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# A System of Transnational Business Interactions: The Case of the Living Wage

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## **A System of Transnational Business Interactions: The Case of the Living Wage**

David J. Doorey

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**The TBGI Project**

Transnational initiatives to regulate business activities interact increasingly with each other and with official regulation, generating complex governance ensembles. Heterogeneous actors and institutions interact at multiple levels and in various ways, from mimicry and cooperation to competition and conflict. The TBGI Project investigates the forms, drivers, mechanisms, dynamics, outputs and impacts of transnational business governance interactions (TBGI) from diverse theoretical and methodological perspectives. It is funded by a Social Sciences and Humanities Research Council of Canada grant led by Professor Stepan Wood, Osgoode.



Comparative Research in  
Law & Political Economy



A SYSTEM OF TRANSNATIONAL BUSINESS INTERACTIONS:  
THE CASE OF THE LIVING WAGE

David J. Doorey

August 3, 2013

York University

# **A System of Transnational Business Interactions: The Case of the Living Wage**

David J. Doorey\*

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## **Abstract**

The subject of transnational business governance (TBG) interactions is an emerging field of study. These interactions are complex, involving multiple public and private actors crossing vast geopolitical spaces, with sometimes shared, but often conflicting interests. This complexity makes TBG interactions both an exciting new field of inquiry for scholars, but also an extremely challenging one. In these early days of theory development, it is useful to engage in a mapping exercise that will help scholars identify and test the relationships between the many inputs and outputs of TBG interactions. This paper contributes to this exercise by proposing and developing a systems framework for analyzing TBG interactions. This new systems framework is demonstrated by reference to the complex story of the ‘living wage’ standard in private governance schemes targeting labour practices in global supply chains.

*Keywords:* Transnational business governance, Employment standards, Living wage, Systems theory  
*JEL classification:* D03; D21; D23; D62; D63; D74; D81; D85; E24; F02; J31; J83; K31; K33; L14; L15; L31; L51; M14; M52; O15; Z13

In a recent important work, Eberlein, Abbott, Black, Meidinger, and Wood develop a model designed to facilitate and guide research in transnational business governance (TBG) interactions. The authors survey the landscape of existing literature on TBG interactions, and then develop a high level framework to help guide future research in this emerging field. They

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observe that TBG “is a dynamic, co-regulatory and co-evolutionary process, involving state, non-state and hybrid actors and organizations, which interact at multiple levels and in multiple ways with a range of effects.”<sup>1</sup> This complexity creates a challenge for theory and framework development.

This essay adapts the model and insights of Eberlein, *et al.* into a systems model framework for analyzing TBG interactions. While Eberlein *et al.* recognize the dynamic nature of TBG interactions, their framework could be strengthened by placing greater emphasis on the extent to which the TBG actors and their interactions are fluid and in a constant state of learning, evolution, and adaptation over time and space. A systems framework is promising for the study of interactions because it disciplines researchers to identify those elements that shape and influence the interactions that produce the outputs of the system. These outputs include written rules, in the form of codes of conduct, as well as normative changes in behaviour. A systems framework recognizes that the TBG Subsystem is one of many within a broader interrelated social and economic system, and that the outputs of the TBG Subsystem are influenced by forces emanating from that broader system in addition to factors internal to the TBG Subsystem. Importantly, a systems framework emphasizes the dynamic nature of interactions through the dominant presence of a Feedback Loop.

The paper proceeds as follows. In Part I, we will review the main elements of the framework developed by Eberlein, *et al.* The TBG Interactions Systems Framework is developed in Part II. Finally, in Part III, applying a systems framework analysis, the paper considers the emergence of the ‘living wage’ standard as a normative component of TBG Schemes targeting supply chain labour practices. The living wage provides an interesting case study, because achieving consensus on it amongst the wide array of actors and interests engaged in TBG

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<sup>1</sup> B. Eberlein, K. Abbott, J. Black, E. Meidinger, S. Wood, “Transnational Business Governance Interactions: Conceptualization and Framework for Analysis”, (2012) *Comp. Research in Law & Pol. Econ.*, Research Paper 29, at 12.

interactions in the labour sphere seems so unlikely: it is vague, difficult to measure, and potentially very costly to employers and buying corporations. Yet, some form of living wage standard had made it into almost all of the major TBG scheme model codes by the turn of the century. Only one resisted, the American-based Fair Labor Association (FLA). However, even the FLA has recently taken steps towards incorporating a living wage standard. The character of interactions relating to the living wage standard has varied over time, from competition to coordination to cooptation. The systems framework provides a model to help researchers track the mechanisms of interaction over time, and possibly, to anticipate how changes in one component of the system will affect outputs within? the TBG Subsystem.

## I. A Framework for Analysis of Transnational Business Governance Interactions: Eberlein, *et al.*

Eberlein *et al* begin by recognizing that interactions occur in TBG at various points in the regulatory process: (1) initial goal setting; (2) rule formation; (3) implementation; (4) monitoring and information gathering; and, finally, (5) in compliance, promotion, and enforcement.<sup>2</sup> It is important for researchers to identify which point in the regulatory process they are describing, since actors, resources, values, and strategies can differ through the full range of a TBG process. Following this, scholars should address some or all of 6 central questions that describe key dimensions of interaction:

1. *Who or What Interacts?* The actors in TBG interactions need to be mapped. This is complicated by the fact that TBG schemes are actors in their own right, but also ‘arenas where interaction occurs’.<sup>3</sup>
2. *What Drives or Shapes Interactions?* This dimension explores why actors are interacting. Is there a governance problem they are trying to address? Is there a desire or need

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<sup>2</sup> Eberlein, *ibid.* at 13-14.

<sup>3</sup> *Ibid.* at 14-16.

for coordination or collaboration in order to address a problem of externalities or free riders? Are there internal drivers, including values, power structures, and goals that drive interaction? Or external drivers, such as market forces, threats of state legal intervention, and so forth?<sup>4</sup>

3. *What are the Mechanisms and Pathways of Interaction?* How are the results or outcomes of TBG interactions determined? How are norms transferred through a TBG community? Some possibilities listed by the authors include: organizational cross-memberships; policy learning; mimicry; direct dialogue; norm entrepreneurship (such as through consultants and hired experts); information sharing and dissemination; meta-regulatory standard setters and global norm-making institutions (like the ILO); government dissemination of norms; and shared supplier relationships.<sup>5</sup>
4. *What is the Character of Interaction?* The authors identify 4 categories of interaction: (1) Competition; (2) Coordination; (3) Cooptation; and (4) Chaos. A TBG system can include more than one of these at any given time, and evolution or digression from one to another.<sup>6</sup>
5. *What are the Effects of Interaction?* There is a need to distinguish between impacts on the actual behaviour that the TBG project is trying to influence (e.g., factory level labour practices), and other institutional and intermediate regulatory effects or outcomes. For example, researchers may address the effects on the norms and standards being defined in TBG schemes, or on the management of supply chains, or other market behaviours.<sup>7</sup>

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<sup>4</sup> Ibid. at 16-18.

<sup>5</sup> Ibid. at 18-21.

<sup>6</sup> Ibid. at 21-23.

<sup>7</sup> Ibid. at 23-25.

6. *How do TBG interactions develop over time?* Finally, the authors recognize that the study of interactions is a study of dynamic processes and change. Therefore, a framework for the study of TBG interactions must be dynamic and be capable of explaining how the effects of interactions influence change, and how interactions themselves change over time.<sup>8</sup>

Eberlein *et al* remind scholars of the need to disaggregate interactions into their component parts. In this way, analysis can better capture the complexity of interactions, and help build a sustainable theory. Although they do not present their framework in a systems framework, the authors have described the core elements of a basic open-systems model. Systems models can be particularly useful in helping to conceptualize complex and dynamic interactions. In the remainder of this paper, I develop a systems framework for the study of TBG interactions, drawing on insights from Eberlein *et al*.

## **II. A Systems Framework for Analyzing Transnational Business Governance Interaction**

The systems interaction framework developed here recognizes that the TBG system operates within a larger environment that includes various other functional subsystems that both influence the TBG system, and are influenced by it in an ongoing, dynamic process. It draws on insights with deep scholarly roots that, due to space limitations, will not be explored in this paper. Talcott Parsons described social systems as, “the system generated by any process of interaction, on the socio-cultural level, between two or more actors”, which “either [are] concrete human individual[s]...or a collectivity of which a plurality of persons are members.”<sup>9</sup> A key insight that emerges from systems theory in the Parsonian tradition, as developed later by scholars such as Niklas Luhmann and Gunther Teubner, is that society is differentiated into a

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<sup>8</sup> Ibid. at 26-26.

<sup>9</sup> T. Parsons & N. Smelser, *Economy and Society, A Study in the Integration of Economy and Social Theory* (London, Routledge, 1956), at 8.

series of autonomous, functional subsystems that are both ‘closed’—they produce their own norms, logics, institutions, and discourses, and reproduce in accordance with them—and ‘cognitively open’.<sup>10</sup> Subsystems are ‘open’ in the sense that external signals emanating from other functional subsystems can penetrate and provoke changes within them. However, the manner and extent of change is often unpredictable, because external signals are filtered through the internal normative logic and communicative modes of the receiving subsystem.<sup>11</sup> Systems theory recognizes that norms and institutions are in continuous evolution, that they ‘learn’, and that subsystem outputs feed back into the social system as inputs in a continuous loop.

These insights form the bedrock for a basic systems framework for studying TBG interactions.<sup>12</sup> The core elements of a transnational business governance systems framework are outlined in Figure 1. It consists of 6 components:

**EXTERNAL INPUTS**

1. *External Inputs*

**INTERNAL COMPONENTS OF THE TBG SUBSYSTEM**

2. *TBG Actors*
3. *Internal Inputs*

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<sup>10</sup> See, e.g., G. Teubner, “Substantive and Reflexive Elements in Modern Law” (1982-83), 17 *Law & Soc’y Rev.* 239 at 248-250; N. Luhmann, *The Differentiation of Society* (Columbia U. Press, 1982). See also the discussion of the evolution and critiques of systems theory as applied to the legal system in R. Nobles & D. Schiff, *Observing Law Through Systems Theory* (Hart Publishing, 2013)

<sup>11</sup> *Ibid.* at 249.

