

## Introduction

### *Monitoring, Sweatshops, and Labor Relations*

Monitoring is the anti-sweatshop movement's great hope.

—*New York Times*, April 24, 2001

IN A FACTORY in downtown Los Angeles, 130 Latino immigrants toil away producing garments for Los Angeles's largest apparel company, GUESS?, Inc. The Korean-owned factory is one of many sewing shops in Los Angeles that contract to make the stylish jeans, chic tops, and other fashion-forward items GUESS? is known for. Less well known are the backward labor conditions under which these high-priced items are made. Five of the 130 workers are children younger than sixteen. One child, a thirteen-year-old, has been working forty hours a week for more than a year. A U.S. Department of Labor investigation finds that only seventy workers are listed on the payroll and that although workers begin arriving at seven o'clock in the morning and stay as late as six at night, the payroll reflects only eight hours of work. Many workers are paid as little as \$3 per hour. The DOL concludes that 127 workers are owed over-time pay, and 118 are owed for violations of the minimum wage. They assess the owner of Jay's Fashions more than \$750,000 in back wages. The owner closes down and files for bankruptcy.

This is the fifth GUESS? contractor to be found in violation of labor law between 1991 and 1992. However, GUESS? does not technically employ these workers—even though the company unilaterally sets the contract price and thereby the conditions in the contract shop; its quality-control staff spend from one to three hours per day in the shop overseeing the work; and it reaps the profit from the sweat of these workers.

Because of the flagrancy and repeated nature of the violations found in GUESS?'s shops, the DOL threatens to take the company to court. In lieu of court proceedings, GUESS? agrees to pay the DOL more than \$500,000 in back wages and pledges scholarships to the five children. Most notably, GUESS? agrees to monitor its own contractors, becoming the first company to do so. On August 5, 1992, the solicitor-general of the DOL, Marshall Berger, describes the monitoring agreement as follows: "The Guess-DOL agreement is truly historic. . . . Guess stands as a bellwether in the

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fight to eliminate widespread wage and hour violations among apparel industry sewing and assembly contractors.”<sup>1</sup> What had seemed a defeat quickly becomes a public-relations victory. GUESS? boasts about its pioneering role in monitoring and claims that its program is a model for the industry. In December 1995, as part of its anti-sweatshop campaign, the DOL begins a Trendsetters List and includes GUESS? among this well-publicized group of manufacturers that are touted as the “Good Guys of Fashion.”

Less than a year later, in July 1996, the California Division of Labor Standards Enforcement raids fifteen apartments in Los Angeles for illegal homework violations and finds GUESS? clothing in most of them. The division also finds in-shop violations at four GUESS? contractors, including nonpayment of the minimum wage, nonpayment of overtime, falsification of time cards, and cash payments. One of the workers, Enriqueta Soto, later described the situation to a Congressional committee as follows:

I have worked in the garment industry for seventeen years. And I worked in about seven different shops. My experience in this industry has been a very difficult one. In most of the shops minimum wage is not guaranteed. Overtime is not paid. Holidays are not paid. There is no paid vacations. We have no medical insurance. . . . My experience at Jeans Plus [a GUESS? contractor], where they had a monitoring system, the conditions there were the same. We couldn't complain to the people who were doing the monitoring. . . . Because those people who were monitoring only spoke to those employees who were selected by the contractor. When one of my co-workers decided to speak to the manufacturer, when she decided to speak up, they simply decided to punish us and they removed the work. So 400 of us lost our jobs. They shut down the plant. . . .

How can we feel secure . . . if the consequences of [reporting violations] mean losing our employment? We have no assurances, either from the monitoring system or from the Department of Labor.<sup>2</sup>

In August 1996, a group of workers files a class-action lawsuit for minimum-wage and hour violations at sixteen GUESS? contracting shops. Part of the workers' argument is that workers should be considered third-party beneficiaries of the monitoring agreement and thus should be able to sue for breach of contract. Ironically, as part of its defense strategy, GUESS? sends the head of its monitoring program into shops—where she is supposed to be protecting workers' rights—to urge workers to waive their right to participate in the lawsuit. In spite of the monitoring agreement and the court action, violations continue. Between January 1996 and January 1997, state and federal investigators assess nearly \$250,000 in back pay owed to workers at some twenty GUESS? contractors. Cal-Safety Compliance Corporation, a monitoring company that GUESS? has hired and whose reports became court documents, finds many more violations.

Meanwhile, the garment workers' union, UNITE, is organizing workers in various contracting shops, as well as at GUESS?'s own “inside”

shop. According to a finding of the National Labor Relations Board, GUESS? harasses, intimidates, fires, and lays off workers in response to the unionization drive. GUESS? also forms anti-union worker committees and threatens workers that it will move production abroad if the workers unionize. In January 1997, GUESS? agrees to reinstate workers and pay \$80,000 in back wages. The next day, the company announces that it will move more than half of its Los Angeles production to Mexico and elsewhere in Latin America over the coming year. Until this point, GUESS? has produced more than 75 percent of its apparel in Los Angeles, making its contractors the largest group of garment employers in the region.

Despite all the findings of violations and its decision to send production offshore rather than allow workers in Los Angeles to unionize, GUESS? continues to advertise itself as a company with progressive labor practices. In the summer of 1997, state inspectors find illegal homework being done for GUESS? contractors. Although none of the garments are actually GUESS? products, GUESS? is supposedly monitoring the shops for such behavior. GUESS?'s lawyer Daniel Petrocelli boasts to the *New York Times*, "This voluntary policing mechanism that GUESS? pioneered has become a model for the country."<sup>3</sup> In the fall of 1997, in response to a consumer-boycott campaign, GUESS? hands out leaflets at its stores saying that it is on the Trendsetters List and that the union's allegations are untrue. In fact, in November 1996 GUESS? had been put on probationary status on the Trendsetters List, and in January 1997 that status had been extended indefinitely.

