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Taking Embedded Liberalism Global:
The Corporate Connection

by

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Twenty years ago I published a scholarly article that introduced the concept of embedded liberalism.[1] It told the story of how the capitalist countries learned to reconcile the efficiency of markets with the values of social community that markets themselves require in order to survive and thrive. That lesson did not come to them easily.

In the Victorian era, policy concern with the level of domestic employment and price stability was subordinated to maintaining the external value of currencies and, less consistently, to the strictures of free trade. But the growing democratization of national political life made that posture increasingly unsustainable, and the first so-called golden age of globalization unraveled. In the period between the two world wars the opposite was true: the unfettered quest for national policy autonomy – pushed by the political left, right and center alike – steadily undermined and ultimately destroyed an already fragile international economic order.

When a workable balance finally was struck it took on somewhat different forms in different countries, reflecting national political realities: in the US, the New Deal or Keynesian state, and in Europe social democracy or the social market economy. But the underlying idea was the same: a grand social bargain whereby all sectors of society agreed to open markets, which in some cases had become heavily administered if not autarchic in the 1930s, but also to contain and share the social adjustment costs that open markets inevitably produce. That was the essence of the embedded liberalism compromise: economic liberalization was embedded in social community.

Governments played a key role in enacting and sustaining this compromise: moderating the volatility of transaction flows across borders and providing social investments, safety nets and adjustment assistance – yet all the while pushing international liberalization. In the industrialized countries, this grand bargain formed the basis of the longest and most equitable economic expansion in human history.

So what is the problem today? For the industrialized countries, it is the fact that embedded liberalism presupposed an *international* world. It presupposed the existence of *national* economies, engaged in *external* transactions, conducted at *arms length,* which governments could mediate at the *border* by tariffs and exchange rates, among other tools. The globalization of financial markets and production chains, however, challenges each of these premises and threatens to leave behind merely national social bargains.

The developing countries, of course, never enjoyed the privilege of cushioning the adverse domestic effects of market exposure in the first place. The majority lack the resources, institutional capacity, international support and, in some instances, the political interest on the part of their ruling elites. As a result, large parts of the developing world have been unable to exploit the opportunities offered by globalization for achieving poverty reduction and sustainable development.

Thus, "our challenge," United Nations Secretary-General Kofi Annan alerted the World Economic Forum in January 1999, ten months before the so-called Battle of Seattle, "is to devise a similar compact on the global scale, to underpin the new global economy. …Until we do," he predicted, "the global economy will be fragile and vulnerable – vulnerable to backlash from all the "isms" of our post-cold-war world: protectionism, populism, nationalism, ethnic chauvinism, fanaticism and terrorism."[2]

Embedding the global market within shared social values and institutional practices represents a task of historic magnitude. The reason is obvious: there is no govern*ment* at the global level to act on behalf of the common good, as there is at the national level. And international institutions are far too weak to fully compensate. Accordingly, this chapter examines the role of certain social processes and movements in triggering the emergence of more inclusive forms of global govern*ance*. Specifically, I focus on the contribution of the dynamic interplay between civil society, business and the public sector over the issue of corporate social responsibility.

The chapter is divided into two main parts. First, I describe some of the main drivers of the anti-globalization backlash, especially the growing anxieties in the industrialized countries that the social embeddedness side of the equation is losing out to the dictates of globalization. Then I examine the evolution of voluntary initiatives involving civil society and the global business community to promote corporate social responsibility as one means of responding to the many challenges of globalization. In that context, I also summarize the key features of Annan's Global Compact, a UN initiative to engage the corporate community, in partnership with civil society and labor, to implement human rights, labor standards and environmental sustainability in its global domain. The burden of my argument, with due appreciation for the irony, is that the corporate sector, which has done more than any other to create the growing gaps between global economy and national communities, is being pulled into playing a key bridging role between them. In the process, a global public domain is emerging, which cannot substitute for effective action by states but may help produce it.

