Rethinking Mexico’s Labor Standards in a Global Economy

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August 17, 2004

This paper is the outgrowth of a study of the administration of labor standards in Mexico that we have been conducting over the course of the last two years. The study is part of a broader attempt to rethink the place of labor standards in the emergent global economic order. Because the administration of labor standards involves the active intervention of government in business operations to protect the workforce, a study of this kind invariably represents an effort as well to re-evaluate national development strategy and public policy which, over the course of the last twenty years, has been dominated by neo-liberal ideology and competitive economic theory.

Mexico is central in the attempt to rethink labor standards and to reconsider neo-liberal development policies. Its government has been one of the most prominent converts to the liberal economic agenda, beginning in the early 1980’s with the abandonment of its commitment to import substitution. Since that time, the Federal government has withdrawn progressively from active intervention while, at the same time, pursuing a policy of trade liberalization that has increasingly exposed the economy to international competition. As part of this strategy, Mexico joined Canada and the United States in creating a united North American trading regime through NAFTA. The results of this approach have been decidedly mixed, not only for Mexico but for the other parties to this agreement as well. Parts of each society have enjoyed expanding economic opportunity and rising incomes, but other parts have lost markets and jobs and experienced declining incomes. And these results have been a major factor calling into
question the broader neo-liberal agenda in terms of which NAFTA was originally conceived.¹

The NAFTA agreement, moreover, represented a turning point in the process of globalization, not only for the direct signatories to the agreement but also for the global trading regime as a whole. The expansion of the international marketplace had previously revolved around a lowering of tariff barriers to trade. But with NAFTA in 1994, and the formation of the World Trade Organization a year later, participation in international trading regimes became conditional on the adoption of specific institutional arrangements – arrangements which guaranteed certain property rights, including the rights of foreign investors and of intellectual property. Significantly, the NAFTA agreement did not include provisions for labor standards. These were relegated instead to a separate side agreement.

This new trend toward institutional conditionality in trade represented an effort to define, in effect, the terms and conditions of modern economic civilization. By excluding labor rights even while extending protection to such abstractions as intellectual property, the treaties seemed to be devaluing human life itself. These implications have become clearer as successive U.S. governments sought to enter into NAFTA-like agreements with a number of other countries. The U.S. Congress, reacting specifically against NAFTA, has made labor standards a condition for fast track approval of additional trade agreements, and NAFTA is thus emerging as the last and only U.S. trade agreement which does not include them.² It is no longer tenable to simply dismiss labor standards out of hand as a form of covert protectionism. Policymakers must now be prepared to consider what forms labor market regulations might take. This fact, along with the broader reaction against the neo-liberal model, with its strictures against any form of government intervention in the economy, prompts a return to the labor standards debate.

I.

In the debate about labor standards – as indeed in the debate about appropriate institutional structures more broadly – U.S. institutional structures serve as a template

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¹ See Kose, Meredith and Towe (2004).
² See Bolle (1997).
against which the institutions of other countries are evaluated and judged. Within the
government-imposed standards are presumed to be inefficient for the individual
to increase the likelihood of getting caught by
administrative units, almost as if each regulation (and certainly each class of regulation)
being moving.

The administrative structure reflects this view of labor standards as a set of
business environment.

The U.S. model is one in which labor standards are understood as a series of
individual, discrete restraints upon business behavior. Compliance with regulations is
thought about in terms of a business calculus. Employers are imagined to engage in a
different from those in the United States: They

3 See Becker and Murphy (2000) and Bhagwati (2002).
were administered and enforced by a different agency: The National Labor Relations Board, the Federal Mediation Service, the Office of Equal Employment Opportunity, the U.S. Citizenship and Immigration Service, and the Wages and Hours Division of the Department of Labor, the Occupational Health and Safety Administration, and the Employee Retirement Income and Security Administration (which regulates private pension funds). Many of these agencies have counterparts at the state and local levels as well that form totally separate and independent regulatory bodies. All of this increases the rigidity and the presumptive social inefficiency of regulation; there is no place in the administrative process where the total burden of regulation is assessed and possible trade-offs among different regulations considered.