In December 1997, GUESS? runs full-page ads in the *Los Angeles Times*, *La Opinion* (the major Spanish newspaper), and elsewhere guaranteeing that its products are "Sweat-Free" and declaring, "Voluntary Monitoring Works." GUESS? also refers to the DOL's "No Sweat" campaign in its ads, implying government endorsement. When the DOL publicly reproaches the company, GUESS? drops the reference to the government-sponsored program but continues to advertise as 100 percent sweat-free and to publicly proclaim that it is a leader in monitoring, with the strongest program in the country. In addition, GUESS? hangs tags on its clothing advertising the products as "Sweat-Free."

Meanwhile, the press, policymakers, and academics all praise the DOL's "No Sweat" program. In 1996, the DOL wins the Kennedy School of Government's prestigious Innovations in American Government award for its monitoring program. The program is touted as a huge success, significantly raising levels of compliance in the United States. In the same year, the president calls together companies, unions, and human-rights organizations to begin a worldwide voluntary monitoring program. By 2000, however, DOL data show that the effects of the program are limited. Disappointment over the results, combined with a change from the Clinton to the Bush administration, leads the agency to pull back from aggressively pursuing the program. The central DOL office drops the "No

Sweat” program from its website, including numerous screens devoted to monitoring. It also halts systematized public reporting of violators, one of the major sticks of the program. Meanwhile, the Los Angeles office switches to pursuing informal rather than legally binding agreements. Despite the weakening of the program, it is still the centerpiece of any focused effort on the garment industry that remains. Moreover, on the international level, monitoring continues to proliferate unabated.

The GUESS? case highlights many important questions about monitoring. How does the process actually function and why? What are the costs and benefits to workers? Why is the practice proliferating internationally, despite obvious weaknesses? How have the government and others envisioned the participation of companies, workers, and consumers in monitoring—and more broadly, in addressing the sweatshop crisis?

## MONITORING SWEATSHOPS

The current exploitation of production workers in the garment industry is widely acknowledged (Bonacich and Appelbaum 2000; Bonacich et al. 1994; Leibhold and Rubenstein 1999; Ross 1997, 2002; Rothstein 1989; Sajhau 1997; U.S. DOL 1996, 1997; U.S. GAO 1988; Varley 1998). In the United States, these workers are largely immigrants from Latin America and Asia.<sup>4</sup> In Los Angeles, the largest production site in the country, 94 percent of the workers are immigrants.<sup>5</sup> Most are women, and a high proportion are undocumented. This highly vulnerable workforce is subject to a degree of exploitation that for decades had been marginal in the garment industry in the United States. Abroad, women who are often very young, with little education and few alternatives, have become the mainstays of new export industries, which provide needed dollars to their indebted governments. With a surge in the internationalization of production, the decline in unionization, deregulation, and a renewed reliance on vulnerable labor, sweatshops have reemerged and proliferated. Domestically, violations of wage and hour laws are rampant, and violations of health and safety laws are almost universal. Internationally, the use of child labor and verbal and physical abuse often accompany low wages and long hours.

The focus of the U.S. government’s policy initiatives to address the “sweatshop crisis” has been privatized monitoring. Beginning with the GUESS? case in 1992, the DOL instituted a program in Los Angeles and elsewhere to force manufacturers to monitor their contractors for labor-law compliance. In 1996, President Bill Clinton formed a task force to replicate monitoring on an international scale, and in 2001 he presented the task force’s newly formed monitoring organization, the Fair Labor Association, with \$750,000 in start-up funding. Although federal support for monitoring has waned under President George W. Bush, the

FLA continues to grow, and the Los Angeles DOL continues to promote domestic monitoring.

Monitoring has been implemented as a means of addressing the contracting system, which allows manufacturers to avoid responsibility and sweatshops to flourish. Under this system, retailers (e.g., Macy's, Bloomingdale's),<sup>6</sup> who sell the clothes, generally order from manufacturers or jobbers (e.g., Liz Claiborne, Polo Ralph Lauren),<sup>7</sup> who design and market the clothes and use numerous contractors to produce the garments. Although a manufacturer may have "inside shops" that it owns, most manufacturers now use inside shops in a very limited fashion: to produce samples, cut cloth, and warehouse garments. The companies rely on dozens to hundreds of contractors to actually produce their apparel. These contractors range in size from small entrepreneurs to large and occasionally powerful multinational corporations. However, within the United States contractors are generally small and mainly immigrant enterprises averaging thirty employees. Layers may be added when buying agents, traders, and other intermediaries are involved and when contractors farm work out to subcontractors or, in many countries, to women who sew in their homes. Thus, workers may be many steps removed from the manufacturers and retailers who most profit from their labor.

With the globalization of production, garment manufacturers are now insulated from workers not only by a lack of legal responsibility but also by distance and anonymity. Contracting has been expanded and complicated by economic globalization. Companies currently produce in dozens of countries at once using hundreds of contractors. Workers often do not know whom they are actually producing for, and in any case they have no access to the manufacturer to rectify any grievances. Manufacturers have the ability to rapidly move production from one plant or country to the next. Most contractors have no brand-name reputation to protect and few assets; they are also quite mobile. They can quickly rent another location, register under another name, or sometimes even move to another country.<sup>8</sup> Workers and government agencies have had a difficult, often impossible, time recouping back wages and demanding other redress from such ephemeral entities. The challenge for workers, government officials, and anti-sweatshop crusaders has been to hold the real profit makers (the manufacturers and retailers) accountable for the conditions under which their products are made. Limited national enforcement capacity and an absence of effective international regulatory regimes have created a regulatory vacuum.