THE BACKLASH

The globalization backlash has many sources, some better reasoned than others.[3] But three negative attributes of the recent era of global market integration stand out as having animated particular concern.

First, the benefits of globalization are distributed highly unequally. As the IMF's Managing Director, Horst Köhler, has conceded, "the disparities between the world's richest and poorest nations are wider than ever."[4] Large parts of the developing world are left behind entirely. Africa is less integrated into the global economy today than a decade ago, and insofar as it is, it is largely through commodity exports, which works to Africa's disadvantage as commodity prices have fallen steadily.

Moreover, apart from China, income disparities among the world's people, as distinguished from countries, either have not improved significantly during the past three decades or actually may have become worse, depending on how they are measured.[5] Much the same holds for global poverty rates. Even in the United States, the unprecedented boom of the 1990s barely budged the income shares of the bottom twenty percent of households, and then only briefly.[6]

There is no fully satisfactory or universally accepted explanation of the relationship between these disparities and globalization. But their coexistence over an extended period of time, coupled with excessive claims for globalization's beneficence by some of its most powerful advocates, themselves feed criticism and outright opposition, including by a growing number of mainstream economists.[7]

Second, the backlash is triggered by a growing imbalance in global rule making. Those rules that favor global market expansion have become more robust and enforceable in the last decade or two – intellectual property rights, for example, or trade dispute resolution through the World Trade Organization. But rules intended to promote equally valid social objectives, be they labor standards, human rights, environmental quality or poverty reduction, lag behind and in some instances actually have become weaker.[8] One result is the situation where considerations of patent rights have trumped fundamental human rights and even pandemic threats to human life – at least until that clash became unbearable for the world's conscience over the HIV/AIDS treatment issue in Africa.[9]

Third, for many people globalization has come to mean greater vulnerability to unfamiliar and unpredictable forces that can bring on economic instability and social dislocation, sometimes at lightning speed. The Asian financial crisis of 1997-1998 was such a force – the fourth but not last major international financial crisis in just two decades. Indeed, the integrity of cultures and sovereignty of states increasingly are seen to be at risk. Even in the most powerful countries, people worry for their jobs, wonder who is in charge and fear that their voices are drowned out in globalization's wake.

The long struggle that ultimately resulted in the embedded liberalism compromise suggests that disparities of this sort are socially unsustainable. Unless they are attended to they are bound to trigger some of the "isms" of which Annan warned – disrupting and potentially undermining the open global economy. What is more, the backlash against globalization has particular bite because it is driven by not only, or even primarily, the poor and the weak. Its vanguard includes large numbers of people in the most privileged societies the world has ever known.

Therefore, let us look briefly at some of the issues that trigger people's anxieties about globalization in the industrialized countries, and how much staying power their concerns are likely to have. Much of the debate about whether globalization is adversely affecting the social embeddedness of market forces focuses on its impact on levels of public expenditure and on public policy, especially in areas related to social safety nets; wage and employment levels; and more elusive issues of identity and accountability.

Public Expenditure

Vito Tanzi and Ludger Schuknecht document the evolution of public expenditure in the industrialized countries going back to 1870.[10] Over the course of the subsequent 125 years, spending grew from an average of 10.7 percent of gross domestic product, to 45.6 percent. The two world wars and the Great Depression accounted for significant increases. But the most dramatic expansion took place between 1960 and 1980, and in that period social expenditures – for education, health, pensions, unemployment benefits and the like – more than doubled on average. This was also the period of the most significant reductions in barriers to trade and monetary flows by the industrialized countries. Research by political scientists as long ago as the late 1970s demonstrated a relationship between the two: the most open economies also tended to lead in social spending.[11] Broadly speaking, this pattern was in keeping with the embedded liberalism compromise of providing a certain measure of domestic compensation for the risks attending greater international openness.[12]