Mexico has, in contrast, what might be termed a unified system of labor standards administration. The basic approach is one developed in France, from which it spread to Spain and from Spain to Latin America. If the U.S. system encourages us to think of labor standards as a series of discrete regulations, the French system is, in a word, holistic. The whole of the labor code – a document which in both France and Mexico is five or six inches thick – is administered by a single agency; the code is enforced through periodic inspections by the line officers of that agency (the labor inspectors), and when the inspector visits a shop, he or she can cite the company for violation of any one of the code’s provisions. Since it is impossible for an inspector to assess compliance with every single provision of the code, he or she is virtually forced to make some judgment about the degree to which the enterprise operates, broadly speaking, in the public interest. Specific violations of the code tend to be invoked less in their own right than to prod non-compliant enterprises to move in a direction that is consistent with the overall intention of the law. The discretion the inspectors exercise in this regard can be limited by certain administrative procedures and it can be managed, but it cannot be totally eliminated.

The basic tendencies are reinforced by another characteristic which distinguishes the French/Mexican system from that of the US: The company’s obligation to the labor code cannot be discharged by payment of a fine or penalty. Punitive fines can be imposed, but the company is expected to come into compliance whether or not it pays a

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4 See Berger and Piore (1980).
penalty. The inspector is empowered to negotiate with the company a plan of compliance and this leads him or her to identify the specific reasons for non-compliance; and where, as is frequently the case, the company is having financial difficulty adhering to the law, the inspector must at least implicitly weigh the value of the employment opportunities which the company creates against the risks of a continuing violation to the workers and to the community. This makes the system much more flexible than the U.S. system, as the inspectors are in a position to weigh the cost of compliance against the benefits, and trade off provisions of the code against each other. While they cannot suspend the code indefinitely, they can tailor it to the peculiarities of individual industries and enterprises. It also has the obvious downside that it opens the door to corruption.

Overall, under this system, the agency functions less as a policing mechanism than as in a tutelary capacity, leading companies into compliance through education and counseling as opposed to compelling compliance through sanctions. The inspectors are in a good position to do this; they are probably more knowledgeable about shop floor practices across a variety of different enterprises than any other actor in the economy.

The Mexican system differs from the original French model in several respects. But the most critical is that Mexico is a Federal System and jurisdiction over labor standards is split between the Federal government and the governments of the individual states. The division of labor between the two is complex, but essentially the Federal government is responsible for key industries, largely heavy industry, energy and the like. It also has jurisdiction over the Federal District (Mexico City) and over health and safety throughout the economy. The last under certain circumstances is delegated to the states.

The Federal administration is fairly standard throughout the country, although recent budget cuts have been distributed unevenly and somewhat arbitrarily, introducing some variation among local offices. The inspection conducted by the state agencies varies enormously. Some states appear to have agencies which are at least as effective as the Federal inspection; in other states there is no labor inspection at all. As part of the study we are conducting, we visited a sampling of state agencies. The most effective agencies appear to be in the more advanced industrial states, and especially in the cities of Monterrey and Guadalajara. Generally speaking, the states without labor inspection agencies are the least industrialized. Between these extremes, the pattern is mixed.
The study that we have been conducting has not put us in a position to evaluate the effectiveness of labor market regulation overall. But it is clear that the general presumption in the United States, that Mexico has no regulatory structure, is patently wrong. There is, however, considerable variation across industries, and for that part of the economy under state jurisdiction, geographically as well.

