corporations in relation to nation-states, leading to a reconceptualization of sovereignty and contestations by local communities. Anthropologists analyze the technologies of governance used by corporations, including administrative techniques, expert knowledge practices, and audit cultures.⁹ Such corporate practices, which are also used by non-corporate actors such as states, international organizations, and NGOs, render domains calculable and susceptible to evaluation and intervention. A guise of neutrality and objectivity exists behind these tools that masks underlying power relations.

A second theme is the intersection of corporate ethics with the rational, depoliticized network of outsourcing production.¹⁰ In a world of “supply chain capitalism” marked by enhanced mobility of labor and greater efficiency via subcontracting,¹¹ multiple legal orders coordinate and compete to shape the environmental, labor, and human rights practices of actors.¹² Anthropologists have theorized this form of supply chain management as an “ethic of detachment,” where companies “are constantly engaged in establishing limits and endpoints to relationships in their supply chain, ensuring that contracts are time-bound and spatially defined, resisting proximity and intimacy, and framing relationships around difference and distance.”¹³ As part of this ethic of detachment, there are “multiple nodes of authority” that complicate efforts to determine which actor was responsible for a particular decision or action, as responsibility is redistributed across a network of actors.¹⁴ Despite hopes of global integration and opportunities for economic and social development, anthropologists have documented how supply chains have an underbelly that is lined with relations of power, inequality, exploitation, and expropriation.¹⁵ Related to the study of corporate ethics, outsourcing, and supply chain-citizenship is an examination of the corporate social responsibility

⁶ Marina Welker et al., *Corporate Lives: New Perspectives on the Social Life of the Corporate Form: An Introduction to Supplement*, 52 CURRENT ANTHROPOLOGY S3, S6 (2011).

⁷ Greg Urban & Kyung-Nan Koh, *Ethnographic Research on Modern Business Corporations*, 42 ANN. REV. ANTHROPOLOGY 139, 142 (2013).

⁸ Welker et al., *supra* note 5, at S4.

⁹ See, e.g., *AUDIT CULTURES: ANTHROPOLOGICAL STUDIES IN ACCOUNTABILITY, ETHICS AND THE ACADEMY* (Marilyn Strathern ed., 2000); SALLY ENGLE MERRY, *THE SEDUCTIONS OF QUANTIFICATION: MEASURING HUMAN RIGHTS, GENDER VIOLENCE, AND SEX TRAFFICKING* (2016).

¹⁰ See Damani James Partridge, *Activist Capitalism and Supply-Chain Citizenship: Producing Ethical Regimes and Ready-to-Wear Clothes*, 52 CURRENT ANTHROPOLOGY S97 (2011).

¹¹ Anna Tsing, *Supply Chains and the Human Condition*, 21 RETHINKING MARXISM: J. ECON., CULTURE & SOC’Y 148 (2009).

¹² See Bertram Turner, *Supply-Chain Legal Pluralism: Normativity as Constitutive of Chain Infrastructure in the Moroccan Argan Oil Supply Chain*, 48 J. LEG. PLURALISM & UNOFFICIAL L. 378 (2016).

¹³ Jamie Cross, *Detachment as a Corporate Ethic: Materializing CSR in the Diamond Supply Chain*, 60 FOCAAL: J. GLOBAL & HIST. ANTHROPOLOGY 34, 36 (2011).

¹⁴ Lesley K. McAllister, *Regulation by Third-Party Verification*, 53 B.C. L. REV. 1, 32 (2012).

¹⁵ Tsing, *supra* note 10.

movement and its effects on local populations as well as corporations themselves.¹⁶ In the remainder of the essay, I will expand on these themes by presenting an anthropological approach to supply chain governance.

An Anthropological Analysis of Supply Chain Governance

By analyzing global supply chain governance through an anthropological lens, we can better understand the technologies of governance, relations of power, and chains of translation in this transnational lawmaking process. Recent supply chain laws—e.g., the 2010 California Transparency in Supply Chains Act, the United Kingdom’s 2015 Modern Slavery Act, and Australia’s 2018 Modern Slavery Act—require companies to disclose their efforts to curb modern slavery within their supply chains. While legal scholars have studied recent supply chain laws by narrowly focusing on the disclosure statements issued by companies, an ethnographic approach delves into the set of practices that feed into these statements. It means analyzing the “technopolitics” behind recent supply chain regulations and the process through which global supply chain governance is assembled.¹⁷ The technopolitics of regulations refers to the set of knowledge practices, administrative techniques, and relations of power that underlie governance. An ethnographic approach, therefore, focuses on the materiality and political instrumentality of laws by examining the practices, networks, and techniques through which governance unfolds. Moreover, it shines light on the seemingly invisible actors (for example, third-party service providers and the experts within them) who are operating in the background but may be wielding significant power in shaping how legal norms are interpreted and supply chain governance operates in practice.

