Paths to Global Social Regulation – What Can Americans Learn from the European Union

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Paths to Global Social Regulation – What Can Americans Learn from the European Union

Abstract
[Excerpt] For American proponents of global justice, social Europe appears distant yet inspirational, with all its weaknesses still a "vanguard" model for the social regulation of the global economy. We believe that a great deal can be learned by other countries, regions and the global economy as a whole from the ongoing experience of European economic and social integration. We also believe, however, that American experiences with NAFTA as well as with contemporary labor movement revitalization and coalition building offer positive lessons for Europeans and other actors in the global North and South.

As much as we admire the European model, therefore, we also believe that (1) there is room for mutual learning, and (2) lessons can be learned but models cannot be transferred without significant adaptation. The road to a social America or social global economy lies not in adoption of the European model but rather in the politics of contestation. Just as the limited EU social dimension is possible only because European unions and governments have fought for it, a stronger social order for the global economy as well as regionally in the Americas will only come with pressure from revitalized interest groups and social movements.

Keywords
Europe, social integration, labor movement, revitalization, social partnership, industrial relations

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For American proponents of global justice, social Europe appears distant yet inspirational, with all its weaknesses still a "vanguard" model for the social regulation of the global economy. We believe that a great deal can be learned by other countries, regions and the global economy as a whole from the ongoing experience of European economic and social integration. We also believe, however, that American experiences with NAFTA as well as with contemporary labor movement revitalization and coalition building offer positive lessons for Europeans and other actors in the global North and South.

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The current rise of social protest, from Seattle in 1999 to worldwide antiwar mobilizations in 2003, provides reason to hope that transformation forces are gathering – forces that among other things can credibly demand stronger labor and social standards in the U.S., Europe and throughout the global economy. Labor unions and the coalitions for social and global justice in which they participate are the decisive actors in contemporary possibilities for social transformation.

The currently hot "varieties of capitalism" literature makes important contributions to understanding cross-national differences in economic strategy, welfare state policy, and the contrasting capacities of governments, firms and unions (Hall and Soskice 2001). There is, however, a fatalistic bias toward the following conservative orientation: if you have the institutions of a coordinated market economy (CME), especially one with strong unions, you are fortunate and can sustain strong
social policies and partnership at the national level, even against persistent corporate attacks for “labor market rigidity” and excessive social benefits. For decades, the New York Times and the Washington Post have run yearly features predicting disaster for the German economy because workers are too protected (Landler 2003 for the latest; entering “Germany” and “labor market rigidity” in the Lexis news database yields 475 citations in the U.S. press going back to the beginning of electronic news archives).

At least a soft social dimension prevails in a Europe that happens to include several such CME’s. If you don’t have such institutions already in place, however, you are simply out of luck. This is the case for unions in the U.S., U.K. and other liberal market economies (LME’s), heroically but also rather hopelessly pursuing greater influence in the political economy and at the workplace (Thelen 2001). We disagree: just as mutual learning is possible among social dimensions and their labor union proponents, so are modern labor and social movement mobilizations aimed at reforming institutions, from the U.K. and Italy to Brazil and the U.S.

**Comparing Strengths and Weaknesses**

If we look at American and European paths to global social regulation as a contest for which path is best for workers’ rights, Europe wins. But strengths and weaknesses emerge in both systems. Our challenge is to learn from them and move toward a strengthened global labor rights regime. Our analysis can be summarized as follows:

1) The North American Free Trade Agreement (NAFTA) and its labor side agreement are deeply flawed.
2) In comparison, Europe’s social dimension is robust.
3) Not so fast. The EU’s efforts at social regulation have flaws, too. The European social dimension is weakened both by the internal opposition of business and governments, and by the contradictions of vanguard social integration in a global economy.
4) In any event, we cannot simply import the European model. Instead, Americans can and should learn from Europe’s experience, adapt the lessons to our own circumstances, and draw on our own strengths to recast social regulation – in the U.S., in our hemisphere, and in the global economy.