Activists, unionists, and government labor officials have devised alternative forms of pressure to complement, bolster, or substitute for direct worker resistance and effective government enforcement. In the garment industry, the most notable examples have been public pressure campaigns involving consumers and investors and the related approach of non-state

regulation in the form of monitoring. Monitoring mechanisms supposedly ensure that domestic labor laws are complied with—or, in the case of international production, that a company's own code of conduct is implemented.

Codes of conduct are lists of principles that manufacturers develop to guide the conditions of production in their contracting factories. The codes usually include such issues as numbers of required hours, minimum working age, minimum wages, and rights such as freedom of association. Codes always demand compliance with local laws (for example, legal working age in the country) or specify higher standards (for example, minimum of fifteen years old). Manufacturers provide each of their contractors with their code and usually request that the contractor sign an agreement to comply. Monitoring—visits to and investigations of factories—is an additional step that a subset of manufacturers has adopted to confirm whether contractors are actually complying.

While codes of conduct are written documents that can be easily examined and analyzed for weaknesses or unacceptable principles (for example, legal minimum wage versus living wage; sixty required hours of work per week versus forty), monitoring is a set of practices that remains largely hidden from scrutiny. The concept and structure of monitoring are now the subject of worldwide debate among nongovernmental organizations, unions, manufacturers, academics, and others.

It should be noted that domestic and international monitoring differ in significant ways. For instance, companies that monitor abroad do so for compliance with their codes of conduct; most companies who monitor domestically do so only to insure compliance with U.S. laws that govern wage and hour standards, child labor, and, to a lesser degree, health and safety regulations. Issues such as discrimination, freedom of association, and collective-bargaining rights are ignored in the domestic monitoring process.

This difference in monitoring is partly due to the fact that international and domestic monitoring arise from two different pressures on the manufacturer. Monitoring, both domestic and international, was originally forced on manufacturers. Domestically, companies are monitoring partly in fear of negative publicity if sweatshop conditions are uncovered with their labels present but more immediately in response to a concerted campaign by the federal government. In 1992, GUESS?, Inc., became the first manufacturer to agree to a self-monitoring program of its domestic production after the DOL confiscated products made in violation of labor codes. At that time, GUESS? had more than \$700 million in sales and employed 3,000 production workers in Southern California through an estimated 100 contractors.

Domestically, the federal government's effort has been concentrated in Los Angeles. Recognizing that it was not making progress enforcing labor law at the contractor level, the Los Angeles branch of the DOL

began to enforce the “hot goods” provisions of the 1938 Fair Labor Standards Act against garment manufacturers by not allowing products made in violation of federal law to cross state lines.<sup>9</sup> In this way, the DOL forced manufacturers to pay back wages and repeat violators to agree to monitor their contractors. The companies agreed to monitor and guarantee remediation of back wages; the DOL agreed not to object to the shipment of goods.

However, the DOL has promoted monitoring far beyond those who sign the agreement. The department launched an education and training program for manufacturers and contractors. It widely disseminated information on how to create a monitoring program, including through its website. It continues to promote the practice of voluntary, not compulsory, participation through its Manufacturer Compliance Assistance Program. Almost all large manufacturers and many smaller ones in Los Angeles have some type of monitoring program as a result of the DOL’s outreach program and other, more coercive efforts to compel participation.

In the 1990s, the DOL used the threat of bad publicity to compel manufacturers to monitor. A central component of the monitoring program from 1995 through 2000 was the DOL’s quarterly publication of the *Garment Enforcement Report*. The GER, which was posted on the Internet, listed all contractors found in violation and the manufacturers for which they were working. The idea was that retailers (and potentially consumers, as well) would check the list and not purchase from repeat violators. The list also noted whether a company had or was adopting a monitoring program, supposedly a mitigating factor in potential repercussions. However, the GER has not been updated since President George W. Bush took office, further weakening the continuing program.

The DOL has attempted to enlist retailers’ participation by pressuring them to require monitoring programs of all manufacturers that wish to sell to them. Retailers are exempt from “hot goods” if they are bona fide purchasers who buy the assembled goods (and do not own the cloth during production). Retailers qualify for the “good faith” exemption of the FLSA if they receive written assurances that the goods were not made in violation of the act. Beyond the GER, the DOL established a Retailer Contact Program to inform retailers of violations linked to manufacturers who sell to them and to urge retailers to use their leverage to promote monitoring. The DOL even threatened retailers that, once informed of a pattern of violations, they might lose their “good faith” exemption if they did not require more than written assurances.<sup>10</sup>

The DOL has also tried to tap in to the potential leverage of factors and banks—those who lend money to the manufacturers. In 1998, the DOL met with some of these entities and explained that they should consider “hot goods” violations a “risk factor” in their loans and should urge monitoring on their borrowers as a form of “insurance.”<sup>11</sup> In 2003, the Los Angeles DOL planned to renew the factor strategy, hoping again to



reach more manufacturers through these lenders. Thus, while more than sixty companies signed formal agreements with the DOL to monitor, hundreds of others do so “voluntarily” because of pressure from the government, retailers, and lenders.

In contrast, companies that conduct international monitoring have done so primarily in response to the pressure of social movements and the negative publicity these movements have generated about sweatshops abroad. In 1995, the Gap became the first manufacturer to agree to “independent monitoring” of a foreign contractor by human- and labor-rights organizations. After a long-fought campaign by workers and human-rights activists in El Salvador and the United States, the Gap signed an agreement with the National Labor Committee that specifically concerned a factory in El Salvador where workers had been mistreated and hundreds had been fired for union activities.<sup>12</sup> Later, Kathie Lee Gifford, the TV personality who serves as the celebrity endorser for a line of clothing sold at Wal-Mart, burst into tears on national television over the NLC’s discovery that children in Honduras were sewing clothes with her name on the label. Meanwhile, Disney was exposed for exploiting workers in Haiti, and Nike was criticized for paying poverty wages to Indonesian workers. These incidents, together with the revelation of the virtual slave labor of Thai immigrants in a factory in El Monte, California, led to the formation of President Clinton’s Apparel Industry Partnership and a surge in international monitoring activity.