Our interviews in Mexico, and the broader debate about global labor standards in the international community, suggests that one can class the problems with compliance under three headings. The first class is composed of willful efforts of individual businesses to avoid compliance in order to enhance their own profitability at the expense of the workforce. This is deliberate exploitation of workers in defiance of prevailing social standards and the practices in common in the industry. It is not a class of violation generally recognized in economic theory, where competitive pressures are assumed to police the labor market, but it is a problem widely recognized by practitioners in a world in which workers are typically weaker than their employers and often have limited information about alternative opportunities, and most countries have arrangements for compensating for this type of market failure. Here, the Mexican and the U.S. systems operate in a very similar fashion, although the effectiveness of both is limited by budgetary constraints and administrative inefficiencies.

The debate about international standards has tended to focus on a second type of labor standards, those thought to emanate from advanced developed countries and hence, it is argued, do not reflect local norms or prevailing practice. These, it is argued, are luxuries which high income counties may be able to afford but developing countries typically cannot. They are thought to represent a kind of cultural imperialism or a form of covert protectionism. This cannot explain the formal standards in Mexico because those standards are of long standing. But one could argue that the Mexican standards are hortatory, designed to express the direction in which the country would like to move.

In Mexico, none of the standards are purely hortatory; all of them are actually enforced in at least some parts of the economy. Enforcement is uneven, but under the patterns of development in the earlier postwar period, there was a tendency for the economy to move into compliance over time. The industries under Federal jurisdiction

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were at the forefront of industrial development, and the most economically advanced parts of the country also had the most effective labor inspection agencies. The tendencies of the system under the present development strategy are less clear.

The frontiers of economic development have shifted geographically toward the border and port cities. Development is thus less concentrated in the Federal District, or in Guadalajara, and in Monterrey, which have the most effective inspection services. Trends in industrial composition are also different under the new development strategy; employment is moving toward maquilas which tend to be concentrated in light industry, and hence are under the jurisdiction of the states.

It is not clear what incentives a maquila-oriented development policy gives to the states that pursue it in the application of labor standards. Prominent multinational companies are under increasing pressure from consumer groups and organized labor in the U.S. and Europe to show compliance with international labor standards, not only in their own plants but in those of their suppliers as well, and often are attracted to locations with a reputation for strict enforcement. Firms pursuing a draconian low-cost policy have a tendency to move continuously toward increasingly lower wage areas, and are not reliable development vehicles, as Mexico has discovered in the last several years. These issues were occasionally debated in our interviews, and there is definitely no consensus. On the whole, however, we found the inspection services in border states, which have the heaviest concentration of maquilas, to be fairly strong and relatively well staffed. But at least one of the interior states committed to a maquila development pattern has deliberately chosen a policy of weak enforcement in the hopes of attracting additional foreign investment.

Two additional factors further complicate the picture. One is Federal budget constraints and the associated program of early retirement in the public service that was instituted in 1998. Overall the number of Federal inspectors has been cut from more than 500 in 2000 to 273 in 2004. Moreover, as noted earlier, there has been no attempt to reorganize the structure of the agency or the geographic distribution of its personnel in the light of the retrenchment, and the impact has thus been very uneven, so that some heavily industrialized states (such as Baja California and Chihuahua) are vastly
understaffed, while other smaller and less industrialized states (Puebla, Yucatán and Michoacán) have a relatively larger staff.

The second factor is a set of administrative reforms and changes in the tone and tenor of the administration under the Fox government. This represents a shift away from an adversarial stance toward the business community to a rhetoric of cooperation and partnership. The rhetorical shift has been accompanied by a set of programs, some of which were actually initiated under the preceding administration, designed to move responsibility for auditing compliance toward the private sector. These include provisions for self-reporting analogous to the personal income tax, certification of compliance by private inspection agencies, and programs of self-management that are certified by the inspection service itself. These programs are subject to various interpretations. Some respondents see them as an outright effort to help private industry evade the law. They can also be seen as an effort to compensate for budget reductions and staffing restrictions. They are certainly consistent with the views about the economy and the role of government of the PAN. We are not in a position to offer an independent evaluation, although, as will become apparent, we hear much of the rhetoric of the new government as consistent with the underlying ethos of labor inspection and the most constructive direction in which it could move. To be effective, however, these new programs probably require, at least initially, more manpower than the conventional approaches to labor inspection, not less.