**NAFTA Flaws**

The social dimension is primarily a commercial agreement. U.S. banks and investors. Investment arbitrages for consciously building a “state” to protect workers from the exploitation of regional corporate capital. (Banfield and Sullivan 2003). NAFTA, in other words, has undermined the country’s labor and social standards. Governments bowed to the pressure from labor unions and social movements.

In the face of Mexico’s vulnerable labor and social standards, three countries have failed to demand a viable solution. While we believe for the medium and long term, NAFTA does not fully coalesce a viable labor standard of the North American Free Trade Agreement. Rather than an international agreement on labor standards, Divorced from the agreement on investment, NAFTA does not trigger other binding norms.

The NAALC does not require labor standards, as the agreement on labor standards is not fully coalesced with the agreement on investment. It does not trigger other binding norms.
The social dimension of North American economic integration is thin. NAFTA is primarily a commercial agreement giving lucrative privileges to multinational firms, banks and investors. NAFTA negotiators assumed that free markets in trade and investment automatically bring more growth, development and jobs, with no need for consciously building social justice or sustainable development into the architecture of regional commerce. To take a single obvious example, NAFTA negotiators refused to address labor migration in the agreement, in contrast to the EU's freedom of movement for workers.

After ten years, this "trickle-down" strategy has failed. NAFTA has had profound social effects, negative for many workers and positive for many elites. Many firms use NAFTA as a club to beat down wages and working conditions in all three countries. (Bronfenbrenner 2000). Mexican workers' real wages have declined overall, while Mexico's vulnerable agricultural sector is about to be devastated by the final phase-out of protections against the at once more efficient and highly subsidized agricultural exports from the United States. (Scott, Salas and Campbell 2001; Jordan and Sullivan 2003). Millions of migrant workers from Mexico continue to suffer low wages, poor conditions, and widespread discrimination in the United States (MALDEF and NELP 2003).

NAFTA, in other words, is deeply flawed. This is so because American multinational corporations have resisted any effective social dimension, from minimal labor and social standards to environmental protections, and the three NAFTA governments bowed to their pressure. (Cameron and Tomlin 2002, citing Mexican government officials scoffing at the labor side agreement).

In the face of MNC dominance, labor and environmental movements in the three countries have not yet become strong enough, as a combined force, to demand a viable social dimension that would include such standards and protections. While we believe MNC and government perspectives are short-sighted, even for the medium and long-term interests of business, unions and their allies have not fully coalesced around a viable and persuasive alternative vision for regulation of the North American (not to mention global) economy.

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Rather than an integral social feature of the trade agreement, the North American Agreement on Labor Cooperation (NAALC) is a "side agreement" to NAFTA. Divorced from the agreement itself, the NAALC has no grounding in treaty law or other binding norms.

The NAALC does not create supranational standards for treatment of workers. It does not trigger a dynamic of "upward harmonization" of labor standards.
Instead, the three parties to the agreement reserved sovereign power to set and to change labor standards. The countries committed themselves to "effective enforcement" of those national standards, whatever they are, not to trinational or international norms.

The NAALC defines eleven "labor principles" covering rights to organize, to bargain, and to strike; elimination of forced labor, child labor, and discrimination; and guarantees of workplace health and safety, minimum wages, and migrant worker protection. Seen in the best light, these principles amount to an implicit "charter of rights" for workers in North America. But this "charter" is a statement of values, not a statement of law. Violations of NAALC principles do not give rise to enforceable action in national legal systems.

The NAALC makes a peculiar division of its labor principles into three groups with different treatment. Freedom of association complaints can be taken up by ministerial consultations, but no more. Forced labor, discrimination and migrant worker cases can proceed to independent committees of experts empowered to make nonbonding recommendations, but no more. In three areas—child labor, workplace health and safety, and minimum wages—complaints over failure to enforce national laws can come to an arbitral panel that can fine the offending government. If the fine is not paid, the arbitral panel can impose trade sanctions against a violating company or sector of industry.

The NAALC created no serious institutional role for what Europeans call the social partners, representatives of peak trade union and employer organizations. They hold seats on NAALC advisory boards that are largely inactive and receive invitations to NAALC conferences that have no follow-up in policymaking or implementation.