<sup>12</sup> This particular structure of the systems framework, developed in this paper, draws heavily on the work of early industrial relations systems theorists, including John Dunlop, *Industrial Relations Systems* (Henry Holt & Co., 1958), and Alton Craig, *The System of Industrial Relations in Canada* (Prentice-Hall, 1983). Industrial relations systems are a useful analogy to TBG interactions, because both involve complex interactions between multiple and dynamic public and private actors and legal systems, operating with a larger social, political, and economic matrix.

4. *Pathways and Mechanisms of Interaction*
5. *Outputs of the TBG Subsystem*

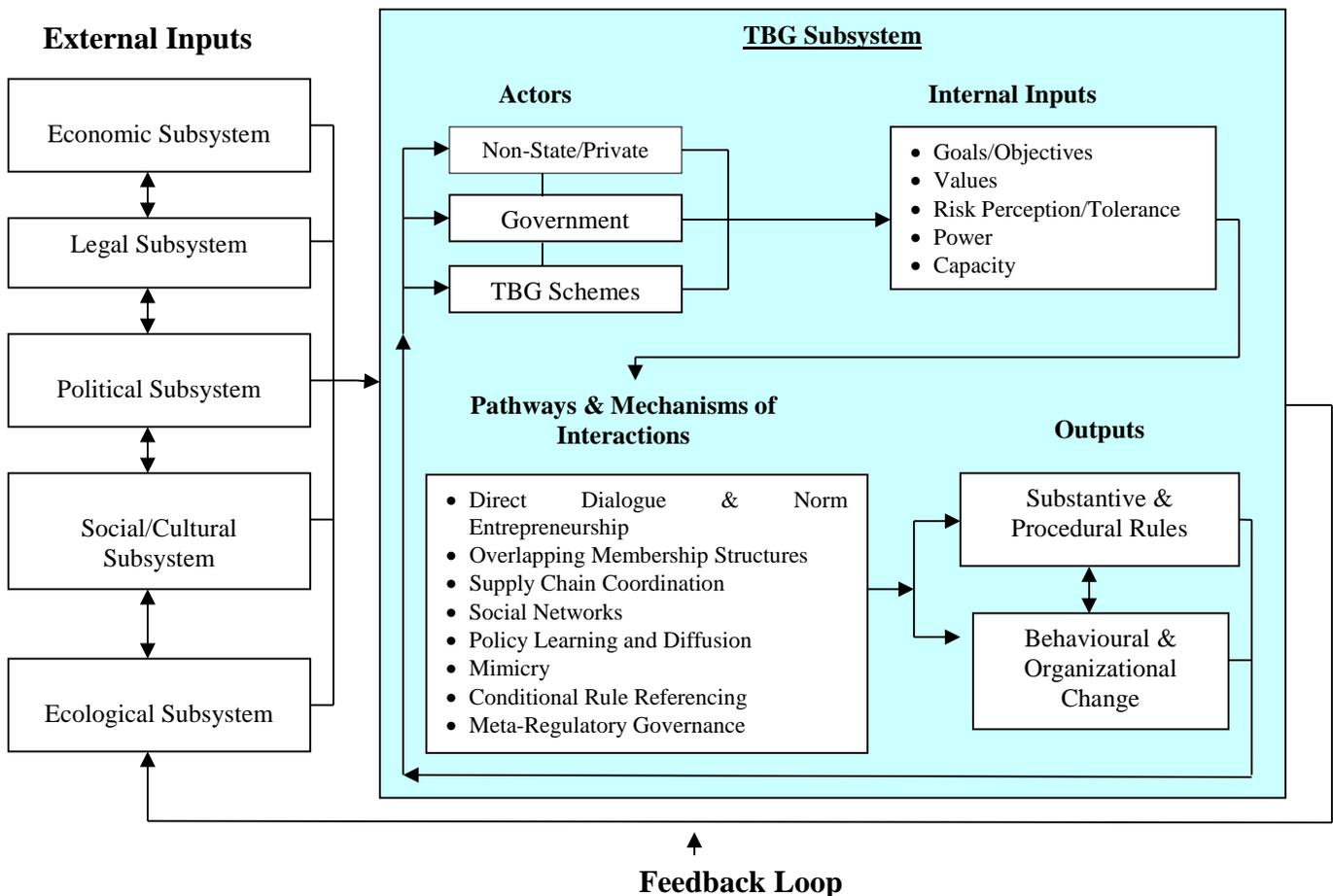
**FEEDBACK LOOP**

6. *Feedback Loop*, demonstrating the dynamic nature of the TBG subsystem as interactions occur within the subsystem, and between it and other social subsystems.

These components can be demonstrated in a useful diagram form (See Diagram 1).

**Diagram 1: A Framework for Analysis of the Transnational Business Governance System**

**TBG Interactions – A Systems Framework**



## 1. The External Inputs: Other Environmental Subsystems

The TBG subsystem is conditioned and influenced by the broader social system in which it functions. Eberlein *et al* recognize this point in their discussion of factors that drive and shape TBG interactions. They note that market forces and legal and political structures condition TBG interactions, as do social and cultural norms.<sup>13</sup> These external forces condition the range of possibilities available within the TBG subsystem, while also creating the conditions that necessitate TBG in the first place. The systems model differs from the model of Eberlein *et al* by separating out these *external* forces from what those authors call ‘actor level drivers’, which include, “interests, values, perceptions, knowledge, and resources”.<sup>14</sup> In the systems model, these actor level drivers are treated as *Internal Inputs* that influence and condition the actions of TBG actors. The external environmental subsystems that condition and are influenced by the outputs of the TBG subsystem (see discussion of the feedback loop below) include the following: (1) the Economic Subsystem; (2) the Legal Subsystem; (3) the Political Subsystem; (4) the Social or Cultural Subsystem; (5) the Technological Subsystem; and (6) the Ecological Subsystem.

The *Economic Subsystem* includes the full range of markets within which global supply chains function: product, labour, consumer, trade, money, transportation and logistics, technological, and bond and securities markets all play a role. Changes in any one or more of these markets can disturb interactions within the TBG subsystem and alter outputs produced by it. For example, a substantial increase in the demand for ‘ethically produced’ goods within consumer markets may affect the *Internal Inputs* of TBG actors in any number of ways. It could cause an adjustment in Risk Tolerance, for instance, or alter the balance of Power among TBG

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<sup>13</sup> Eberlein, *et al*, supra note 1 at 16-18.

<sup>14</sup> *Ibid.* at 17.

actors in ways that could influence interactions and, ultimately, outcomes. Advances in technological and logistics markets made global sourcing a more viable business alternative, leading to a vast expansion of global supply chains, thereby creating the demand for effective governance techniques that extend beyond national borders. If oil markets produce dramatically higher prices, the global sourcing model may become unsustainable, an occurrence that could dramatically alter the nature of TBG interactions in the future.

The economic subsystem that interacts with the TBG subsystem is especially complex because both transcend national jurisdictions. We are interested in global or supranational markets and economic forces. Thus, labour market conditions in the advanced economic nations of the global North influence demand for global sourcing, as do labour markets in economic developing states. Changes in labour market conditions in either place can influence demand for labour and for labour standards in positive or negative directions, alter the discourse of interactions, and also structure the range of feasible TBG outputs. Events in one labour market can influence events in other labour markets, and also influence other types of markets. For example, a highly publicized scandal involving child labour in a region within Pakistan can disturb consumer demand for products made anywhere in the world that have the taint of child labour. This might result in fewer child workers, which could raise production costs, and then product costs, causing a decrease in the demand for the products. This could also lead to a lowering of family incomes in places where children used to work, which could affect economic markets in those communities. These interrelationships are complicated, and will often be difficult to measure.

The *Legal Subsystem* includes local, regional, national, supranational, and international legal norms and rules. As Eberlein *et al* observe, while the focus of TBG tends to be on the role played by private (non-state) actors, states still play an important role through political (see

discussion of the Political Subsystem below) and legal action.<sup>15</sup> Sometimes that role takes the form of an omission; the perceived failure of states to effectively regulate conduct can create the conditions for private TBG to emerge, in order to fill a regulatory vacuum.<sup>16</sup> Other times, the state may play a more direct regulatory role in the formation, implementation, or pollination of TBG schemes by ‘steering’ private actors towards the scheme or legislatively requiring its support or adoption.<sup>17</sup>

Legal rules and regimes also provide the backdrop against which TBG interactions take place. TBG schemes frequently incorporate state-based legal rules in their own codes and schemes through the concept of legality. For example, every TBG scheme that targets supply chain labour practices includes as a base requirement compliance with the national labour laws of the host state in which the work is performed. Legal standards also interact with economic markets in ways that can influence TBG interactions. When one state raises its minimum wage, or introduces a new export-trading zone in which labour laws are relaxed or ignored, it can alter its relative competitiveness compared to competing states and thereby provoke concerns about a ‘race-to-the-bottom’ dynamic. These concerns can create a demand for TBG to address coordination problems.<sup>18</sup>

Finally, supranational and international laws can also influence the TBG subsystem in direct and indirect ways. Liberalization of trade laws through the expansion of ‘free trade’ agreements created conditions that have allowed the global sourcing model to flourish. Trade laws, and complex tariff systems such as the Multi-Fibre Arrangement, allowed whole new regions of the world to build export-based economies, only to see those economies threatened

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<sup>15</sup> Eberlein, *et al*, supra note 1 at 6.

<sup>16</sup> S. Bernstein & B. Cashore, “Can Non-State Global Governance Be Legitimate? An Analytical Framework” (2007), 1 *Regulation & Governance* 347; T. Bartley, “Certifying Forests and Factories: States, Social Movements, and the Rise of Private Regulation in the Apparel and Forest Products Fields” (2003), 31 *Politics & Society* 433; V. Hauller, *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy* (Carnegie Endowment for International Peace, 2001)

<sup>17</sup> See, Eberlein, *et al* supra note 1 at 10.

<sup>18</sup> Eberlein, *et al*, supra note 1 at 16-17.

when the tariff system is dismantled.<sup>19</sup> Trade laws restrict the range of legal options available to states to give preference to local producers or to impose tariffs on foreign producers. Supranational and international laws can also act as strong normative signals that can create ‘path dependency’ within a realm of activity that TBG seeks to address.<sup>20</sup> For example, as discussed later, on labour issues, legal standards and norms promulgated by the International Labour Organization (ILO) have had a strong normative impact on the discourse within the TBG systems that address global supply chain labour practices.