Where the Mexican and the U.S. systems differ most dramatically is a third class of labor standards violations, violations which result not from the willful exploitation of labor and not from the uneven nature of the development process, but from limitations on the ability of management. It is here that the tutelary role of the inspectors and their ability to act as in effect managerial consultants carrying best practice from one enterprise to another comes into play. To fully appreciate how this might operate, one needs to appreciate the underlying difference the two approaches.

II

The difference between the Mexican (and more French-Latin) tutelary system of labor market regulation and the policing tradition of the United States reflects a
fundamental difference in the way in which people on the two sides of the border think about and understand the nature of society and the role of government. It points to the way in which apparently similar views about the economy could yield very different approaches, not only to labor standards but also to economic development more broadly.

The United States is a liberal society in the most profound sense of the term, and this is reflected in the way in which we think about ourselves and our country. For us, the basic social unit is the individual; society is essentially an aggregate of individuals. Neither the nation nor the state exist separate from or prior to the individual citizens. The nation is nothing more than the collection of individuals who happen to live in the same geographic territory. In discussing politics, we do not use the word ‘state’ at all, but speak rather of the ‘government’. The role of government is first and foremost to protect the autonomous individuals from interfering with each other. Only secondarily does this view recognize an active role of government and when it does so, government is conceived as an alliance of individuals for accomplishing particular ends. Government agencies are thus so many instruments for achieving particular ends. *The* government is then really the collection of such agencies.

This liberal vision is haunted by the fear that government, or rather one or more of its components, will take on a life of its own, interfering with the rights of individuals or pursuing a separate agenda in the interest of the people who control the government. The ideal is a society of cooperating individuals which emerges spontaneously, without the creation of any government body. A vision of how this might happen – and more broadly, how a coherent social system might be constructed out of autonomous individuals without compromising the independence of any one of them – has been worked out in competitive economic theory, and that creates an attraction among U.S. policymakers to that theory and the institutions and structures associated with a competitive market which goes beyond its scientific and pragmatic value and is normative and moral.

This liberal ethos underlies the system of labor market regulation as a policing operation. The regulations are seen as so many restraints upon the actions of employers designed to protect workers, as individuals, from particular harms. The idea of regulations as separate and distinct entities also reflects the tendency in the Anglo-Saxon
tradition of thought to build up the whole out of atomistic parts. The dispersion of the powers of labor market regulation among so many different agencies reflects the fear of government and the desire to create checks and balances by chartering entities with overlapping jurisdictions.

In the Continental European tradition out of which labor inspection grows, by contrast, the state and the nation have an independent existence which is prior to the individual citizens, who then take on their characteristics from the country in which they live. In the French version of this view, society tends to be seen as being polarized between the state and the individual. But in the Spanish (and Latin American version), the society is itself composed of intermediate groups, which play a functional role in its operation, and it is to these groups that individuals belong and from which they take their characteristics. The nation is seen as an organic whole, the groups within it functioning to support its operation like the organs of the human body. The role of the state is to insure that they function in this way and when they do not to guide them into a healthy, organic relationship, as a doctor might a sick patient or a father a wayward child within the family.  

This understanding of society leads naturally to a system of labor market regulation that is less concerned with particular rules and regulations than with the more basic patterns of relationships which generated to them, in the first place. It leads also to a conception of the role for the inspector as a representative of the state, as an educator or tutor, rather than as a policemen. It is not necessarily inconsistent with competitive economic theory or its policy prescriptions. One might still think of the competitive market as an instrument for coordinating the separate components of the society, but the theory loses its normative attraction. Indeed, this tradition of thought grows up alongside and, especially in Latin America, is still closely associated with Catholic theology, and hence it has a very different moral inspiration. The market mechanisms are more likely to be associated with the Church doctrine of subsidiary than with values of individual autonomy.