On the trade union side, Mexican and Canadian labor movements hesitate to commit themselves to close collaboration with the AFL-CIO and U.S. unions. Mexicans remember an unsavory history of interventionism on behalf of U.S. government foreign policy. Canadians recall a relatively conservative, business union approach to collective bargaining in the United States. Even the more progressive, solidaristic, social-unionist approach of the AFL-CIO under John Sweeney has not fully overcome Mexican and Canadian suspicions.

Cross-border collective bargaining does not exist except in unusual contexts like professional sports. The once-unified U.S. and Canadian autoworkers union and its international collective agreements broke apart in the 1980s. The Inter-American Regional Workers Organization (ORIT), the regional equivalent to the ETUC, is a faction-ridden body so far incapable of having real influence in NAFTA or in hemispheric trade negotiations.

On the management side, the "American Company" with its active on a multinational level, three governments, and multinationals.

The NAALC created new forms of collaboration among the three countries. Of course, to enforce laws protecting human rights in the workplace, migrant workers, and wages.

Presenting these conferences as cross-border solidarity forums, (2001). However, the governing Ministerial consultations have not produced discernible improvement in working conditions. The three countries have never established an appropriate mechanism to address social issues.

EU Strengths

Compare this glass-mee top-down, social regulation in a social partnership approach. European integration has not produced a New Social Contract. But these features of the EU are capable of addressing social issues.

- The EU has carried out an innovative, de-centralized approach to cross-border labor issues and soon to benefit the Americas.
- The EU has adopted the European Convention for the Protection of Fundamental Rights.

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spheric trade negotiations. Even if the ORIT were more cohesive, there is no NAFTA headquarters location akin to Brussels where ORIT could systematically intervene in NAFTA affairs.

On the management side, there is no NAFTA definition of a "North American Company" with regional obligations. There are just national companies active on a multinational scale and guaranteed "national treatment" by the three governments, automatically benefiting larger, more powerful American multinationals.

The NAALC created a forum where trade unions in the three countries could shape new forms of collaboration bringing complaints to the labor ministries of the three countries. Of some thirty cases, most have involved governments’ failure to enforce laws protecting freedom of association. Other cases addressed discrimination, migrant worker protection, workplace health and safety, and minimum wages.

Presenting these complaints had the positive effect of promoting new forms of cross-border solidarity among unions and NGOs in the three countries. (Compagno 2001). However, the governments shrank from any real enforcement in these cases. Ministerial consultations led to conferences and research reports, but no discernible improvement in labor law enforcement. Despite several opportunities, the countries have never established an independent committee of experts or an arbitral panel. This was as true of the Clinton and Zedillo administrations as it is now of the Bush and Fox administrations, and the Bush administration’s Department of Labor has virtually shut down its application of the NAALC.

**EU Strengths**

Compare this glass-mostly-empty assessment of the North American model of social regulation in a regional economic arrangement to what appear to be, from our side of the Atlantic, a mostly full glass in the European model:

- European integration is deeper and broader than North America’s. NAFTA did not produce a North American commission, parliament, or court of justice; these features of the European Union create a strong institutional framework to address social issues.
- The EU has carried out extensive programs of economic assistance to less-developed member states, especially benefiting Ireland, Greece, Spain and Portugal, and soon to benefit the eastern accession countries.
- The EU has adopted far-reaching social charters, most recently the Charter of Fundamental Rights of the European Union accepted at the Nice summit in
December 2000, containing extensive statements of basic rights and protections for workers.

- The EU is empowered to adopt supranational directives, including those on workers' rights and labor protections. Several member states have had to change national law to conform to EU labor directives. The prospect of the United States Congress changing national labor law in response to orders from a supranational authority is beyond comprehension.

- The EU establishes a strong institutional role for the European Trade Union Confederation (ETUC) in which trade union and management groups are empowered to negotiate framework agreements on labor-related directives; and the EU is authorized to impose the terms of a directive if the social partners fail to reach agreement.

- The European Works Council (EWC) directive creates cross-border relationships between trade unions at large European firms, launching new pressure toward transnational collective (or at least coordinated) bargaining.