Monitoring is now being touted as an international solution to the well-publicized sweatshop crisis. The AIP, a coalition of manufacturers and NGOs, has begun to expand monitoring into an institutionalized regime of certification through its successor organization, the FLA. Several other monitoring-oversight organizations have been formed to promote and regulate international monitoring, as well. Meanwhile, extensive labor violations have been found in monitored factories in Los Angeles.

Monitoring in Los Angeles consists entirely of “private monitoring”—that is, manufacturers hire a commercial firm or use their own employees to monitor. Although the vast majority of international monitoring is also private, a growing number of local nonprofit organizations with expertise in human- and labor-rights advocacy have been formed to conduct third-party, or “independent,” monitoring.<sup>13</sup> While this alternative has created enthusiasm within the anti-sweatshop activist community, the role of independent monitoring continues to be the center of much debate among students, unions, and NGOs. This book does not fully evaluate the effectiveness of independent monitoring; however, I will conclude with an argument about the potential of independent monitoring vis-à-vis private monitoring. New models of independent monitoring (still limited to relatively few work sites) stand in sharp contrast to the practices of the private monitoring that is currently being conducted in thousands of factories in Los Angeles and around the world.



## PRIVATE MONITORING AND LABOR RELATIONS

This book considers the meaning of the burgeoning practice of monitoring, or “social accounting.” What has private monitoring meant for labor relations in the global apparel industry in terms of affecting employment conditions and structuring relations between workers and employers?

The clothing industry has always played an important role in capitalist development and the configuration of relations between workers and employers. The first wave of industrialization in the United States was based on textile production, and it has been argued that garment assembly was the first production process to become truly globalized (Dicken 1992). Moreover, the “prototype of collective bargaining agreements” emerged in the garment industry (Ross 1997). In 1910, in the wake of the uprising of 20,000 shirtwaist makers in New York City, more than 40,000 cloak makers sustained a two-month strike that ended in a general agreement signed between union and manufacturer representatives. The Protocols of Peace mandated preferential hiring for union members, guaranteed workers’ participation in overseeing factory conditions, and instituted a joint grievance procedure (Stein 1977). This pact began the movement toward America’s social contract built on an industrial democracy that involved workers in the regulation of the industry (Brandeis 1977 [1915]; Howard 1997; Ross 1997). From the late 1930s on, unionization and government promulgation and enforcement of labor laws increasingly balanced power relations in the industry. However, in the 1980s, with the globalization of production and the undermining of both unionization and government regulation, sweatshops reemerged.

It is not surprising, then, that a new form of labor relations is now developing within the apparel industry in response to changing economic conditions. Whereas the social contract that prevailed in the post–World War II period brought workers, business, and the government into an alliance, the “social-accountability contract,” as I will call it, is a pact strictly among employers, their contractors, and the government or, in the case of international monitoring, public-interest organizations rather than governments. Thus, the violent struggle of the early twentieth century and the mid-century consensus were being succeeded at century’s end by a new paternalism in labor relations.

## OVERVIEW

In this book, I begin with a review of the historical trajectory of the sweatshop and then delve into the current response. I document the practices of private monitoring, domestic and international, and analyze its ramifications and theoretical import. I conclude by exploring the potential significance of the alternative independent model. To conduct research on monitoring, I relied primarily on the qualitative methods of in-depth

interview, observation (sometimes participatory), and document analysis. I also used quantitative analysis of DOL data and a brief survey to ground my research. Intensive fieldwork took place in Los Angeles and El Salvador, and additional interviews were conducted in Washington, D.C., New York City, and the San Francisco Bay area. In all, I conducted more than 135 in-depth interviews with monitors, workers, contractors, manufacturers, government officials, unionists, academics, and NGO staff. I have included a complete list of those interviews, as well as a detailed description of each aspect of the research methods used (see Appendixes 2 and 3).

In the first chapter, I provide a historical context for my argument, detailing the rise and fall of a social contract in U.S. labor relations, particularly within the garment industry. Here I follow three trends and their relationship to one another and to the emergence, marginalization, and reemergence of the sweatshop. My focus is on industry structure, unionization, and government enforcement of labor laws. A clear understanding of the rise and fall of the social contract leads the way to the subsequent discussion of my concept of a social-accountability contract.

In the second chapter, I ask why monitoring arose in the 1990s and what monitoring means for labor relations. I posit that the nature of the global economy—with its proliferation of subcontracting, buyer-driven chains of production, government deregulation, attacks on unionization, and use of vulnerable labor—has sustained the development of a new form of labor relations. I argue that private monitoring reflects this new economic system because as a process it addresses multilevel production chains, privileges consumer concerns, privatizes a government function, can undermine unionization, and treats workers as passive and in need of protection.

Private monitoring is adapted to the globalized production system, *but it does not challenge that system*. Private monitoring accepts as given the industry's production practices—such as mobility and hidden chains of production—and its multilayered structure, both of which foster sweatshops. Thus, although monitoring purports to, and may minimally, improve conditions for workers, it cannot systemically address the sweatshop problem. This hypothesis is sustained by evidence from Los Angeles that private monitoring does not effectively change working conditions because it neither alters the structural practices under which sweatshops flourish nor allows workers to address their own exploitation.