The *Political Subsystem* includes both the actions of political actors and agents, as well as prevailing and dominant political ideologies and orthodoxies. The state can play a role *within* the TBG Subsystem, such as by funding or participating in the governance or negotiations surrounding particular TBG schemes. We will discuss the state’s role within the TBG subsystem below. Here we are considering the role of the external political system, by which we mean political forces and decisions not directly related TBG, that can nevertheless influence the TBG Subsystem in more indirect ways. For example, the ascendancy of Neoliberalism in the 1980s, as reflected in the “Washington Consensus” policies of open markets and limited regulation, made possible the conditions necessary for the movement towards ‘free trade’, which in turn led to the vast expansion of global sourcing.<sup>21</sup> Were there to be a shift back towards a preference for a more closed global economy, the role of the TBG Subsystem and the substance of its outputs would no doubt change. The decision to forgo an enforceable labour or ‘social clause’ at the World Trade Organization and in global and regional trade agreements was a function of political negotiations and philosophies. Political systems of nation states can influence the content and substance of TBG discourse and schemes. For example, early private TBG schemes

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<sup>19</sup> See the discussion in P. Rivoli, *The Travels of T-Shirt in the Global Economy* (Wiley & Sons, 2005)

<sup>20</sup> V. Haufler, “Transnational Business Governance and the Management of Natural Resources”, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2143388](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2143388) at 8

<sup>21</sup> H. Arthurs, “Labour Law Without the State?” (1996), 46 U. Toronto L.J. 1

emerged in response to South Africa's apartheid regime, while similar debates continue within TBG systems in regards to oppressive or allegedly corrupt political regimes.

The *Social/Cultural Subsystem* refers to the particular social structures, norms, and values that define societies. This includes religious attitudes and beliefs, as well as cultural norms and public attitudes. These can be powerful forces that explain behaviour and also resistance to the introduction of new norms and rules. For example, to return to an earlier example, if we want to understand why children were used to sew soccer balls in rural Pakistani villages, we need to understand the cultural norms of those societies. Child labour in those communities can be a normal and expected social and economic behaviour in which children interact with families and their community, while providing a necessary financial supplement to family income.<sup>22</sup> When a Western norm that perceives child labour as deviant is introduced into these communities through a TBG scheme, it runs head on into a powerful cultural norm. We can expect conflict to result. Because TBG by definition involves governance beyond geo-political borders and across vast geographic spaces, the role played by cultural and social norms in interactions can be complex.<sup>23</sup>

The *Ecological Subsystem* can influence TBG interactions in myriad ways. The link between the Ecological Subsystem and TBG interactions is most evident in fields such as forestry, climate change, tourism, transportation, pollution and emissions, and ocean and fisheries, for example. The range of activities and possible 'solutions' in these fields are driven by the ecological 'problems' they are designed to address. Changes within the Ecological Subsystem will necessarily influence activities, discourse, problematizations, and outcomes within those TBG Subsystems. Even fields that are not directly linked to ecological issues are

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<sup>22</sup> Kaushik Basu, *Child Labor: Cause, Consequence, and Cure, with Remarks on International Labor Standards 3* (World Bank Policy Research, Working Paper No. 2027, 1998), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=604927](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=604927).

<sup>23</sup> D. Doorey, "In Defense of Transnational Domestic Labor Regulation" (2010), 43 *Vanderbilt J. Trans. L.* 953 at 972

indirectly affected. For example, investment and sourcing decisions are often influenced by access to natural resources, and to rules regulating the use of those resources or emissions and pollution controls. Changes in these ecological-related factors can influence whether a supplier is selected, how many workers are hired, and their conditions of work. Natural disasters or climate change can destroy the viability of a supplier or region, while opening up new possibilities for others.

Finally, each of these subsystems interacts with the others, as well as the TBG Subsystem. Changes or disturbances within a Social Subsystem can influence the Political Subsystem in ways that provoke changes within the Legal Subsystem, and so forth. Each subsystem is functionally autonomous, possessing its own internal norms, values, and discourses, yet each is a component of the larger interactive system.

## **2. Internal Components of the TBG Subsystem**

The TBG Subsystem is comprised of four key components: (1) *Actors*; (2) *Internal Inputs*; (3) *Pathways and Mechanisms of Interaction*; and (4) *Outputs*. We will consider each in turn.

### ***a. The TBG Actors***

One of the distinctive features of the TBG Subsystem is the vast range of actors that occupy it. As noted by Eberlein *et al*, “TBG interactions...involve numerous actor combinations” creating a “need to disaggregate generic categories of business, state, and civil society.”<sup>24</sup> In our systems model, we have identified four broad categories of actors that inhabit the TBG Subsystem: (1) Civil Society Actors; (2) Business/Industry Actors; (3) State Actors; and (4) TBG Schemes.

The presence of civil society, non-state, and private actors in TBG is its defining feature. Using labour issues as an example, a non-exhaustive list of Civil Society actors found within the

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<sup>24</sup> Eberlein, *et al, supra* note 1 at 14-15.

TBG Subsystem would include: *non-governmental civil society organizations* with varied interests and objectives (United Students Against Sweatshops, Clean Clothes Campaign, Maquila Solidarity Network, Consumers International, Shareholder Association for Research & Education); *domestic and international trade unions* (UNITE, AFL-CIO, International Confederation of Free Trade Unions); *workers*; *faith based organizations* (Interfaith Alliance); *academics*, and the *media and journalists*. Civil society actors can be individuals or local, regional, or international organizations. The range of interests, values, and goals of civil society actors is vast, and may vary sharply along subject matter, economic or social interests, constituencies, geography, resources, or expertise. Therefore, as Eberlein *et al* note, researchers must be careful not to conflate ‘civil society’ into a homogenous category.

Business/Industry actors include individual business people, various forms of business organizations, and industry associations, such as the American Apparel Manufacturer’s Association. As with Civil Society actors, opinions and agendas within the category of Business/Industry actors will often not align, so researchers need to be cautious in attributing consensus. For example, an industry association may not represent all actors operating within the industry, and may take positions that not all of its members share.

States play a variety of roles within the TBG Subsystem. Sometimes government officials sit at the table in negotiations over the direction of TBG schemes. Governments might provide funding to TBG schemes. In the labour realm, for example, the Clinton Administration initiated meetings that led to the development of the Fair Labor Association, while the British based labour scheme, *Ethical Trading Initiative*, was supported and initially funded by the British government under Prime Minister Tony Blair. States can also influence TBG by promoting or steering other TBG Subsystem actors in a certain direction, such as by encouraging or even ordering actors to participate in a TBG scheme. As with civil society and business actors, states operate at a variety of levels, including the local or domestic level, the regional or

transnational level, and the international level. States may act alone, or in association with other organizations or states, such as occurs at the ILO.

Finally, TBG schemes are actors in their own right, in addition to being arenas of interaction between other TBG schemes and TBG actors.<sup>25</sup> For example, the FLA brings together civil society organizations and business actors to debate labour norms, standards, and practices. But it also interacts and dialogues with its TBG scheme ‘competitors’, such as the Workers’ Rights Consortium, Social Accountability International, and the Ethical Trading Initiative. As we will discuss later, a TBG Scheme known as Jo-In boasts a membership consisting solely of six other TBG schemes—it is an organization of organizations—yet it created its own Code of Conduct and conducted pilot projects to test it, altering the debate surrounding the living wage in the process (see below). Thus, Jo-In is both an actor and a space of interaction in the labour realm within the TBG Subsystem.

### ***b. Internal Inputs***

Each of the actors within the TBG Subsystem is guided by and framed by its own set of Internal Inputs, which can evolve over time in response to both internal and external pressures, experiences, and opportunities.<sup>26</sup> Five such inputs are central to understanding interactions within the TBG Subsystem. Firstly, Goals and Objectives are desired outcomes that actors seek to realize. They provide the motivation that guides actors in their engagements with other actors. Variations in the goals and objectives of the many actors involved in TBG contribute to the complexity of the system. Mapping actors’ goals and objectives is important to understanding interactions within the TBG Subsystem, since, as Eberlein *et al* note, alignment of goals is a “powerful enabler” of cooperation, as misalignment is of conflict”.<sup>27</sup>

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<sup>25</sup> Eberlein, *et al*, supra note 1 at 15.

<sup>26</sup> Eberlein *et al* described these as actor level drivers, which include “interests, values, perceptions, knowledge, and resources. Ibid. at 17.

<sup>27</sup> Ibid.

Goals and Objectives can vary not only across actors within the TBG Subsystem, but sometimes *within* actors as well. Depending upon how incentive systems are devised, the interests and experiences of individual managers may not always be aligned with the interests of the organizations they work for.<sup>28</sup> Departments within organizations can have conflicting interests that are resolved through power interactions and negotiations. For example, the CSR department within a corporation may support a new code of conduct and greater transparency about supplier practices, whereas the Sourcing department within the same corporation may strongly oppose both initiatives. Industry associations may include members with widely different goals and objectives, and those members may represent only a small fraction of enterprises operating within the industry. Therefore, we cannot assume that an industry association's goals always align with those of the actors within that industry. NGOs might find common ground with one another on specific issues, but profoundly disagree on others.

The second key Internal Input is Values. "Values" are the system of beliefs upon which an actor formulates its goals and objectives and assesses the various courses of action for pursuing them. Bernstein and Cashore note that the first firms to support TBG schemes are often those whose core value systems align with those of the scheme:

...firms that market environmentally or socially sustainable products have a clear incentive to join because their core values fit with the system. Indeed, when a firm faces uncertainty over its profit-maximizing choices, it may fall back on existing values, which could include environmental stewardship or social responsibility.<sup>29</sup>

For example, when Levi-Strauss adopted its vendor code of conduct in 1992, and again when it published its supplier factory list, it cited its founder's value system and the company's decades'

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<sup>28</sup> This was a key insight of T. Kochan, H. Katz, and McKersie, *The Transformation of American Industrial Relations* (Cornell U Press, 1986), who observed conflicts in goals and objectives within the layers of management, particularly in complex organizations.