The Catholic roots of this view have become particularly important in Mexico because of the ascendancy of the PAN, which is closely associated with the Church, and

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7 See Stepan (1978).
one can hear it in the rhetoric of the labor market regulation of the current Secretary of Labor as well as in the PANista administrations. The association of labor market regulation with a moral view of the economic system is not, however, peculiar to the PAN government.

There are, of course, different versions of the organic view of the state; these are clearly articulated in debates within the Catholic Church. One division which is particularly important for the tenor of labor market regulations concerns the way in which organic harmony is achieved and the factors which are likely to be disruptive of it. In one version, society is naturally hierarchical, especially in the workplace, and threats to that hierarchy are a major source of social conflict. In labor market regulation, this leads to an administration which is more favorable to employers and more inclined to presume their good will and best intentions. It tends thus to place greater emphasis on the educational and tutelary functions of inspection. An alternative vision is that the natural order is more communitarian and egalitarian. The threat to social harmony is thus an imbalance of power in the workplace. This leads to labor market regulations which tend to be much more suspicious of employers’ motivations and much more solicitous of workers’ rights. It also tends to lead to an administration that puts more emphasis on punitive sanctions. In our interviews, this division emerged most clearly in the differences in Michoacan, where the state government which is controlled by the PRD and the federal agency presumably reflects the views of the national government, and hence the PAN. Either vision can appear close the liberal philosophy underlying labor market regulations in the United States: The hierarchical vision because it tends, like competitive economic theory, to defer to the employer’s judgment; the egalitarian vision because of the relative emphasis which, like the U.S. system, it places on the need to sanction employer behavior. But, in point of fact, the hierarchical and egalitarian variants share views of the state which are basically the same, and fundamentally different from that of competitive economic theory or neo-liberal ideology. And, as a result, both give an underlying legitimacy to labor market regulation, which it does not have in the United States.

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8 See Dulles (1974).
III

What precisely does this tutelary approach to labor market regulation mean in practice? How does it really differ from a policing approach to labor inspection? Our study did not yield a direct answer to this question, partly because its importance emerged only in the course of the research process. It clearly takes on different meanings in different situations. As a general rule, it encompasses any activity which smoothes the socio-economic processes. Thus – to take an example that in Mexico is unusual but in France and Spain is not – in Chihuahua, in the state administration, an important dimension of the inspector’s job is mediating labor disputes and promoting industrial peace and harmony.

The most consistent aspect of the tutelary role, mentioned at virtually all of our research sites, and emphasized in many, was educational. The Federal inspection service has a number of specific programs designed for this purpose, as do a number of states, and these could clearly be expanded as part of the reforms we are about to propose. But the activities related to it ranged widely, and were often cosmetic or ad hoc. In the Yucatan, for example, at the state level, where a concern with labor inspection was just emerging, the only activity of the state government is a campaign to educate supermarkets about the dangers of child labor and to discourage them from permitting kids to offer their services of carrying groceries to customers leaving the stores. At the Federal level in the same state, the early retirement program has left the local Federal office with a medical doctor specializing in industrial safety as one of its residual employees; a special program of seminars in industrial hygiene has been created to take up his time, which would probably be better spent back-stopping inspectors in the field, if there were any left in the office.

The other major dimension of the tutelary role makes the inspector a consultant or advisor to industry. In all parts of the country, and at both the Federal and state levels, it is apparent that in enterprises which are not in compliance with the law, the inspectors are drawn into a process of trying to diagnosis the reasons for their deficiencies and develop a plan for bringing them into compliance. They are virtually forced into this role when the cost of coming into compliance is likely to drive the shop out of business and the price of labor standards becomes the jobs of the workers. Because the inspectors are
often trained engineers – and when they are not, have access to engineers through the home office – they are in a good position to play this role. But, an even more important factor strengthening their capacity to do so is their wide experience in the field in a variety of different business enterprises. Indeed, their job probably exposes them to a greater variety of different shops and business practices than any other economic actor. Thus, they are able to play an arbitrage function transferring efficient practices from most advanced shops to the laggards.