The second chapter also lays out a theoretical framework for understanding the phenomenon of monitoring. By viewing private monitoring through the lens of shifting power relations, one can grasp its broader import. I theorize that monitoring represents a new paradigm in which the social-contract triangle of government, business, and workers is replaced by a social-accountability contract that involves government, business, and its contractors (the factory owners) and excludes workers. This triangle of power can be seen to reside within a triangle of resist-

ance composed of civil society, consumers/investors, and workers. In this way, we can imagine the three methods of addressing sweatshops as embedded within these relations of power and resistance. Civil society pressures government for stronger enforcement; workers organize to win concessions from factory owners; and consumers and investors mount campaigns against brand-name companies. Monitoring, which represents a privatization of enforcement and an avoidance of worker organizing, caters to the powerful players in each triangle—the consumers/investors and the brand-name manufacturers. These companies use monitoring primarily to avoid bad publicity and to address consumer concerns.

Chapters 3 and 4 address the empirical questions of how monitoring is practiced through a case study of private monitoring in Los Angeles. The DOL program began in that city in 1992, and it has the longest-standing and most developed system of monitoring. Chapter 3 lays out the mechanics of this system: who is monitoring; what the actual practices of monitoring are; and how effective monitoring is. Chapter 4 assesses why monitoring has not been more effective by analyzing the weaknesses, conflicts, and issues involved in the practice in Los Angeles. Two central questions in this discussion are: Who controls monitoring, and what is the role of workers in the process?

The detailed description and analysis of monitoring as practiced in Los Angeles lays the groundwork for an exploration of international monitoring, which has grown exponentially since 1998. Chapter 5 moves into the international arena, documenting the rise and effectiveness of monitoring on a global scale. That chapter provides historical background for codes of conduct, which make up the relevant standards at this level, as well as a description of the forms of implementation being used. It also provides a context for the global phenomenon by detailing the internationalization of the industry and the conditions faced by workers around the world.

Chapter 6 is devoted to reviewing the vast body of reports, studies, and articles evaluating the effectiveness of monitoring across the globe. In its totality, this body of research reflects many of the conclusions I have drawn from evidence in Los Angeles: that monitoring practices are erratic; that monitoring is only marginally effective; and that workers are usually unaware of the programs and are not real participants in them.

I argue in this book that through private monitoring workers are “protected” rather than empowered; consumers are placated; and transnational companies maintain their power and profits. Yet monitoring is also a site of contestation. A struggle is being waged among those who promote private commercial monitoring; those who support independent NGO monitoring; those who denounce monitoring altogether; and those who believe that these seemingly opposed efforts may indeed be complementary.

This struggle is covered in Chapter 7. There I explore the development and politics of independent monitoring. Chapter 7 details the history of

the first NGO monitoring initiative, located in El Salvador, and the campaign that brought it about. Such alternative forms of monitoring are being proposed and practiced on a small scale throughout Central America. The formation of the FLA triggered a focused interest in international monitoring on the part of anti-sweatshop activists, some of whom took up the idea of independent monitoring. Students, unionists, and other academics began formulating a different vision of monitoring—one that challenged the premises of private monitoring and of the industrial system on which it is built. This process resulted in the Worker Rights Consortium. The chapter describes how the public space of the university became the battleground between supporters of the WRC and the FLA and how that struggle has been partially resolved.

The question remains as to whether a different system of monitoring could promote workers' organizing by opening spaces for workers and providing access for their allies in otherwise constrained circumstances. Recent organizing successes in factories monitored by the WRC suggest real potential in this direction. I argue that these victories are largely due to a different conceptualization of the role of workers and consumers. In the conclusion, this conceptualization will provide the basis for a discussion of potential synergy between protest at the point of consumption and protest at the point of production. A monitoring model that focuses on workers' rights to organize, rather than on conditions, may succeed in bringing workers back into the social contract.

# 1 The Rise and Fall of the Social Contract in the Apparel Industry

THE GARMENT INDUSTRY ended the twentieth century as it began, with the stain of sweatshops on its clothes. At midcentury, government regulation and unionization combined to marginalize sweatshops within the industry. After hard-fought struggles in the early 1900s, garment workers gained a high degree of unionization. Immigrant garment workers literally marched their way out of the sweatshop and joined many of their working-class brothers and sisters in forcing employers and the government into a tripartite agreement constituting America's social contract. This "National Bargain," as former Secretary of Labor Robert Reich refers to it, involved employers' commitment to share their rising profits; workers' commitment to contain their struggle within rigid guidelines (most significantly, not to strike at will); and the government's commitment to regulate and mediate the relationship and to provide a crucial safety net (Reich 1991).

Although this bargain never included all workers—particularly, it excluded many unskilled and semiskilled workers of color (Harrison and Bluestone 1988)—by midcentury it did apply to much of the garment industry. In 1954, garment workers in the women's sector earned 85 percent of the average manufacturing wage, as opposed to 59 percent today.<sup>1</sup> But workers' position was greatly undermined as imports took their toll. The need for competitive pricing and manufacturers' threats to move production abroad combined with deregulation and the lack of enforcement of labor laws. With the new terms of economic globalization, the balance of power shifted, and the social contract was broken. By the 1980s, sweatshops had reemerged.

This chapter provides a brief history of labor relations in the garment industry from the sweatshops of New York tenements at the turn of the twentieth century, through the period of increasing unionization and government regulation, to the decline of both and the reemergence of abusive conditions. The first section sets the groundwork by discussing what constitutes a sweatshop, historically and currently. The next two sections follow the rise and fall of the social contract in relationship to the garment industry. The focus is on tracing the developments in unionization and regulation and the changing structure of the industry as three key factors in the marginalization and reemergence of sweatshops.