<sup>29</sup> Bernstein & Cashore, *supra* note 17 at 358

long commitment to social issues.<sup>30</sup> Yet, researchers need to look beyond an actor's own public literature and press releases to identify core values.<sup>31</sup> An actor's values can make some courses of action unthinkable, while opening up new courses of actions not evident to other actors.

The third Internal Input is Power. Power is the ability to achieve one's goals and objectives despite resistance from others.<sup>32</sup> TBG actors derive power from a variety of sources. Market forces and wealth are an obvious source, but economic power can be, and often is, offset in some measure by other power sources. These can include moral or religious power, cultural power in the form of embedded social norms, communicative power in the form of the capacity to disseminate facts or ideas, or legal power. Walmart possesses sufficient market or economic power to impose contract terms that are almost certain to force their suppliers to shirk on overtime pay laws. However, the ability of Walmart to exercise that power may be restrained by the power Civil Society actors to disseminate stories blaming Walmart for illegal conditions in its supplier factories, or by the power of consumers or socially conscious investors to inflict economic damage. The power of a buying firm to influence change in the labour practices of a supplier depends on its share of the supplier's business. The power of civil society actors within the TBG Subsystem derives in large measure from the demand for socially responsible production practices, but that demand fluctuates.<sup>33</sup>

The fourth Internal Input in our model is Risk Perception and Tolerance. This is tied closely to the other Internal Inputs, particularly Goals and Objectives, and Power. Although some firms may support TBG governance schemes because they align with their core Values,

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<sup>30</sup> See D. Doorey, "The Transparent Supply Chain: From Resistance to Implementation at Nike and Levi-Strauss" (2011), 103 J. Bus. Ethics 587 at 594-598.

<sup>31</sup> See e.g. M. Somers, "Ethical Codes of Conduct and Organizational Context: A Study of the Relationship Between Codes of Conduct, Employee Behaviour, and Organizational Values" (2001), 30 J. Bus. Ethics 185.

<sup>32</sup> Craig, *supra* note 13 at 9.

<sup>33</sup> H. Arthurs, "Private Ordering and Workers' Rights in the Global Economy" in *Labor Law in an Era of Globalization*, J. Conaghan, *et al.* (Eds), Oxford U. Press, 2002); K. Kolben, "Integrative Linkages: Combining Public and Private Regulatory Approaches in the Design of Trade and Labor Regimes" (2007), 48 Harv. Int. L.J. 203

many do so only after an assessment of perceived risks and rewards.<sup>34</sup> Business firms that depend heavily on brand image and that operate in highly competitive consumer markets, for example, are more likely to attach greater risk to their suppliers' labour practices than other firms. These perceived risks would be expected to influence the course of action taken by the firms within the TBG Subsystem.

Finally, the range of actions and strategies available to TBG actors are framed by their Capacities. Capacity is related to Power, but it is not the same thing. Capacity refers to the financial means or technical expertise to achieve one's Goals and Objectives. For example, many economically developing state governments possess legitimate political and legal *power*, yet lack the *capacity* necessary to effectively enforce domestic laws.<sup>35</sup> Large, financially successful firms like Gap, Nike, and Walmart have greater capacity to invest in and implement TBG schemes and processes than do smaller firms. Civil society organizations are notoriously underfinanced, which limits their capacity to engage in monitoring and other such activities, and can also make them more vulnerable to co-optation. On the other hand, these organizations may have considerable technical capacity to monitor and report on compliance with TBG schemes. Thus, an actor may have strong technical capacity, but weak financial capacity. This can influence strategies in TBG interactions involving these actors. The capacity of suppliers may also be an important force within the TBG Subsystem. Norms promoted by TBG schemes have little chance of being implemented if the suppliers subject to them lack the capacity to comply.

### ***c. Pathways and Mechanisms of Interaction Within the TBG Subsystem***

The third component of the TBG subsystem identifies the *Pathways and Mechanisms* through which External and Internal inputs are converted into subsystem *Outcomes* through processes of *Interaction*. TBG interactions are central in the framework developed by Eberlein *et*

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<sup>34</sup> M. Power, "Risk Management and the Responsible Organization" in Richard V Ericson & Aaron Doyle, eds, *Risk and Morality* (Toronto: University of Toronto Press, 2003) 145 at 153.

<sup>35</sup> Y. Kryvoi, "Why European Union Trade Sanctions Do Not Work" (2008), 17 *Minn. J. Int. L.* 209 at 219.

*al.* They define interactions as, ‘including all the ways in which TBG actors and institutions engage and react to one another and state-based regulatory actors and institutions.’<sup>36</sup> This definition fits well into our systems model. Eberlein *et al* describe a number of mechanisms and pathways of interaction.

Direct Dialogue is an obvious starting point. The TBG actors, at both the individual and organizational level, discuss problems and strategies for addressing them. Sometimes TBG actors are engaged in Norm Entrepreneurship, attempts to persuade other actors to adopt particular norms and standards.<sup>37</sup> In this way, TBG actors can act as pathways and conduits between TBG schemes, like honey bees pollinating TBG schemes with ideas and norms. Some actors participate in multiple TBG schemes (Overlapping Organizational Membership Structures), which ensures learning and information sharing across schemes. For example, in the labour sphere, there are corporations and NGOs that participate in some manner in two or all of the following American-based TBG schemes: Fair Labor Association, Workers’ Rights Consortium, and Social Accountability International. We can hypothesize that experiences and knowledge acquired by actors through participation in one of these schemes would occasionally influence dialogue and debates within the other schemes.

Supply chains are another pathway of TBG interactions.<sup>38</sup> Supplier factories in economically developing countries may be governed by a multitude of vendor codes of conduct, with varying requirements. As Eberlein *et al* observe, a supplier may opt to comply with the most demanding of the codes, thereby displacing the codes with the weaker requirements.<sup>39</sup> Alternatively, suppliers may experience difficulty complying with a particular code or standard in one situation and adopt measures to avoid it in the future. This could mean refusing to accept

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<sup>36</sup> Eberlein, et al, supra note 1 at 7.

<sup>37</sup> Ibid. at 19.

<sup>38</sup> Ibid. at 20.

<sup>39</sup> Ibid.

orders that would require compliance with the standard, if that is economically feasible, or adopting measures to avoid detection. Either response could place strains on the codes or standards as knowledge of them feeds back into the TBG subsystem. For example, there may be pressure to lower the standards, to strengthen monitoring and reporting systems, or for TBG actors to discuss the root causes of non-compliance in order to identify how compliance with the standard can be more effectively achieved.

Interactions can also occur through Mimicry and Informational Dissemination. Eberlein *et al* describe these as “cognitive interactions”, which occurs when “information, knowledge, or ideas produced in one institution modify the perceptions of relevant decision-makers in another.”<sup>40</sup> Bernstein and Cashore observed similarly that TBG schemes sometimes “engage in ‘mimetic isomorphism’, by mimicking more successful schemes and standards.”<sup>41</sup> For example, the SA8000 code of the TBG scheme Social Accountability International is directly modeled after the systems approach utilized by the International Standards Organization in its ISO 9000 and ISO14000 standards.<sup>42</sup>

Another mechanism of interaction is Conditional Rule Referencing. This occurs when a governance scheme is directly conditioned on compliance with another system of rules. Finally, interactions can occur through processes of Regulatory Governance, when powerful systems of rules guide, steer, or influence standard setting and processes within other systems.<sup>43</sup> For example, the Global Compact encourages corporations to endorse and work towards implementation of ten ‘principles’ that are derived from other international instruments, including the ILO’s “Core Labour Standards”.

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<sup>40</sup> Ibid. at 19.

<sup>41</sup> Bernstein & Cashore, *supra* note 17 at 360

<sup>42</sup> See SAI website, “How We Got Started”, <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=938>

<sup>43</sup> Eberlein, *et al*, *supra* note 1 at 19-20. See also discussion in C. Coglianese & E. Mendelson, “Meta-Regulation and Self-Regulation” in M. Cave, *et al*. (Eds), *THE OXFORD HANDBOOK ON REGULATION*

Eberlein *et al* note that while researchers tend to emphasize conflict as the dominant form of interaction within the TBG subsystem, interactions take other forms as well. The character of interactions within the TBG Subsystem can vary over time and space, roughly in accordance with the following typology: (1) Competition; (2) Coordination; (3) Cooptation; and (4) Chaos.<sup>44</sup> This demarcation in the character of interactions is implied, but not expressly incorporated into the TBG Systems Framework discussed in this paper. In particular, it is important to note that the character of interactions can evolve over time, moving from one type (e.g., conflict) to another (e.g., coordination, cooptation) over time as a function of power differentials, experience and learning, mimicry, personal relations and dialogue, or consolidation. This possibility is captured by the Feedback Loop component of the Systems Framework, which is designed to emphasize the dynamic and fluid nature of human and institutional interactions over time.

#### **d. Outputs of the TBG Subsystem**

The *Outputs* of the TBG Subsystem can be separated into two general categories: (1) Substantive and Procedural Rules; and (2) Individual and Organizational Behavioural Change. The first type of output is easiest to measure, since it is often written down in codes of conduct and other such documents that describe the standards and procedures that the TBG actors have agreed to. Sometimes these rules are the end result of complex, contentious, and lengthy bouts of negotiation, conflict, and compromise between multiple TBG actors, such as occurred with respect to the FLA's model code. In other cases, they reflect a decision of a single TBG actor to codify a statement of aspiration or present a public image of responsible behaviour, such as when Levi-Strauss published the first vendor code of conduct in 1992. Substantive and Procedural rules can be vague ('treat employees with respect'), or highly complex and technical. They can include comprehensive systems for monitoring and publishing compliance reports, or require simply that TBG actors pledge to do their best to ensure compliance.

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<sup>44</sup> Eberlein, et al, *ibid.* at 21.

The second type of Output is more difficult to measure. Researchers need to study how TBG interactions actually change (or do not change) behaviour, but measuring change and the causes of it is a highly complex endeavour. A TBG scheme may publish a very strongly worded code of conduct (*Substantive and Procedural Rules*) that is then completely ignored. In the end, the purpose of TBG is to produce changes in behaviour, usually downwards through a supply chain. However, it is often difficult to isolate the effect of TBG from the effects caused by any number of other causal variables.<sup>45</sup> Did TBG schemes cause wages in India to rise, or would wages have risen anyways due to normal market forces or other reasons unrelated to TBG? The difficulty of answering these sorts of questions helps explain why there is so little research into the actual impact of TBG.