- The ETUC has a solid institutional (and physical) presence in Brussels to deal with the Commission and related bodies. As with any trade union grouping, divisions exist in the ETUC, but there is still a common mission to defend Europe's social welfare model against the U.S. free market model.

All of the above are possible because European unions have been strong and influential at the national level in many countries, because they have been well anchored in institutions of social partnership (from tripartite forums to plant-level works councils), and because they have consistently but critically supported European integration and its social dimension (Martin and Ross 1999; Turner 1996; Visser 1999). To make the argument in simplest terms, social Europe is more substantial than social America because on the whole European unions are stronger and more politically influential — and they have coalesced across national boundaries in critical support of economic integration, informed by at least a germinal vision of a social Europe (Daunderstädt 2001; Mückenberger 2001).

**Not So Fast**

Experts know that while the EU's social dimension is robust compared with that of North America, it has weaknesses. The Council still runs the European Union; the roles of the Commission, Parliament and Court are limited. Enlargement to the East will not bring the same levels of economic assistance to less developed countries as those granted to earlier new members.
The Nice Charter is not an integral part of the treaty. The question is still unsettled whether it creates "law" that will be enforced by national courts or the ECJ, or whether it is just another statement of good intentions with no force behind it. (Bercusson 2002). Even where EU directives are binding, enforcement is often less than swift and tough; witness how many years it took France to obey a Court of Justice order to remove its national law prohibiting night work by women.

Like the NAALC, the Treaty of Amsterdam creates three "tiers" of labor rights. Binding EU directives can be adopted by qualified majority support for some matters, which tend to be softer, less controversial ones like health and safety or information and consultation. Unanimity is required for harder issues, such as social security and termination of employment contracts, where that a single country can veto a directive. Three critical issues are totally "off the table:" pay, the right of association, and the right to strike and lock out. EU countries have reserved complete national sovereignty over these subjects.

The ETUC has not succeeded in convincing UNICE, the counterpart employer organization, to engage fully in framework bargaining except in relatively easy cases like parental leave and part-time work, where they can agree on least-common-denominator rules. Where the Commission steps in, it is often with watered-down directives solicitous of employer interests. At the end of the day -- and often by noon -- free market values and interests trump social concerns in the EU system.

European works councils have moved only haltingly toward a transnational bargaining framework. For one thing, EWC's are only entitled to information and consultation, not bargaining. Many European companies are happy to tell their EWC representatives how dire the competitive situation has become and why worker demands must be restrained. Some even use the EWC system to bypass trade unions and deal with councils dominated by office employees and midlevel managers (HBS 2001). Many EWC annual meetings devolve into separate demands from national delegates that management keep jobs in their country.

The ETUC is understaffed and underfunded (Turner 1996). National trade unions, employers and governments operating in deeply embedded national labor markets and collective bargaining frameworks, not cross-border bodies in a Europe-wide system, are still the major actors in European industrial relations. While the regional and international orientation of European unions is more developed than that of American unions (or unions in other parts of the world), national institutional focus thus continues to weaken what has been and can be accomplished at the European level (Visser 1999; Martin and Ross 1999).
Finding a Balance

From a North American perspective, the strengths of the European social dimension still far outweigh the weaknesses, especially contrasted with NAFTA and the NAALC. The next challenge for labor rights advocates in the United States comes with accelerating negotiations on the Free Trade Agreement of the Americas (FTAA). Right now, the trade union demand is to stop the FTAA. But some form of hemispheric economic integration plan will ultimately take shape. In this context, U.S. trade unionists and allies should aim at preserving and strengthening positive elements of the NAALC while overcoming its main flaws. Drawing lessons from the EU social dimension will greatly help this process. So will drawing on positive elements of Mercosur’s Social-Labor Declaration, a South American counterpart to the NAALC.