## WHAT IS A SWEATSHOP?

The term “sweatshop” conjures up the image of a small, hot, dimly lit room with women bent over machines surrounded by piles of fabric. The truth is that exploitative conditions can exist in the best-lit, most spacious facilities, such as the airplane-hangar-like factories of Central America’s export-processing zones. In its report *Sweatshops in the U.S.*, the U.S. General Accounting Office (1988: 16) defined a sweatshop in legal terms as “a business that regularly violates BOTH safety or health AND wage or child labor laws.” Pamela Varley, in *The Sweatshop Quandary* (1998: iv), chose to use the term in the very general sense of factories that pay low wages and are otherwise criticized for their conditions. Some use the term to refer not to specific conditions of work but, rather, to the powerlessness of the workers. In his introduction to *Out of the Sweatshop*, Leonard Stein (1977: xv) posited that “the sweatshop, whether in a modern factory building or a dark slum cellar, exists where the employer controls the working conditions and the worker cannot protest.” It is common for authors to refer to both miserable conditions and the imbalance of power that drives workers to suffer sweatshop employment (Arnold and White 1961; Bonacich and Appelbaum 2000).

The original definition of “sweatshop” was directly tied not only to the abuse of the workers but also to the way in which the structure of the garment industry fostered such exploitation. In 1901, the historian John Commons noted that the “‘sweating system’ originally denoted a system of subcontract” (Commons 1977 [1901]: 44). Contracting out is a system of compounded competition. Competing manufacturers give work to the lowest bidding contractors, who make their profit from the margin between the contract price and the lowest possible labor costs. This margin is “sweated” out of workers who toil under the pressure of a piece-rate system of pay. In a piece-rate system, workers are paid for each piece (seam, pants leg, or shirt) rather than by the hour. As the fastest workers become more efficient at sewing the given style, the piece rate drops, and everyone must sew faster to maintain the same pay. This system thus forces workers into competition with one another. Moreover, as Commons pointed out, the subcontracting itself renders the workers more vulnerable: “In the factory system the workmen are congregated where they can be seen by the factory inspectors and where they can organize or develop a common understanding. In the sweating system they are isolated and unknown” (Commons 1977 [1901]: 45). The struggle of garment workers has thus always been structured by the subcontracting system and their ability to combat it.

The subcontracting system, in which workers are divided and always in competition and garment manufacturers remain at arms’ length from them, has been a major obstacle to both unionization and government enforcement of regulation. The garment industry is especially prone to

subcontracting because it is highly labor-intensive and marked by large fluctuations in production (in terms of seasons, demand, and fashion changes). Within the hierarchy of retailers, manufacturers, and sewing contractors, risk is easily shifted down to smaller, more mobile companies able to enter the business with only enough capital to rent space and purchase or lease a few sewing machines. These companies often have neither reputation nor assets to protect.

The subcontracting system creates a situation in which abuses abound but a chain of legal accountability is absent. Retailers and manufacturers have been insulated from legal liability for working conditions because workers do not have a direct relationship to these companies, although the companies clearly profit from their labor. Domestically, manufacturers, as well as retailers with private labels, have actually owned the material throughout the entire process of production. They do not buy garments; they lease labor.<sup>2</sup> Internationally, the situation can differ, with some contractors offering “full-package” services in which they procure the cloth and cut and assemble the articles.

The first subcontracting system preceded garment factories and involved the distribution of cloth throughout an area to women who sewed the goods in their homes. This system was referred to as “putting out.” Women sewing ready-made goods rather than garments only for family use began in the early 1800s. According to the historians Ava Baron and Susan Klepp, several factors led to the growth of ready-made clothing and the proliferation of sewing factories: the “democratization” of clothing, the availability of inexpensive textiles, and the mass-production of sewing machines, which did not happen on any large scale until the 1870s (Baron and Klepp 1984). Even at the beginning of the factory system, combining an “inside” shop with contracting out of seasonal work allowed manufacturers to minimize the risk they faced from the uneven and unpredictable nature of the women’s clothing industry.

The recorded history of the sweatshop extends back as far as the 1840s, according to the journalist and labor activist Alan Howard (1997). However, it was in the 1880s, when the mass-production of garments took off, that sweatshops proliferated. Mechanization and factory-based production led to an ever higher degree of division of labor and a severe deskilling of the craft that custom tailors and dressmakers had performed. No longer did a single skilled craftsperson produce an entire garment; rather, many workers repetitively stitched only their portion: seams, buttonholes, cuffs, or collars. The seamstress no longer controlled her pace of work and maintained relations with her customers. Instead, she sat among dozens or hundreds of others at lines of sewing machines working under the watchful eye of supervisors who demanded ever increasing speed. The large expansion of sewing factories was facilitated by the concomitant influx of poor immigrants from Eastern Europe and Italy who swelled the low-wage labor market. In *The Needle Trades*, the historian



Joel Seidman documents the horrific abuses of the 1880s and 1890s, when sweatshop conditions in the industry reached their abyss. In New York, where the overwhelming majority of production occurred, immigrant workers lived and worked in crowded, unsanitary tenements with no water or ventilation. Hours commonly stretched to fifteen a day, with only a few minutes to eat lunch. Wages were miserable, and child labor was widespread (Seidman 1942). As far back as 1892, Congress recommended a system of labeling sweatshop goods after investigating the horrors of the subcontracting system (Arnold and White 1961).

### THE RISE OF THE SOCIAL CONTRACT AND THE MARGINALIZATION OF SWEATSHOPS

In the first decades of the 1900s, workers banded together to fight exploitative conditions. Collective action was made possible by structural shifts within the industry. Electrically powered machines and a more stable distribution system (owing to newly established department stores and mail-order catalogues) lent themselves to increased capital investment, larger factories, and a decline in small contracting shops. Workers gathered in large factories with more stable employment were easier to organize, and large employers who reaped less of their profit simply from sweating had an interest in standardizing production and somewhat less reason to fiercely resist unionization, although many of them still did (Waldinger 1985).