Researchers should not focus exclusively on changes at the bottom of the supply chain. TBG can affect behaviour higher up the supply chain as well. For example, participation in a TBG scheme might cause a corporation to develop more robust internal management systems that enable managers to better track suppliers and their labour practices.<sup>46</sup> This may not translate into improved labour practices on the factory floor, at least not immediately, so it would be missed if researchers were looking only at factory level wage rates. TBG interactions might lead to greater dialogue or information sharing among competitors, or heighten hostilities, even if no actual written rules ever emerge. TBG schemes can improve the capacity of states to enforce their local laws, or undermine a government's economic or social policies. In short, research into TBG interactions must recognize the many links in transnational activities, any of which can be affected by interactions, and often not in obvious ways.

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<sup>45</sup> Ibid. at 23.

<sup>46</sup> D. Doorey, "In Defence of Transnational Domestic Labor Regulation" (2010), *Vanderbilt Trans. L.J.* 959

### 3. The Feedback Loop

Incorporating a *Feedback Loop* into the systems model is essential to capturing the complex ‘fluid and dynamic’ nature of TBG interactions.<sup>47</sup> As Eberlein *et al* note, “a snapshot of interactions frozen at a moment in time has little analytical value.”<sup>48</sup> Their model recognizes that TBG interactions develop over time in a dynamic environment. The explicit addition of a *Feedback Loop* in the systems framework makes this crucial insight even more explicit. The *Feedback Loop* demonstrates that the *Outputs* of the TBG Subsystem feed back not only into the TBG subsystem itself, but also into the broader social system (*External Inputs*), of which the TBG subsystem is just one element.

Subsystem *Outputs* can influence *Internal Inputs* directly or indirectly. For example, a firm’s initial *Objective* may be to avoid engagement with TBG altogether, or to ‘fend off’ a particular TBG standard. However, that objective may become unsustainable if the TBG subsystem begins producing schemes and rules that gain traction within that subsystem.<sup>49</sup> In the early days of TBG in the labour sphere, for example, the position of most multinational enterprises was that the conditions of work in their supplier factories were not their responsibility.<sup>50</sup> That position spawned a TBG movement aimed at pressuring firms to take responsibility for those conditions. One output of the resultant interactions was the first generation of vendor codes of conduct that explicitly assigned some responsibility for supplier labour practices to sourcing firms. That outcome then fed directly back into the TBG Subsystem in ways that influenced actors’ *Risk Perceptions*, *Power* relations, and *Goals and Objectives*.

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<sup>47</sup> Eberlein, et al, *supra* note 1 at 25.

<sup>48</sup> *Ibid.*

<sup>49</sup> Bernstein & Cashore, *supra* note 17 at 359.

<sup>50</sup> J. Esbenshade, *Monitoring Sweatshops* (Temple U. Press, 2004), at 119.

Denial or ‘fending off’ faded and was replaced by new *objectives*, such as “pacifying”—creating new TBG schemes to compete with those perceived to be less business-friendly.<sup>51</sup>

TBG Subsystem Outputs also influence *External Inputs* in ways that can feed back into the TBG Subsystem in a more indirect manner. An output of the TBG subsystem, in the form of a monitoring report showing rampant use of child labour by American corporations, can agitate the *Economic, Legal, Political, and Social Subsystems* at local (national), regional, and international levels. For example, a report of that nature could affect demand in consumer markets for the products in question (the *economic subsystem*), and produce *political* pressure on states to ‘do something’ about child labour, such as introduce new laws through the *legal subsystem* in order to punish producers who use child labour. This could ultimately create greater awareness and dialogue about how Western *social* norms surrounding child labour differ from those in economically developing states.

Finally, these disturbances within the various external subsystems are transmitted back into the TBG Subsystem as signals. For example, if public opinion as expressed through markets or political pressure turns against the use of child labour as a result of learning about the monitoring report, then the *Power* balance within the TBG Subsystem shifts. Those TBG actors interested in stronger controls over labour practices are empowered, whereas those who prefer the status quo may now perceive greater *risk* associated with doing nothing about child labour. Even *values* can begin to shift as TBG actors learn about child labour, with respect to not only public reaction but also its root causes. For instance, as Western TBG actors acquired greater understanding of child labour through TBG interactions and outputs, more nuanced responses began to emerge, such as requiring TBG actors to fund new schools for children in places where educational opportunities did not exist.<sup>52</sup>

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<sup>51</sup> Bernstein & Cashore, *supra* note 17 at 359.

<sup>52</sup> See discussion in Doorey, *supra* note 45 at 993-94

### III. An Application of the System Framework: The Living Wage

The emergence of the ‘living wage’ standard in many labour-related TBG schemes can be used to demonstrate the Systems Framework. The living wage (LW) is an interesting subject for a number of reasons. As a slogan, it carries considerable attraction; who could object to paying workers a wage that permits them to live a decent life. However, it also has the potential to impose substantial new costs on supply chain systems that could undermine the comparative advantage enjoyed by low wage suppliers. What those costs are remains uncertain, though, because there is also little agreement on how to calculate a living wage. These latter factors make the LW an unlikely standard to emerge as an output of the complex interactions within the TBG Subsystem concerned with supply chain labour practices.

#### A. *The Origins of the Living Wage Standard Within the TBG Subsystem*

There is a long and complicated factual matrix that can be reduced to its core components for our purposes. The story of the LW begins outside of the TBG Subsystem. The “living wage” has deep historical roots in the economic, social, political, and legal subsystems of bygone eras.<sup>53</sup> British trade unions were advocating for a living wage by the 1870s.<sup>54</sup> In the 1880s, the Knights of Labor were doing the same in the United States.<sup>55</sup> It took legal form in 1913 in Wisconsin, where a law requiring payment of LW was enacted, defined as, “compensation for labor paid...sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare”, including “reasonable comfort, reasonable

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<sup>53</sup> J. Ryan, *A Living Wage* (London, MacMillan, 1912), dating the concept of the need for wages above subsistence levels to the Middle Ages and religious doctrine. See also: R. Shelburne, “The History and Theory of the Living Wage Concept”, available at [http://works.bepress.com/robert\\_shelburne/40](http://works.bepress.com/robert_shelburne/40)

<sup>54</sup> S. Webb, *Industrial Democracy* (London, Longmans, Green, 1899) at 588.

<sup>55</sup> Glickman dates the phrase “living wage” to the 1870s, when it was used in some British writings and American writings dealing with wages and political economy: L. Glickman, *A Living Wage* (Cornell U. Press, 1997). In 1898, Samuel Gompers argued that a living wage was necessarily, “sufficient to maintain an average-sized family in a manner consistent with whatever the contemporary local civilization recognizes as indispensable to physical and mental health, or as required by the rational self-respect of human beings”: Glickman, *ibid.* at 3.

physical well-being, decency, and moral well-being.”<sup>56</sup> This history is important to our story only insofar as it explains the source of modern day activists’ demands for a LW in contemporary labour codes of conduct.

The LW standard resurfaced on the agenda of civil society actors in America and Europe just as labour TBG systems were emerging in the 1990s. Networks of social activists, including unions, faith-based organizations, and other poverty activists were campaigning for a LW condition on all public tenders to perform government projects.<sup>57</sup> This movement was a response to concerns about growing income inequality and poverty in American cities (*Economic Subsystem*), which also had racial and gender implications, as many of the services affected by the public tendering process were performed by women, racial minorities, and new immigrants (*Social/Cultural Subsystem*). The movement for domestic LW standards to improve the lives of these vulnerable, low-paid workers resonated with local politicians in some cities (*Political Subsystem*), which resulted in occasional legal victories in the form of municipal “living wage ordinances” (*Legal Subsystem*).<sup>58</sup>

When the issue of working conditions in foreign factories supplying North American and European markets burst into public consciousness in the early 1990s, the LW was fresh on the minds of some of the Civil Society actors who would join the movement for TBG of labour practices within international supply chains, including unions, NGOs, and some faith-based organizations.<sup>59</sup> Experience with living wage campaigns in the domestic realm carried over into the emerging TBG subsystem. As Freeman and Elliott observed, “labor standards came to the

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<sup>56</sup> See discussion in J. Spectar, “Pay Me Fairly, Kathie Lee! The WTO, the Right to a Living Wage, and a Proposed Protocol”, (2000) 20 N.Y.L. Sch. J. Int. & Comp. L. 61 at 62.

<sup>57</sup> I. Martin, “Dawn of the Living Wage: The Diffusion of a Redistributive Municipal Policy” (2001), 36(4) Urban Affairs Review 470-496; M. Levi, D. Olson, & E. Steinman, “Living-Wage Campaigns and Laws” (2002-03), 6 Working USA 111.

<sup>58</sup> Living wage laws were passed in many American cities, including Baltimore, Los Angeles, Boston, Oakland, Washington, and others.

<sup>59</sup> On the emergence of civil society networks targeting global supply chain labour practices in the 1990s, see: W. Meyer & B. Stefanova, “Human Rights, the U.N. Global Compact, and Global Governance” (2001), 34 Cornell Int’l L.J. 501; I. Mamic, *Implementing Codes of Conduct* (Brookings Inst., 2004) at 24-25.

fore [in the 1990s] because non-governmental groups in advanced countries...galvanized consumers to demand that multinational firms and their suppliers improve working conditions and pay living wages in developing countries.”<sup>60</sup> The challenge was similar—how to ensure a decent wage in an economic system based on subcontracting out work—although far more complex in the case of supranational contracting out.<sup>61</sup>

### B. *The Evolution of Labour TBG Schemes and the Living Wage*

The LW standard conflicted with the principal *Goal/Objective* of most Business actors within the TBG subsystem, profit maximization, and with their secondary objective of avoiding, as much as possible, any loss of autonomy to TBG schemes. The LW standard was vague. There was no agreement on a methodology for calculating it. This had a number of implications for the Internal Inputs of Business actors. It created *Risk* in terms of uncertainty and potential costs. It also raised *Capacity* concerns, since firms questioned whether they had the financial means to pay a LW or to police whether their suppliers were paying it. On the other hand, disagreement over how to calculate the LW gave Business actors greater courage to resist it (*Risk Tolerance*): How could they be expected to order their contractors to implement a standard which even economists could not agree on how to calculate? If pressed, it was possible to commit to paying a LW in principal, while falling back on the lack of agreement on how to calculate to explain the lack of movement towards actually implementing it throughout a supply chain.

