

# Filling the Void: New Architects of Human Rights Governance

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The global political order is undergoing a historic transformation. Nationalist and populist movements have grown in power across the global north, including in the United States, the United Kingdom, the Netherlands, and France. These countries were the architects and proponents of the neoliberal economic order, working together and sometimes alone to lower barriers to trade, promote economic development, and increase access to markets for their businesses and consumers. They also led in setting and promoting the rules of the game, including around anticorruption and human rights.

This grand experiment in globalization is faltering, and not due to the efforts of the political left which has for years been raising alarm about the growing power of corporations in setting the agenda for governments. The now-rising right is trying to reshape the discourse. This new movement is marked by a feeling among people of being left behind by forces outside their control, including seeing industries that once sustained the middle class being eliminated by technology, innovation, and offshoring. These people sense that jobs just are not coming fast enough or in ways that can keep the middle class afloat.

The culprits are twofold. One, due to a globalization of people, immigration has pushed cultures together, causing them to bump into one another in ways that can sometimes be combustible. Two, due to a globalization of markets, companies are increasingly driving the conditions that governments set and can relocate to satisfy tax, labor, or other preferences with no regard to the communities where they operate. Helplessness pervades, and when it turns into hopelessness, it explodes.

Politicians, including U.S. President Donald J. Trump and former French presidential candidate Marine Le Pen, have blamed this globalization of people for the inequality affecting many. Building walls, dividing cultures, turning away refugees are all tactics that distract from the real reason why people are being left behind: governments will not regulate globalization.

## *THE NEW ARCHITECTS OF HUMAN RIGHTS*

Ponder this thought: what can companies not do at the moment? They can escape and evade tax liabilities, relocate their operations to less-regulated markets, set and influence elections, determine and shape policy, and minimize liabilities when harms occur. No one stands in their way because the current model of governance relies on businesses to function.

This outsourcing of responsibility has consequences, including critical ones for human rights. While governments traditionally ensured that international human rights standards were adopted domestically and promoted abroad, they are now ceding their regulatory roles, including on human rights.

Stepping into this void left by receding governments is a wide swath of stakeholders who are seeking to uphold principles of international human rights law and ensure protections. Some actors, including those within civil society, are alarmed by the rise of corporate influence over policymakers.

Others, including corporations, are being pushed by their own employees, consumers, and investors, and a realization that their social license to operate may mean going beyond doing no harm. Both sets of actors recognize that governance gaps exist and that they need to address those gaps. The challenge for these actors is that while innovations in governance around human rights can help address specific challenges or harms, they are difficult to scale without governmental regulatory standards.

The following examples provide some innovations where new models of governance are being developed.

### **Grounding Globalization: Worker Ownership and Empowerment**

Some efforts seek to shift economic power to create alternative structures for business and finance and to tackle inequality. Take for instance the Working World, a nonprofit that provides workers capital to create cooperatives through a revolving loan fund. Inspired by workers in Argentina who formed cooperatives out of their abandoned factories during the country's 2004 financial crisis, the Working World came to the United States in 2012. The Working World's success rates are telling: 98 percent of the nonprofit's loans have been paid back in full, 100 percent with profits from the projects invested in. One such project began in 2012. After two successive companies sought to close a window factory in Chicago, twenty-two workers from the former plant founded New Era Windows LLC as a worker-run cooperative with support from the Working World. Five years on, the company is thriving and exceeding sales forecasts.

This model of grounding globalization through worker ownership and empowerment presents a path forward to tackling the inequality that pervades many communities disaffected by globalization. Empowering workers through ownership creates agency and can spread wealth through communities. It also means that workers themselves set and enforce the conditions around them. Governments can clearly create incentives for the spread of such models. For instance, in their procurement, governments could require that a percentage of content be produced by worker-owned cooperatives.

### **Co-Regulation Through Multistakeholder Initiatives**

Creating co-regulatory spaces, or exploring ways in which stakeholders can create enforceable standards over business, is another innovation in governance. An example is the International Code of Conduct for Private Security Providers' Association (ICoCA) mechanism, whereby private security companies, civil society, and government develop a sector-wide code on human rights and humanitarian law applicable to their operations in complex environments that is enforced by ICoCA. The ICoCA addresses the systemic failure of governments to regulate the industry and provides a model of co-regulation whereby stakeholders work together to reform the sector.

The benefits are clear. Wherever a sector operates across many jurisdictions, each posing similar types of human rights and humanitarian law concerns, an international multistakeholder governance model can provide a path forward. Governments can support and incentivize the system by requiring that contractors be members of such organizations. In fact, the U.S. Department of State has done just this and made membership in good standing to the ICoCA a requirement in its lucrative Worldwide Protective Services contracts.

## Going It Alone

Companies increasingly understand that their human rights performance is of material concern to investors, relevant to their interactions with their own employees, and a growing target for their consumers. They may also understand that they have a role in improving the human rights situation where they operate and that they should exert leverage to the extent that they can.

Take, for example, the work of the Electronics Industry Citizenship Coalition (EICC). Founded in 2004 by a set of electronics companies seeking to set an industry standard on social, environmental, and ethical issues across the electronics supply chain, the organization's membership has grown to over 110 companies.

One EICC initiative provides an example of its efforts to tackle challenges, including around human rights. As defined by the EICC, the Responsible Raw Materials Initiative is an effort to “[mitigate] the salient social and environmental impacts of extraction and processing of raw materials in supply chains, leveraging direct and indirect partnerships and using international standards (e.g., Organization for Economic Cooperation and Development [OECD] Guidelines for Multinational Enterprises, United Nations [UN] Guiding Principles on Business and Human Rights) as [their] guideposts.”

Such an effort raises the bar across the industry and allows industry actors to collaborate with other stakeholders toward meeting their objectives. But such voluntary regulation itself does not create enough change. While EICC should be driving forward this important work, governments need to understand that industry has neither the same incentives nor the interests to do anything more than respect human rights. Therefore, governments still need to step in and ensure that human rights are protected.

## *THE ELEPHANT IN THE ROOM*

The examples above highlight three innovations that help fill the void of government regulation around human rights. These examples on worker empowerment, multistakeholder standard setting, and industry self-regulation show that many models are being developed to drive higher human rights performance across various sectors. For such innovations to succeed and grow, however, governments will need to become involved and use the various tools they have at their disposal to regulate, incentivize, sanction, and reward leaders and laggards on human rights.

Procurement provides one relatively powerful yet less extensive approach to regulation and should be explored to support and fuel other innovations. However, governments should use other regulatory tools such as the creation of strong and enforceable civil and criminal sanctions against violators of human rights, including violations perpetrated by corporations.

Globalization has clear governance gaps. While the efforts above can create patches around them, they ultimately need to be filled by strong government action. The future of efforts to promote human rights and human dignity lies in solving the challenges of globalization. Failure in this endeavor and continued growth in inequality will lead countries to slip further into isolationism and nationalism, subverting aims of bolstering human rights across this world.