One hundred and fifty thousand workers participated in strikes in the decade between 1905 and 1915, the most famous action being the “Uprising of 20,000.” In New York City, a strike of 20,000 Jewish and Italian female garment workers exploded in 1909. A walkout by women at the Triangle Shirtwaist Company had galvanized other workers who saw the protesting seamstresses beaten by police and company-hired ruffians. Thousands of workers met in response and declared a strike. Middle-class female reformers joined women workers on the picket lines in hopes of halting arrests and police brutality. Union negotiators and the newly formed manufacturers’ association were at loggerheads over union recognition, although they reached agreements on wages, hours, and conditions. Accounts of the outcome of the strike range from victory to defeat (Dye 1980; Jensen and Davidson 1984; Schofield 1984; Stein 1977). Many dozens and perhaps hundreds of individual employers signed agreements over wages, conditions, union recognition, and a cessation of subcontracting—the workers’ principal demands (Finn Scott 1977 [1910]; Jensen and Davidson 1984). However, a still weak union was unable to enforce individual agreements with dozens of small manufacturers, in part because the union’s male leadership did not commit the resources to the women workers that it would soon offer the men (Dye 1980; Waldinger 1985).

This prolonged mass action had in any case heightened awareness of the conditions in the industry, raised public support, strengthened the union, and prepared the way for broader changes. In 1910, the men followed suit, with 60,000 cloak makers taking to the city's streets. This second general strike ushered in a new era, with the manufacturers' association agreeing to recognize the union, standardize piece rates, institute an industry-wide joint grievance procedure, and establish a Joint Board of Sanitary Control to monitor health conditions (Dye 1980; Stein 1977).

Many argue that this Protocol of Peace, as the agreement was called, influenced "the course of industrial relations" (Howard 1997: 155). While the agreement did not eradicate the sweatshop, it did firmly establish the concept of an "industrial democracy." As Judge Louis Brandeis, who brokered the agreement and later served on the U.S. Supreme Court, wrote: "It was the purpose of the Protocol to introduce into the relations of the employer and the employee a whole new element; that is, the element of industrial democracy; that there should be a beginning, at least, of a joint control, and with joint control a joint responsibility for the industry" (Brandeis 1977 [1915]: 122). A Board of Grievances and a Board of Arbitration were established as part of the protocol to determine the outcome of any complaint. The former was a joint system of employers and union representatives resolving complaints. The latter served as a neutral body that would decide unresolved grievances. Employers agreed to abide by the board's decisions, and the union agreed not to strike for anything beyond that which had been agreed to in the accord. John Dyche, a union leader who fully supported the protocol, said at the time, "The Board of Grievances replaces the strike" (Dyche 1977 [1914]).

Some labor researchers have argued that such a system of arbitration ultimately stifled the power of unions by constraining them to bureaucratic channels (Brody 1993; Fantasia 1988). This arrangement did give workers an institutionalized voice in their conditions for the first time. But the complaint system was soon clogged, and the workers' ability to withhold work, their only real power, was greatly restricted. A fierce debate ensued within the union over the benefits of the protocol. Ultimately, it was the employers who abandoned the protocol in 1916, locking out workers and provoking a strike. Nevertheless, as the cultural critic Andrew Ross notes, the protocol was at least a condemnation of the unbridled abuse of the workers and the beginning of a social contract: "Thus were sown the seeds of labor-capital's social contract, conceived of as the joint control of industrial democracy, governed by the modernist creed of production efficiency and committed to a more rational form of capitalism than that symbolized by the sweatshop" (Ross 1997: 30). Although a step toward union recognition had been taken, the abuse of garment workers was not eradicated by the protocol. Six months after it was signed, on March 11, 1911, a fire at the same Triangle Shirtwaist factory killed 146 workers who were locked inside, many of whom jumped

to their deaths rather than burn. Manufacturers also increasingly closed their inside shops and contracted out work in the wake of these uprisings and the subsequent union contracts.<sup>3</sup> Between the mid-1910s and 1920s, the percentage of work in the men's suit and coat industry that was contracted out tripled, rising from 25 percent to 75 percent (Howard 1997). The 1920s also saw an increase of non-union and independent contracting shops in the women's apparel industry. The percentage of small shops (most likely to be contractors) rose dramatically after 1917, reaching almost 80 percent by 1922.

The sociologist Roger Waldinger argues that the increase in contracting was brought about by increased competition based on slower growth. By the 1920s, market expansion based on the substitution of mass-produced clothing for homemade had been exhausted. Moreover, a new fashion consciousness contributed to the instability of the industry, which returned to its pre-turn-of-the-century dependence on small-scale shops (Waldinger 1985). In an increasingly competitive and volatile market, manufacturers sought to lower labor costs and outsource risk.

The membership of the ILGWU reflects both the activism described and these structural changes. Two thousand workers formed the ILGWU in 1900 (Arnold and White 1961). Membership census data show a huge jump in 1909, continued steady growth until 1920, and then a decline. However, after a mass uprising, with hundreds of thousands of workers striking in 1933, membership in the ILGWU shot up from 40,422 a year earlier to more than 198,000. As shown in Figure 1, membership continued to rise for the next four decades.<sup>4</sup>

Legal reforms instituted during the New Deal supported growing unionization and provided a regulatory apparatus to enforce labor laws. Protective legislation that limited working hours for women had been passed in many states during the Progressive era, but debate raged as to whether such gender-specific laws helped protect women or hindered them by limiting their opportunities in some of the most exploitative industries (Kessler-Harris 1982). Clearly, limiting hours without mandating pay standards meant restricting income. Minimum-wage bills had been passed in the 1920s but were struck down.<sup>5</sup> It was not until the New Deal that comprehensive and lasting protections were enacted. In 1933, shortly after President Franklin D. Roosevelt came into office, the National Recovery Administration was established. Under the NRA, business and labor were to work together to set wage and hour standards. Workers' legal rights to join unions and bargain collectively were secured.