Businesses and industry associations mostly ignored the Civil Society actors’ calls to pay a LW in the early period of labour TBG interactions, or fended off<sup>62</sup> the demand by proposing that suppliers respect lesser standards of adhering to statutory minimum wages, or sometimes a

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<sup>60</sup> R. Freeman & K. Elliott, “White Hats or Don Quixotes: Human Rights Vigilantes in the Global Economy” (2001), NBER Working Paper, No. 1802 at 1.

<sup>61</sup> See discussion in J. Wills & A. Hale, “Threads of Labour in the Global Garment Industry” in A. Hale & J. Wills, *Threads of Labour* (Blackwell Publishing, 2005) 1 at 8.

<sup>62</sup> Bernstein & Cashore, *supra* note 17 at 359.

‘prevailing industry’ wage.<sup>63</sup> The earliest company code addressing global supply chain labour practices, the 1992 Levi-Strauss Global Sourcing and Operating Guidelines, required compliance with minimum wage laws, but many other business-based codes made no reference to compensation at all. In 1999, a survey of codes showed that only 51.5 percent of individual company codes and 16.7 percent of industry codes included any compensation standard.<sup>64</sup> The industry-based TBG Scheme, Worldwide Responsible Apparel Production (WRAP) Principles, developed by the American Apparel Manufacturers Association in 1996, required compliance with minimum wage laws, if they existed. Another industry-based scheme introduced in 1994, the Caux Roundtable Principles for Business, only included vague statements for businesses to pay compensation levels that “improve workers’ living conditions”.

These first generation company codes represented early Outputs (*Substantive & Procedural Rules*) of the burgeoning TBG Subsystem. Businesses and industry associations drafted and publicized supplier codes addressing labour practices in order to neutralize the perceived *Risks* to their *Goals and Objectives* posed by the ‘naming and shaming’ campaigns being undertaken by Civil Society actors.<sup>65</sup> One risk was the possibility that new laws would impose obligations on corporations to police their suppliers’ labour practices.<sup>66</sup> New developments in External Inputs, including in the Economic, Legal and Political Subsystems made this a possibility in the 1990s. In the U.S., President Bill Clinton had campaigned on a promise to address growing public concerns about “American jobs” being shipped to developing economies where workers would lack decent employment laws and working conditions.

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<sup>63</sup> Mamic, *supra* note 60 at 331: “Although the [MNCs] studied have faced pressure from civil society to pay workers a wage that meets the suppliers’ workers’ basic needs, sometimes referred to as a living wage, thus far the MNCs have not publicly entered into the debate. [MNCs] with codes ... require their suppliers to adhere to their stated provisions of paying the local minimum wage or prevailing industry wage.”

<sup>64</sup> R. Jenkins, “The Political Economy of Codes of Conduct” in R. Jenkins, *et al.* (eds), *Corporate Responsibility and Labour Rights* (Earthscan, 2002), 13 at 21.

<sup>65</sup> B. Kytte & J. Ruggie, “Corporate Social Responsibility as Risk Management”, Working Paper 10, Harvard CSR Initiative (March 2005) at 7.

<sup>66</sup> J. Rowe & R. Lipschut, “Corporate Codes as a Global Business Strategy” in J. Hooker, *et al.* (Eds), *Perspectives on International Corporate Responsibility* (Carnegie, 2005) 1 at 19.

However, the North American Agreement on Labor Cooperation (NAALC), enacted in 1993, failed to stem these concerns.<sup>67</sup> In 1996, the possibility of a “social clause” being included in World Trade Organization trade rules was put to rest by the WTO Singapore Ministerial Declaration on Labour Rights, which reaffirmed the ILO as the body responsible for global labour issues.<sup>68</sup> Meanwhile, campaigns exposing labour abuses in factories supplying American markets and corporations surged. While the new TBG subsystem was producing Outputs in the form of *Substantive and Procedural Rules*, there was little evidence of the second type of TBG Subsystem Output, actual *Behavioural and Organizational Change* by Business actors.

The absence of enforceable labour standards in supranational trade regimes created political pressures on Government actors in advanced economic nations to ‘do something’ to satisfy their citizens that liberalized trade was not encouraging a global race to the bottom in work standard.<sup>69</sup> The Clinton Administration responded by initiating the White House Apparel Industry Partnership (AIP), which led to the creation of the FLA.<sup>70</sup> The idea was to bring together leading American apparel firms, alongside NGOs and labour groups, which would work together to build a voluntary, private governance scheme aimed at improving labour conditions within the global supply chains of the firms. Interactions occurred through the mechanism of *Direct Dialogue* at the rule formation stage. Discussions were often tense and competitive in nature, because the Civil Society and Business actors had very different ideas about what the Outputs of the Scheme should include. The *Goals and Objectives*, as well as the *Values*, of the actors participating in the AIP/FLA dialogue were in conflict.

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<sup>67</sup> Esbenshade, supra note 51 at 176-180.

<sup>68</sup> K. Kolben, “Integrative Linkages: Combining Public and Private Regulatory Approaches in the Design of Trade and Labor Regimes” (2007), Harv. Int’l L.J. 203 at 210-13.

<sup>69</sup> H. Bloomfield, “Sweating the International Garment Industry: A Critique of the Presidential Task Forces’ Workplace Code of Conduct and Monitoring Systems” (1998-99) Hastings Int’l & Comp. L. Rev. 567 at 573.

<sup>70</sup> The British government responded to similar pressures in 1998 by funding a new multi-stakeholder TBG scheme called the Ethical Trading Initiative. In Canada, the Department of Foreign Affairs developed and promoted in 1997 the creation of the International Code of Ethics for Canadian Business.

### *C. The Fair Labor Association and the Struggle Over the Living Wage*

The credibility of the burgeoning FLA suffered a serious blow when the only two participating labour representatives, along with an important faith-based NGO, defected over what they perceived to be the FLA's unacceptably weak governance system. The main concerns of the defectors were weak language on freedom of association, a lack of independent monitoring and, notably, the absence of a requirement for payment of a living wage. The remaining participants released the FLA model code in 1997. It required payment of "at least the minimum wage required by local law or the prevailing industry wage, whichever is higher." The FLA code, as an Output of the TBG Subsystem, fed back into that Subsystem (via the *Feedback Loop*), provoking a strong negative response by many Civil Society actors seeking to improve global supply chain labour practices.

A LW standard is central to *Goals and Objectives* and *Value* to these actors. The purpose of TBG in the labour sphere, from their perspective, is to ensure that workers earn a wage sufficient for them to live a decent life. From their vantage point, the new FLA model code would do little to improve the wages and working conditions down through global supply chains, and therefore was a smokescreen to enable Business actors to claim that they were socially responsible, without actually having to alter their behaviour in any substantive manner. The omission of a LW standard was a principal criticism leveled at the FLA by a new NGO active on American college campuses during the late 1990s, United Students Against Sweatshops (USAS). USAS joined with other NGOs and labour groups in condemning the FLA model, and in 2000, formed a new, competing labour governance TBG Scheme named the *Workers Rights Consortium* (WRC).<sup>71</sup>

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<sup>71</sup> T. Bartley, "Certifying Forests and Factories: States, Social Movements, and the Rise of Private Regulation" (2003), 31 *Pol. & Soc.* 433.

In sharp contrast to the FLA, the WRC's governance structure excluded participation by business, which was intended to strengthen its claim of independence from the entities it would govern. The WRC targeted branded apparel sold at American colleges and universities. Schools that affiliated with the WRC were required to adopt a code of conduct and apply it to suppliers of school-branded apparel. The WRC sought to carve out its own space of authority by purporting to be everything that the FLA was not: independent, transparent, and substantive. Its model code included a strong living wage clause, as well as a compliance procedure, and much greater reporting and transparency requirements than the FLA.<sup>72</sup> Since the college apparel market was so lucrative, Business actors who had endorsed the FLA, including Nike, decided (sometimes reluctantly<sup>73</sup>) that they had little choice but to accept the WRC's conditions when major college customers signed onto the scheme. This has the important effect of creating *Overlapping Memberships* between the WRC and the FLA. Companies that supplied WRC-affiliated schools were now indirectly bound by the WRC's living wage standard, even though no such obligation applied as a result of their direct participation in the FLA.

The WRC was not the only TBG Scheme that had adopted a LW standard by the turn of the century. The breakthrough year for the LW standard in TBG schemes was 1998. That year, U.C. Berkeley hosted a 'Living Wage Working Summit' to explore possibilities for a LW standard within global supply chains supplying the apparel and footwear industries. It was attended by over 50 participants, including academics, students, unions, and NGOs representing human rights, immigrants, and women. Organized meetings of this sort jumble together several possible mechanisms and pathways of interaction, including *Social Networks, Policy Learning and Diffusion, Direct Dialogue*. That same year, the American multi-stakeholder TBG scheme, *Social Accountability International (SAI)*, issued its new SA8000 standard, modeled after the

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<sup>72</sup> The WRC model code included the following language: "Wages and benefits that comply with applicable laws and regulations, which provide for essential needs and establish a dignified living wage for workers and their families."

<sup>73</sup> See discussion in Doorey, *supra* note 30.

ISO-style management systems approach (*Meta-Regulatory Governance*). SA8000 included a form of the LW standard under the Remuneration heading that read: “Wages paid for a standard work week must meet the legal and industry standards and be sufficient to meet the basic need of workers and their families.”

Similar developments were taking place in Europe. A union-backed Dutch NGO, *Clean Clothes Campaign* (CCC), and the British multi-stakeholder TBG scheme, *Ethical Trading Initiative* (ETI), also published model codes in 1998 that included LW standards similar to that in the SA8000. The CCC Code was endorsed by three international unions, and by the approximately 250 NGOs and unions already affiliated with it by 1998.<sup>74</sup> In 1999, the Dutch NGO *Fair Wear Foundation* also published a code that included a LW standard based on the CCC language. By the turn of the century, all of the leading Civil Society based schemes, none of the Industry-based schemes, and all of the multi-stakeholder TBG schemes addressing labour issues, except the FLA, had adopted a LW standard.