The 2002 victory of Luis Inacio da Silva (Lula) of the Brazilian Workers’ Party creates a new context with greater potential for progress on a social dimension in hemispheric integration. Brazil and its Mercosur partners agreed on a Social-Labor Declaration in 1999 with several elements that should go into a “mix” of social models, along with lessons from earlier North American and EU experiences. Among these are tripartite sectoral bodies taking up matters of concern to workers in trade-related industries. Applying this model to the hemispheric scale could trigger a North American model of cross-border engagement akin to that triggered by the EWC directive.

Here are other examples of elements of a social dimension with positive features from North American, European, and Southern Cone initiatives:

- Labor rights should be integral to a hemispheric trade accord, not a side agreement. If Europe succeeds in integrating the Nice Charter into the Treaty, Americans should demand no less.
- The NAALC labor principles, perhaps enhanced by norms in the EU Charter and in Mercosur’s Declaration not mentioned in the NAALC, such as information and consultation as a basic right of all workers, should become binding supranational standards like EU directives.
- Any hemispheric social dimension should contain a vibrant complaint system backed up by sanctions against countries or companies that violate workers’ rights. Unions should build their cross-border institutional structures to take advantage of complaint mechanisms, as with the ETUC and the Mercosur’s trade union coordinating body.
- Like the European Court of Justice, the Inter-American Commission and Court of Human Rights should be empowered to consider and remedy workers’ rights violations.

What You See is What You Get

Ultimately, the gains from for hemispheric integration will depend on the strength of the political and institutional structures in place. With Lula in place, labor is proving to be a deft instrument of social change. While the United States and Canada have been pioneers in creating a transnational labor rights agenda, the European Union and Mercosur have been leaders in developing and enforcing those rights.

The U.S.-Jordan Partnership is one example of how the two regions can work together to advance a social dimension in hemispheric integration. The Partnership has been instrumental in promoting worker rights and improving living conditions for workers in the region. By working together, the U.S. and Jordan can create a model for how to build a strong labor rights agenda in the region.

While the European Union has been a leader in promoting labor rights at the global level, it has also been a leader in promoting labor rights within the region. The EU has been instrumental in creating a strong labor rights agenda in the region, and has been a leader in enforcing those rights.

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A strong institutional framework is key for making the NAALC and Mercosur’s initiatives effective. The EU’s institutional framework has been instrumental in promoting labor rights and enforcing those rights. The EU has been able to create a strong labor rights agenda in the region, and has been a leader in enforcing those rights.

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A strong institutional role like that of Europe's social partners and trade unions in Mercosur's tripartite bodies should be built into a social dimension of the Americas for trade unions and other civil society actors.

A well-funded permanent research and oversight body should take shape in any hemispheric trade and labor arrangement. Here the EU's European Industrial Relations Observatory (EIRO) is a valuable model, producing extensive, important research on a continuing basis, using its own team of staff experts and contracting widely with experts around Europe. Similarly, though it is still on the drawing board, Mercosur envisions a social-labor Observatorio to monitor developments and produce reports and analyses on workers' rights in member countries.

What You See Is What You Get

Ultimately, the gains in labor and social standards incorporated into a future plan for hemispheric integration will depend on the revitalization, coalition building and political influence of unions, working together, in North and South America alike. With Lula in power in Brazil, with labor and environmental groups continuing to mobilize around trade agreements, even after the defeat on "trade promotion authority" (fast track by a new name), there are conceivable openings for a social dimension in the Americas.

The U.S.-Jordan trade agreement, for example, negotiated in the waning months of the Clinton administration, included the AFL-CIO and Sierra Club in policy-making processes and yielded meaningful labor and environmental standards (and enforcement mechanisms) in this small but example-setting agreement. The Jordan agreement created a template for future linkages of trade and workers' rights. (Polaski 2003).

While the European social model cannot be transplanted to the United States, to NAFTA, or to a new hemispheric trade regime, underlying values and lessons can inform American efforts. The EU shows what is possible in today's global economy, and it is inspiring to see that European unions are convinced they can make more gains in the future. For American unions, in a liberal market economy that provides only weak institutional protections for labor, the essential element in the promotion of a social dimension – for North America, for the hemisphere and for the global economy – is greatly expanded future political power. And such power is possible only through labor movement revitalization and the broadest coalition efforts, local, national, regional and global.
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