Although the NRA was declared unconstitutional in 1935, many of its principal components were embedded in successive legislation, and the concept of a new tripartite arrangement for regulating industry continued. The Wagner Act, or National Labor Relations Act of 1935, reestablished workers' legally protected rights to organize and bargain collectively. It also created a National Labor Relations Board with the power

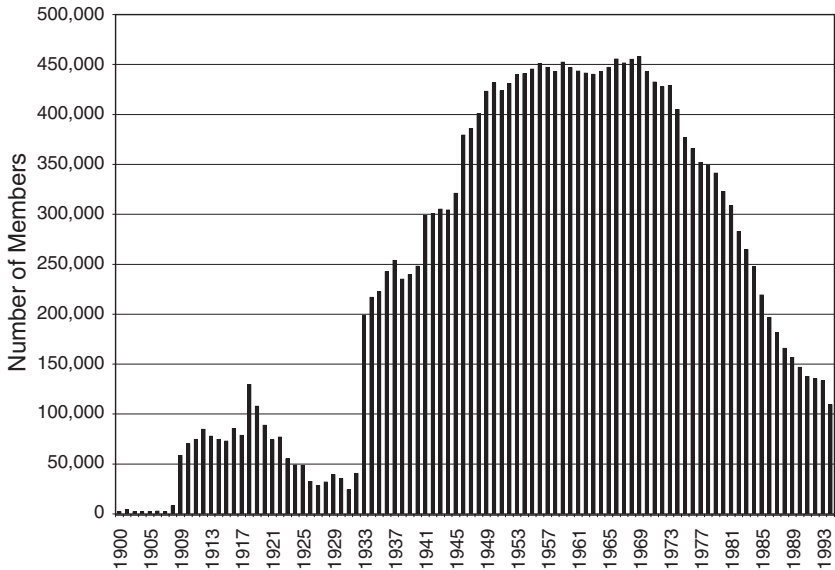


FIGURE 1. Membership in the International Ladies' Garment Workers' Union, 1900–94. *Source:* Figures for 1902–91, from ILGWU research department; for 1900, from Arnold and White 1961; for 1993–94, from *Statistical Abstract of the United States*, comp. U.S. House of Representatives Committee on Education and the Workforce, Subcommittee on Oversight and Investigations, for hearing on August 6, 1998.

to enforce decisions on issues of employee elections, employers' obligation to bargain with majority-elected representatives, and a prohibition on coercing or restraining workers in regard to their union activities. The 1938 Fair Labor Standards Act (FLSA) set standards and established enforcement mechanisms in areas such as minimum wage, overtime pay, and child labor. To prevent widespread violations of wage and hour laws, the Department of Labor issued regulations in 1943, under the FLSA, outlawing homework in seven apparel-related industries, including women's garments.<sup>6</sup> In addition to new labor laws, the institutionalization of social-welfare policies in which the government took a measure of responsibility for the well-being of workers strengthened the workers' position vis-à-vis employers and consolidated the social contract.

With a profound increase in organizational strength and in legal standing, the unions were able to achieve a measure of joint liability, despite the lack of legislatively mandated accountability. "Joint liability" refers to the manufacturers' being mutually liable with the contractor for the wages and conditions in the contracting shops, despite the technicality that they are not the direct employers. As early as 1926, a New York State commission recommended that joint liability be established based on its findings that the manufacturers actually determined the conditions in

those shops (Stein 1977). However, manufactures resisted, and such legislation was not passed.<sup>7</sup>

By the 1930s, though, the strengthened union was able to achieve a measure of accountability through its collective bargaining. Jobber (or manufacturer) contracts became standard in the industry and are an important practice that continues to this day (Howard 1997). Manufacturer-level contracts often include provisions that manufacturers pay the union health and pension benefits based on the number of workers in their contracting shops. Manufacturers also agree to use only union contractors and to pay the union “liquidated damages” based on the number of jobs lost if they do not.<sup>8</sup>

In 1959, manufacturer-level bargaining was codified in the Garment Industry Proviso amendment to the NLRA. This amendment states that garment manufacturers are *not* covered under the prohibition against secondary boycotts. The secondary-boycott provision was meant to protect neutral parties in a dispute from economic damage—for instance, cannery workers’ asking shoppers to boycott a store selling the canned goods they produce may be considered a secondary boycott because the cannery owners, not the store, are the primary employers in the dispute. Apparel, however, is a highly integrated process in which manufacturers determine wages and conditions in contract shops by setting prices, shipment schedules, and amount of work ordered. The manufacturer also owns the cloth, and then the clothing, during the production process, although it does not own the shop in which it is being sewn. Garment manufacturers thus are not considered a neutral third party and are therefore subject to boycotts, contract bargaining, and other actions involved in unionization campaigns. The proviso helped clarify the standing of the joint liability provisions of contracts, which manufacturers had challenged in courts on numerous occasions.<sup>9</sup>

Throughout the post–World War II period, the union remained strong, and government enforcement of labor laws was comparatively effective. ILGWU membership reached 400,000 in 1948 and remained between 400,000 and 460,000 throughout the next two and a half decades. Social legislation was expanded during the War on Poverty years, and new labor legislation continued to be enacted. For example, the Occupational Safety and Health Administration was established in 1970. The country’s economic boom and an expanding clothing market contributed greatly to improvements in factory conditions. Data on shop size reflect this growth and stability. Figure 2 shows that there was an increase in large shops, which continued through the late 1960s.

Garment workers benefited from the social-contract era, whose creed included companies’ commitment to national economic well-being and government protection of vulnerable workers through social welfare and controls on the excesses of free-market capitalism. Scholars studying the garment industry agree that sweatshops became marginal in the middle