The ILO was cited as authority in every instance in which the LW was included in a scheme’s standards. Standards promulgated by dominant international organizations can create path dependency within a TBG process through their normative authority in a governance domain (*Meta-Regulatory Governance*).<sup>75</sup> The ILO carries a strong gravitational pull in labour practice governance, in part because of its unusual tri-partite construction consisting of representatives of states, industry, and worker representatives. Although the LW standard does not appear directly in ILO Conventions, it is referenced in the Preamble of the ILO’s Constitution, which states that, “peace and harmony of the world are imperiled” when working conditions produce “injustice”, so that “the provision of an adequate living wage”, among other conditions, is urgently required. The Declaration of Philadelphia (1944), which was appended to

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<sup>74</sup> L. Sluiter, *Clean Clothes: A Global Movement to End Sweatshops* (Pluto Press, 2009) at 129.

<sup>75</sup> Bernstein & Cashore, *supra* note 17 at 351.

the Constitution, referenced the need for “wages and earnings” to be calculated to ensure “a minimum living wage”. The ILO’s standards are directed at states, not employers and corporations, but this has not deterred TBG Civil Society actors from pointing to the ILO as moral and legal authority in its advocacy for the LW standard.<sup>76</sup>

The inclusion of the LW standard in most multi-stakeholder TBG Schemes, and the normative authority of the ILO’s support for it, undermined the legitimacy of the FLA and other schemes that omitted the standard. The systems framework predicts that how these schemes respond to this threat will be influenced by their respective Internal Inputs, including their *Goals and Objectives*, their *Capacities*, and the relative *Power* relationships within the organizational structure of the Schemes. For example, TBG Schemes that are dominated by Industry, and that lack the voice of unions and labour advocacy Civil Society actors in their governance structure, would be least likely to *Mimic* stronger TBG Schemes that include the LW standard. The principal *Objective* of these Schemes is to provide Business actors with a means to present an image of social responsibility, while imposing relatively little in terms of substantive of procedural obligations. The industry-based WRAP Scheme is an example. It responded to the ascendancy of the LW standard in Schemes with strong Union and Labour NGO actor participation by claiming that the LW standard, while nice in principle, was too vague to be included in its code.<sup>77</sup>

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<sup>76</sup> It is notable that the phrase ‘living wage’ does not appear in any of the ILO’s Conventions, or in the 1998 *Declaration on Fundamental Principles and Rights at Work* that described the “core” labour standards. In fact, the ILO has deliberately steered clear of trying to set precise wage levels. As an ILO representative explained, “the term ‘living wage’ only appears in the preamble to the ILO Constitution, with the operative clauses of the constitution only speaking about ‘minimum wages’”.<sup>76</sup> However, the notion that wages should take account of reasonable standards of living for workers and their families is referenced indirectly in a variety of instruments. Convention 26, *Minimum Wage-Fixing Machinery* (1928) directs states to implement minimum wage systems, and Recommendation 30 (1928) explains that those minimum wages should “take account of the necessity of enabling the workers concerned to maintain a suitable standard of living.” Convention 131, *Minimum Wage Fixing* (1970) similarly noted that minimum wages should take account of national conditions, and also the needs of workers and their families, taking into account the cost of living, social security benefits, and the relative living standards of other social groups.

<sup>77</sup> WRAP added this explanation of its lack of a LW standard to its website: “The discussion and debate about a “living wage” has been going on for centuries. Numerous recent attempts to define such a wage have been made but no

The situation was more complex for the FLA. Its' direct 'competitors' were other multi-stakeholder Schemes such as the WRC, SA8000, and ETI (UK), all of which included a LW standard. As noted above, some firms that participated in the FLA had already pledged support for a LW standard through their participation in other Schemes, such as the WRC, the SAI, or the British ETI. Moreover, many of the factories that fell within the scope of the FLA system were also operating under other Schemes and codes that included a LW standard. In theory, if not practice, this meant that these factories were already supposed to be paying a LW to their workers (*Supply Chain Coordination*). Civil Society actors on the FLA Board continued to push for the LW standard (*Direct Dialogue and Norm Entrepreneurship*). Yet, despite these forces pushing in the direction of the LW, there was still resistance from Business actors within the FLA to adopting the standard.

The FLA responded to these pressures by fending off calls to adopt a LW. It tried to redirect the discussion, channeling it into the complexities of calculating a LW in practice. Since the FLA model required code compliance audits, standards that were not auditable could not be included in the code, it argued.<sup>78</sup> Until such time as there was broad-based agreement on how to calculate a LW, it could not be included. However, in response to competitive pressures from other TBG Schemes, and internal pressures from Civil Society actors participating in the FLA, the FLA decided to study the LW. In 2003, the FLA convened a conference at Columbia University to explore the question of how to calculate a LW, and invited a variety of experts to discuss different measures.<sup>79</sup> At the end of the Columbia conference, the FLA leadership

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consensus or agreement has been reached on such a definition. WRAP continues to follow the issue and is supportive of the concept, but until a clear and agreed-upon definition is put forth, WRAP cannot certify that which cannot be defined.”: <<http://www.wrapcompliance.org/faqs#15>

<sup>78</sup> See, e.g., Auret van Heerden, the Director of the FLA, quoted as follows in a 2009 article: “The main problem is how to define the living wage in a consistent way and making sure that it is auditable”: “Wages: Working for a Living”, *Ethical Corporation* (30 June 2009): <http://www.ethicalcorp.com/communications-reporting/wages---working-living>

<sup>79</sup> Fair Labor Association, “Beyond Questions of Principle: Exploring the Implementation of Living Wages in Today’s Global Economy” (Report, 20 October 2003)

promised to consider “pilot projects” on the LW over a period of three years, and to encourage more research into LW calculations. Directing the discourse towards debates over precise mathematical calculations of a LW standard enabled the FLA to balance competing interests within its own governance structure, while still declining to recognize the LW standard formally in its model code.

#### ***D. The Jo-In TBG Scheme Collaboration and the Living Wage***

These debates continued through a process of ongoing subsystem wide feedback and interaction. While there were real philosophical and practical disagreements between many of the actors operating within the TBG Subsystem, there was also a learning process underway, through which spaces of agreement became evident over time (*Policy Learning and Diffusion*) as experiences continued to feed back into the Subsystem. It was obvious, for example, that no one benefited when a factory owner was subjected to multiple audits under multiple codes that were similar, yet not identical. This overlap wasted resources and created confusion for the sourcing corporations, the factory owners, local NGOs and unions, workers, and the public alike. On this point, everyone involved in the labour codes debates agreed. These zones of agreement created opportunities for new forms of collaboration and cooptation.

In spring 2002, a meeting of the leading TBG Schemes in supply chain labour practices was organized in Europe by two academics, Dara O’Rourke and Charles Sabel. The meeting brought together representatives of the American-based schemes FLA, SAI, and WRC, and the European CCC, ETI, and Fear Wear Foundation.<sup>80</sup> The meeting was exploratory, as the organizations sought to learn more about areas of commonality and divergence in standards and monitoring and reporting practices. Little came of the meeting, except that seeds were planted for possible further collaborations. One year later, the ETI invited the same organizations to come

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<sup>80</sup> Maquila Solidarity Network, Codes Memo No. 12 (June 2002), [http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/codesmemo11\\_0.PDF?SESS89c5db41a82abcd7da7c9ac60e04ca5f=n7ca9efj3bn361u4lrsh19aa0](http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/codesmemo11_0.PDF?SESS89c5db41a82abcd7da7c9ac60e04ca5f=n7ca9efj3bn361u4lrsh19aa0)

together again in a more formal manner to continue their discussions about how to maximize the effectiveness and efficiency of the TBG Schemes. From this contact emerged a new collaborative TBG Scheme given the name *Joint Initiative on Corporate Accountability and Workers' Rights* (Jo-In).<sup>81</sup>

Representatives of the six participating schemes began meeting in early 2003. While there was willingness to experiment with collaboration, there was also a measure of mistrust among the organizations involved, as noted in the Jo-In Interim Report from 2007:

Some participants acknowledged a level of misunderstanding and mistrust of the other organizations and their work before the start of Jo-In. Some of the relationships were characterized by competition (for members and funding) or suspicions arising from different emphases in work practice. Others simply had not had the opportunity to get to know one another and to understand each others' work due to long distances and busy schedules. While such tensions persist, Jo-In is viewed by most project participants as alleviating many of them, through improved communications and collaboration.<sup>82</sup>

Jo-In obtained seed funding from both the European Commission and U.S. State Department (a form of *Regulatory Governance* interactions between states and private TBG schemes). The Steering Committee agreed on the following "aims" for Jo-In:

To maximize the effectiveness and impact of multi-stakeholder approaches to the implementation and enforcement of codes of conduct, by ensuring that resources are directed as efficiently as possible to improving the lives of workers and their families;

To explore possibilities for closer co-operation between the organizations;

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<sup>81</sup> Website: <http://www.jo-in.org/pub/about.shtml>

<sup>82</sup> Jo-In, Interim Report, 2007 at 17.

To share learning on the manner in which voluntary codes of labour practice contribute to better workplace conditions in global supply chains.

Jo-In agreed to run a Pilot Project testing various code implementation strategies in factories in Turkey. This required the Jo-In members to agree on code standards to use in the tests.