When applying an anthropological approach to supply chain governance and analyzing the technopolitics of regulations, one focuses on the role of experts and the use of technologies in the design and implementation of laws. Experts apply practices of accounting, management techniques, and financial instruments to conduct human rights due diligence across supply chains, maintain webs of relational contracts between suppliers, and mediate exchanges among people and objects across vast distances. There is also a datafication of supply chain governance as auditors rely on data analytics, performance indicators, and other statistical tools to conduct supply chain mapping and risk assessments. Such techniques display governmentality by serving as a technology of power that constitutes populations and makes individuals calculable and therefore governable.¹⁸

Part of an ethnographic study of global supply chain governance is determining who has the power to shape its regulatory functions. In this case, the actors operating in the background are third-party service providers, which are providing tools for companies to perform risk assessments and due diligence in compliance with recent laws. These third-party service providers—and, in particular, platform businesses—are thus playing a critical role by offering guidance to companies on how to interpret, measure, and report on legal norms around modern slavery. Platforms are business models that create value by facilitating exchanges of information and creating networks of users. One of the world’s largest collaborative platforms for sharing responsible sourcing data on supply chains is the Supplier Ethical Data Exchange (Sedex), which is a not-for-profit organization founded fifteen years ago that includes over fifty thousand buyer and supplier members across thirty-five industry sectors and one hundred fifty countries. Sedex is the third-party service provider referenced most frequently in recent corporate disclosure statements. It is thus filling a vacuum left by governments, which have passed vague legislation that lacks enforcement

¹⁶ See, e.g., ELANA SHEVER, [RESOURCES FOR REFORM: OIL AND NEOLIBERALISM IN ARGENTINA](#) (2012); MARINA WELKER, [ENACTING THE CORPORATION: AN AMERICAN MINING FIRM IN POSTAUTHORITARIAN INDONESIA](#) (2014); John M. Conley & Cynthia A. Williams, [Engage, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement](#), 31 J. CORP. L. 1 (2005).

¹⁷ Brian Larkin, [The Politics and Poetics of Infrastructure](#), 42 ANN. REV. ANTHROPOLOGY 327, 328 (2013);

¹⁸ See Galit A. Sarfaty, [Measuring Corporate Accountability Through Global Indicators](#), in [THE QUIET POWER OF INDICATORS: MEASURING GOVERNANCE, CORRUPTION, AND RULE OF LAW](#) 103 (Sally Engle Merry et al. eds., 2015); MERRY, *supra* note 8.

power and have failed to provide clear guidance on its interpretation and implementation. Yet the question that remains—and which anthropologists are well-suited to answer—is how these experts are translating ill-defined legal norms around modern slavery and interpreting them in practice.

The “Vernacularization” of Legal Norms

Engaging anthropologically with supply chain laws allows us to examine how legal norms of modern slavery are being “vernacularized,” or adapted to local meanings, in the context of management practice.¹⁹ Examining human rights as both discourse and social practice, anthropologists have studied the process of producing and translating norms as well as the ways in which they become meaningful on the ground.²⁰ They have also analyzed human rights as a disciplinary knowledge practice and have uncovered the technocratic and instrumental approach used by human rights practitioners.²¹ One can extend anthropological studies of human rights as a social practice to analyze the translation of modern slavery norms by business professionals.²² What is particularly unique about recent supply chains laws is that the legal norm of modern slavery is undefined under international law and remains ambiguous within recent legislative definitions.²³ In the absence of clear guidance from governments, the interpretation of modern slavery is left to corporations to determine how they apply it to their supply chains.

Anthropologists track the implementation of recent laws by following the “chain of translation” that leads to the development of supply chain disclosure statements. According to Bruno Latour, a “chain of translation” is “the set of practices whereby objects are identified, collected, registered, transferred, and interpreted” in various contexts.²⁴ Information changes and is reinterpreted as it moves through the chain of translation. One therefore needs to examine the process by which supply chain information is transformed from qualitative, unstructured data replete with contestations over the determination of modern slavery on the ground, to quantitative indicators and scorecards of modern slavery risks, and, finally, to polished disclosure statements that summarize corporate efforts to eradicate modern slavery in their supply chains. The chain of translation hinges upon the important role of third-party service providers such as Sedex, which enable the flow of data, services, practices, and ideas across buyers and suppliers. While these third-party agents of governance operate in the background, they are playing an important function in interpreting legal norms and shaping supply chain governance.