This consultancy role can easily become a cover for willful violations, for outright corruption or, essentially a subsidy for underinvestment and inefficient management. In competitive economic theory, where the competitive market drives firms toward efficiency, this would almost invariably be the case. But noncompliance can also be symptomatic of more systematic adjustment problems. In an economy in the throes of the development process, especially one in which firms are forced to adjust to an economic environment with which they have no experience, this is likely to be the case. And, indeed, other research we have conducted independently of our study of labor market regulations suggests that in Mexico this is indeed the case. The single greatest problem for traditional industry trying to survive in the face of competitive pressures unleashed by the opening to trade is their inability to meet the standards of quality and reliability in the global marketplace. In many ways it appears that the ability to meet these standards is what has distinguished the winners from the losers as the country moved away its import substitution strategy.

The problem, and its relationship to labor standards, emerged most graphically in our field work in a visit to shops in the furniture industry in Cuidad Hidalgo, a small mountain city in the state of Michoan. The shops were typical of production in clothing, shoes, ceramics and the like in Mexico and elsewhere in the developing world. They were attached to the living quarters of the proprietor, overflowing into what in other houses in the neighborhood would be the living room or dining room and into outbuildings which would otherwise have served as a garage or to house farm animals. The work was laid out in a helter-skelter fashion, seemingly without order, and violations of basic labor standards were rampant. Children were everywhere and of all ages. The

\[9\] See Piore (forthcoming).
older children helped with the work, fetching wood pieces on command for their parents, painting and varnishing, occasionally even cutting wood on electrical saws. The younger children chased each other around the shops, jumping over open vats of glue and varnish, which was carcinogenic.

But the shops were not able to compete internationally and the work environment which was so violative of labor standards was part of the problem. The open vats of glue and varnish collected sawdust which spoiled the finish on the wood products. The children were a distraction for their parents (and each other) and prevented them from paying attention to the quality of the work or utilizing the limited capital equipment to full capacity. The shops were responding to the pressures of international competition by attempting to increase the pace of work and by lowering wages. But this did not help them in the international (or even domestic) marketplace where the products look shabby and crude compared to those that could be obtained in China or Morocco (or even maquilla shops under the supervision of foreign engineers in Mexico); and it made the shop even more dangerous because the parents had no time to watch the children.

At least two strategies were available, however, which could have made these shops more efficient. One was to reorganize the production process in a systematic way, smoothing the flow of work which would have make it both more efficient and easier to apply standard health and safety measures, removing the children from the shop, and instituting control systems to re-emphasize quality, in ways which would, among other things, have led to a reduction in the noxious fumes from the glue and varnish. The alternative would have been to move up-market creating specialty goods for niche markets, a strategy which would have been consistent with the preservation of household industry but would also have led to a cleaner and more relaxed work environment. The shops needed the help of consultants to work out either of these alternatives, and in fact had talked to several, but they could not afford them on a consistent basis. Work inspectors could easily have performed this role; the advice which they would have had to offer the firms was consistent not only with the way they reported functioning with delinquent enterprises but also with the educational programs that were already in effect.

One need not turn to these special studies, however, to see the potential role of standards in a strategy of international competition and economic development. That role
is also suggested by ISO 9000 and similar programs of certification which have played a central part in the evolution of global commodity chains in the course of the last two decades. These programs and the procedures for certification are already serving as a model for new programs of self-management in the Federal inspection service. Thus far, they have yet to be linked up to the development strategy. But here too the ground work has been laid in Mexico by the development strategies of a number of state governments in the 1990’s, particularly governments under the control of the PAN, which have sought to use the state to help small- and medium-sized businesses become more competitive in the international marketplace by the provision of consulting services, the mutual interchange of business practice, and the development of quality and production standards. They point toward a kind of post-liberal development strategy, one which accepts the market as a guide to action, rather than passively submitting to the market’s judgment, and uses the government to help business learn how to respond to the signals the market emits.

References