Therefore, the Jo-In collaborators began the difficult process of trying to define a common set of standards for a draft code. While the model codes of the various TBG schemes were, by that point, similar in many respects, there were also important differences. Areas of controversy included freedom of association, working time standards, monitoring and reporting processes, and wages, including the LW standard. A consensus emerged, through *Direct Dialogue* among the Jo-In participants, that the draft code should aim to encourage a “race to the top”. The code went through over 20 drafts between 2003 and 2005, and ultimately adopted, in most cases, the highest standards found in the model codes of the six participating TBG Schemes (*Mimicry*). The living wage standard was found in 5 of the 6 participating scheme’s model codes, the FLA being the only exception. In the end, the draft Jo-In code included a strongly worded living wage clause.<sup>83</sup>

The LW standard was a source of considerable conflict in the Jo-In discussions. There were fundamental disagreements about how difficult it was in practice to measure and implement a LW. The CCC and WRC accused the FLA of hiding behind calculation difficulties to avoid the standard altogether, as noted in the Jo-In Interim Report:

WRC and CCC do not consider that a lack of know-how or evidence is a significant barrier to living wage implementation. Rather, they consider that the larger problem is a lack of sufficient political will and that companies, in particular, use such technical complexities as a shield against real action in this area. WRC holds strong views that

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<sup>83</sup> <http://www.jo-in.org/pub/docs/Jo-In%20Draft%20Common%20Code%205.05.pdf>:

Workers shall have the right to a living wage. Wages and benefits paid for a standard working week shall, as a floor, always comply with all applicable laws, regulations and industry minimum standards and shall be sufficient to meet basic needs of workers and their families and provide some discretionary income

brands' pricing practices are the main obstacle to implementation of a living wage. CCC considers sourcing practices as important and also looks to questions relating to the distribution of income between factory owners and workers. The [other] four [TBG schemes] acknowledged that political will, sourcing practices, and distribution of income are relevant to the discussion, but also call for the consideration of topics, such as productivity, competitiveness, and trade union negotiation during the project's work on living wages.<sup>84</sup>

In order to move past these fundamental disagreements, the Jo-In Steering Committee agreed to focus on how a living wage could be implemented in practice, rather than on finding a precise definition of a LW. The five TBG Schemes that already included a LW standard acknowledged that the LW remained an aspirational standard. The inclusion of a LW standard in a code did not yet translate into the payment of a LW in practice.

Having moved past the rule-formation stage of interactions, focus shifted to the implementation stage. After a period of debate and disagreement, the FLA representatives proposed a solution, which became known as a "wage ladder".<sup>85</sup> The 6 TBG Schemes collaborated on developing a wage ladder model, which was then used to assess the remuneration component of the code during the Pilot Project. It plotted existing wage levels as compared to other measures of decent wages, including: minimum wages; prevailing industry wages; and variously calculated living wages. The idea was that factories would aim to move "up the ladder" over time. The Final Report praised the "wage ladder" as a significant development that had emerged from the Jo-In process.<sup>86</sup> After the Pilot Project, the Jo-In code

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<sup>84</sup> Interim Report, p. 19.

<sup>85</sup> Jo-In, Final Report, p. 27: "Finally, the Steering Committee was able to combine around an ingenious solution, fathered by Rut Tufts, FLA's representative to the Steering Committee...The 'Rut Tufts Wage Ladder', as the project christened this solution, enables various levels of wage payment to be plotted on a scale to show comparative effects and positioning resulting from specific proposals. This tool was used throughout the remainder of the project to trace and compare wage statistics and has given the opportunity for important findings."

<sup>86</sup> Ibid.

was incorporated as the gold standard by some other TBG Schemes, including the *Multi-Fibre Agreement (MFA) Forum*, a network of NGOs, unions, TBG schemes, and MNEs formed in 2004 to discuss the implications for workers of the impending phase out of the MFA in 2005 (*Mimicry*).<sup>87</sup>

#### **E. *The FLA After the Jo-In Project***

The debates leading to the formation of the Jo-In code caused five of the TBG Schemes to review their own codes, including the FLA (*Policy Learning and Diffusion*). The Jo-In Final Report noted, however, that agreement on a single code for all TBG Schemes and other TBG Subsystem actors is unlikely. This is because the TBG Schemes that participated in Jo-In believed that competition within the TBG Subsystem remained beneficial. Moreover, complete convergence on a single code would threaten the existence of some or all of the TBG schemes.<sup>88</sup>

The FLA established a Code Review Working Group to review its code, comprised of one representative from each of its constituent groups (Business, Universities, NGOs). The process began with a public invitation for comment, and 62 responses were received, two-thirds of which were from FLA participating organizations (*Direct Dialogue*). Many of the submissions addressed the FLA's existing remuneration provision, which required payment of the minimum wage or the "prevailing industry wage", whichever was higher. Some commentators argued it was time for the FLA to ratchet up to the other TBG schemes and finally recognize a "living wage" standard.

Canada's Maquila Solidarity Network (MSN), which by this time sat on the FLA Board as an NGO member, argued that the FLA should adopt the Jo-In language on the living wage. It claimed that FLA's reluctance to support a LW standard on the basis that it cannot properly calculate it, "reinforces the view of many critics of the FLA that the FLA and its Participating

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<sup>87</sup> Among the participating members in the MFA Forum were all of the TBG schemes that had formed Jo-In, and many MNEs that were FLA participants.

<sup>88</sup> Jo-In, Final Report, p. 36.

Companies are not committed to the principle of the living wage and are avoiding grappling with the question of how to achieve a living wage over time.”<sup>89</sup> MSN also proposed a more conciliatory option. It proposed that the FLA publicly declare its support *in principle* for a LW standard, while recognizing it, at this point, as only an aspirational standard. The MSN was acting here as a *Norm Entrepreneur*, advocating for the FLA to follow the lead of competing TBG Schemes.

In February 2009, the FLA Board invited representatives from the ILO and the British ETI to address them on the question of wages. Although the FLA Board agreed to changes to its Code and Benchmarks on subjects such as child labour and migrant workers, agreement on how to revise the wage provisions proved more difficult. In the fall of 2009, the FLA convened a conference on supply chain wages in conjunction with its Board meeting. Among the invited speakers were representatives from the ILO, Jo-In, and a company named Knights Apparel, which had recently implemented a “living wage” standard at its factory in the Dominican Republic (*Direct Dialogue, Social Networks, Policy Learning and Diffusion*).<sup>90</sup>

Finally, in February 2011, a new wage standard was tentatively agreed upon at the FLA Board level. The standard recognized that workers have a right to a wage that meets basic needs and provides discretionary income. It still required employers to pay minimum or prevailing wage, whichever is higher. However, when that is not sufficient to meet basic needs and provide discretionary income, employers must develop strategies to “*progressively realize*” compensation that does.<sup>91</sup> The reference to “progressive realization” was consistent with the approach of the “wage ladder” developed at the Jo-In (*Mimicry*). It recognizes that “living wages” are not reached overnight, and are achieved with respect to a range of other economic and social pressures. This was the first time an FLA standard has been prefaced by “progressive

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<sup>89</sup> MSN, Submission to FLA on Code, on file with author.

<sup>90</sup> The presentations are available here: [http://www.fairlabor.org/fla/go.asp?u=/pub/mp&Page=CT\\_WageIssues](http://www.fairlabor.org/fla/go.asp?u=/pub/mp&Page=CT_WageIssues)

<sup>91</sup> FLA Workplace Code of Conduct, <http://www.fairlabor.org/our-work/labor-standards>

realization”, rather than immediate effect. The NGO members on the FLA Board were mostly satisfied that the new language represented a first time commitment by the FLA to the pursuit of a LW.

The ‘wage ladder’ concept, developed as a compromise solution during the Jo-In project, and later incorporated into a revised wages provision in the FLA model code, is now being explored by other TBG schemes and participating actors. For example, the Fair Wear Foundation has developed its own version of the wage ladder as a method for measuring compliance with its living wage standard. Professional consultants are helping to spread the concept by introducing their clients to the wage ladder, and by showing how it can be used to track the movement of wages over time.<sup>92</sup>

### **Concluding Observations**

Two dominant themes emerge from the story of the living wage standard in labour TBG Schemes. The first is the complexity of the interactions. The systems framework is helpful in mapping this complexity. It can help guide research agendas by identifying and helping to map the external and internal factors that can influence the strategies and perspectives of the actors that inhabit the TBG Subsystem. This can assist researchers in identifying research questions, some of which might be empirically testable: How do changes or pressures emanating from the external subsystems infiltrate and influence developments and interactions within the TBG Subsystem? How do differences in an actor’s Internal Inputs (*Goals, Values, Risk Perception & Tolerance, Power, and Capacity*) affect their behavior over time, and their choices in TBG interactions? What Pathways or Mechanisms of interaction are most effective in producing what range of Outputs in what circumstances?

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<sup>92</sup> See for example, Ergon Associates, “Climbing the Wage Ladder”, <http://www.ethicaltrade.org/news-and-events/blog/stuart-bell/climbing-the-wage-ladder>

Our story of the living wage standard covers a period of time. The story is not over. In the period covered, the TBG Subsystem moved some way towards normalization of a LW standard in TBG Schemes. However, it has done so only at the level of the first type of Output: *Substantive and Procedural Rules*. There is little evidence that the LW standard is being implemented in practice, or that it is causing real *Behavioural or Organizational Change*, the second type of TBG Subsystem Output. The systems framework draws an important distinction between ‘rules,’ on one hand, and normative changes in behaviour, on the other hand. In some instances, the TBG Subsystem may produce rules *only because* the actors know that the rules will never be implemented in practice. Studying how rules produce behavioural change over time, or fail to do so, is an important challenge for the study of TBG interactions.

The second dominant theme is the importance of the dynamic systems framework’s Feedback Loop. The TBG Subsystem developed in response to important changes in the External Subsystems. In the case of supply chain labour issues, for example, TBG schemes were a response to growing consumer demand for ‘sweatshop free’ goods (Economic, Social Subsystems) and the perceived failure of states to respond adequately to this challenge (Political, Legal Subsystems). This means that TBG Schemes addressing labour practices remain vulnerable to future changes in these External Subsystems, including indifference by consumers, or the emergence of new state-based legal models that would supplant TBG Schemes. Whether developments such as these occur is partly a function of the Outputs of the TBG Subsystem that consequently feed back into the external environment. If TBG actors keep labour issues in the media, then public apathy will be less likely to occur; if TBG Schemes appear to be producing positive normative changes in labour practices, then states will feel less pressure to intervene.

The TBG Subsystem is in a constant state of evolution, as the actors adjust to the forces acting on them from both within the Subsystem, and from outside of it. These evolutionary forces are not always obvious, which creates a challenge for researchers of TBG interactions.

Often it will be necessary to build a complex factual matrix to capture the essence of the interactions, as I have attempted to do here in respect of just one TBG standard. As Eberlein, *et al.* note, rarely will it be possible to draw a direct causal line between event A and output B.<sup>93</sup> The explanations will be more complex. Researchers need an analytical framework to help guide the investigation. Eberlein, *et al.* have taken an important step in this direction with their framework. This paper has built on their contribution by redeploying many of their insights into a systems framework with a greater emphasis on the dynamic nature of TBG interactions.

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<sup>93</sup> Eberlein, *et al.*, *supra* note 1 at 18.