Technologies of Corporate Governance

Central to an ethnographic account of supply chain governance is an analysis of the role of experts and their use of technologies of governance. The appeal of metrics lies in their ability to simplify complex concepts such as modern slavery and translate them into a numerical representation that is transparent, easy to understand, and comparable across actors. Quantitative tools can offer a number of apparent benefits: they can measure

¹⁹ SALLY ENGLE MERRY, [HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE](#) (2006).

²⁰ *Id.*

²¹ Annelise Riles, *Skepticism, Intimacy and the Ethnographic Subject: Human Rights as Legal Knowledge*, 108 AM. ANTHROPOLOGIST 52 (2006).

²² MARK GOODALE & SALLY ENGLE MERRY, [THE PRACTICE OF HUMAN RIGHTS: TRACKING LAW BETWEEN THE GLOBAL AND THE LOCAL](#) (2007).

²³ Although the prohibition against slavery has the status of a *jus cogens* norm under international law, there is considerable debate over the definition of modern slavery. While each of the component practices that may be included under modern slavery are defined within international law, the broad concept is not covered under a separate legal framework.

²⁴ Marieke De Goede, *The Chain of Security*, 44 REV. INT’L STUD. 1, 4 (2017), citing BRUNO LATOUR, [PANDORA’S HOPE: ESSAYS ON THE REALITY OF SCIENCE STUDIES](#) 24–79 (1999).

accountability to standards and norms; assess compliance with policies; and evaluate performance with respect to stated objectives. Indicators rely on numbers, which command scientific authority and offer the public an impression of truth and objectivity. Yet, according to recent anthropological scholarship on the role of indicators in shaping global governance, these tools imbue a technocratic rationality into decision-making that masks underlying power relations as well as the methodologies in producing the metrics. In fact, there are trade-offs and assumptions that are made when using quantitative tools that are frequently hidden from the public. Moreover, the use of indicators can also produce a box-ticking approach to compliance, which entails superficial or cosmetic changes without any substantive effects on behavior. If not supplemented with qualitative contextual data, the use of indicators can also distort the meaning of public norms such as human rights when converting them into numbers.²⁵

Because indicators rely on numerically rendered data, technical experts can exercise considerable power over decision-making and the interpretation of legal norms. In the case of supply chain governance, the platform Sedex has developed forced labor operational indicators as well as forced labor indicator reports that calculate composite risk scores based on a weighted calculation of the number of indicators identified at specific supplier sites and their strength. These tools provide guidance to companies on how to interpret norms around modern slavery and measure compliance with those norms. An ethnographic examination of Sedex reveals that technical experts—mostly business professionals from the United Kingdom rather than social scientists or legal experts—are playing a critical role in the platform's decision-making, its design of measurement tools, and its interpretation of legal norms. While their specialized knowledge and political neutrality can be a benefit for policy-making, it is difficult for stakeholders to challenge the power of experts and their methodology and assumptions in producing indicators. Despite limited opportunities for public and NGO participation in Sedex's governance, there is also a lack of transparency as to the methodology behind its metrics to allow for comment and critique.

Thus, technologies of corporate governance are not neutral instruments that can be applied mechanically. They are normative tools that embed certain values and shape behavior. In order to command scientific authority, these tools rely on numbers, as they serve as second-order abstractions of complex phenomena. Numbers construct new categories and new relations among people and things through standardization and commensurability and, in the process, “profoundly transform what we choose to do, who we try to be, and what we think of ourselves.”²⁶ Commensuration (through such tools as indicators) is a means of managing uncertainty, depersonalizing relations, imposing control, securing legitimacy, and enforcing discipline.²⁷ Yet it also carries potential costs, such as the promotion of box-ticking and superficial compliance; the dominance of technical experts over decision-making; and the distortion of public values into numbers. Analyzing the use of these technologies is an important component of ethnographically examining the power and practices of corporate governance.

Conclusion

By applying an anthropological lens to the case of supply chain governance, we can uncover technologies of governance, relations of power, and chains of translation in the transnational lawmaking process. While disaggregating corporate actors into their legal, organizational, and social forms, ethnographic methods can reveal local variations and cultural contexts within which international legal norms circulate. They can offer insights into how international law is produced and operates on the ground—from how it is developed on a global scale to its localization on the micro-level. By engaging anthropologically with international law, studies can usefully contribute to our understanding of how corporations shape international law in practice.

²⁵ See AnnJanette Rosga & Margaret L. Satterthwaite, *The Trust in Indicators: Measuring Human Rights*, 27 BERKELEY J. INT'L LAW 253 (2009).

²⁶ IAN HACKING, *THE TAMING OF CHANCE* 3 (1990).

²⁷ See Wendy Nelson Espeland & Mitchell L. Stevens, *Commensuration as a Social Process*, 24 ANN. REV. SOC. 313, 316 (1998).