The 1980s and 1990s saw the emergence of growing skepticism about the role of the state, especially in the United Kingdom and the United States. For a variety of reasons, some substantive, others political, prevailing economic theory and public attitudes began to shift in a neoliberal (the preferred term for neo-laissez-faire) direction.[13] Though public spending continued to increase, it was at a slower pace. And it was purchasing fewer social services, in part due to the declining cost-effectiveness of some interventions, and in part because a rapidly rising public sector debt burden consumed an ever greater fraction of overall government spending.[14] A period of reform and retrenchment ensued.[15]

Tanzi and Schuknecht predict a reduction in public expenditure relative to GDP in the years ahead, reflecting less favorable attitudes toward the role of the state (which may be partially off-set in the United States by the effects of 9/11 and corporate malfeasance), coupled with greater fiscal constraints due to demographic shifts, among other factors.

But what exactly is the relationship between these trends and globalization? An increasingly widespread view holds that global market integration induces governments to pursue greater fiscal austerity, ease regulatory and tax burdens on business, and strongly discourage certain policy options if not ruling them out altogether[16] – owing to the relative increase in capital mobility if nothing else.[17] Geoffrey Garrett has examined aspects of this relationship closely – and skeptically – for some time. In a book published in 1998, he argued that social democracy continued to thrive where powerful left-of-center parties were allied with strong and centralized trade unions – irrespective of differences in the extent of market integration.[18] In other words, domestic coalitional politics appeared to be a more powerful explanation of social spending and related policy outcomes than globalization.[19]

But in a recent and more comprehensive statistical analysis Garrett has modified some of his earlier conclusions in at least three key respects. He now finds that year-to-year increases in total trade *do* have a negative effect on government spending, even though historically a country's exposure to trade was an important determinant of fiscal expansion.[20] He shows that increased international financial openness produces a similar result. And he finds that over time the average mix of taxation in the OECD countries has become somewhat less progressive – that is, "more revenues have been raised by tax sources that target poorer people."[21] Foreign direct investment had no such effects.

The magnitude of these changes remains small and patterns of variation among countries, and across different market segments for the same country, are exceedingly complex. Nevertheless, they may signal a gradual shift in the political economy of industrialized countries, away from an earlier "compensatory" approach to managing the effects of increased openness, towards more of a "competitiveness" model. This would confirm that popular anxiety about globalization, though possibly exaggerated, is not without any basis in fact. Recent moves by the United States Congress to limit offshore corporate tax havens and to couple President Bush's "fast track" trade negotiation authority with assistance to adversely affected workers indicate that even America's lawmakers – seemingly inured to this issue for the past two decades – have begun to recognize its political salience.[22]

Income and Employment

In the United States, organized labor has been among the most ardent opponents of globalization, especially of further trade liberalization. Although third party presidential candidate

Ross Perot coined the phrase, labor's concern has been driven by fear of a "giant sucking sound" of well-paying jobs being exported to low wage countries.

There is little dispute that median family income in the United States has been stagnant for two decades while worker productivity has been growing.[23] And there can be no disagreement that this gap coincides with large increases in trade exposure.

But there any consensus ends. Edward Leamer has developed a sophisticated economic model and presents country-based evidence partly supporting the globalization hypothesis.[24] In contrast, Robert Lawrence and Matthew Slaughter's statistical study leads them to conclude that "trade had nothing to do with the slow increase in average compensation," that low rates of productivity increases in the non-traded goods sector of the American economy has been responsible.[25] Paul Krugman, among others, has argued that technological change, especially information technology, is the main cause.[26]

Disentangling and establishing these and other factors with any degree of certainty, Leamer acknowledges, "may be inherently too complex for economists to handle."[27] Dani Rodrik suggests that the link between globalization and its labor market effects may be largely indirect, through shifts in relative bargaining power.[28] Globalization makes the services of large numbers of workers more easily substitutable across national boundaries, Rodrik argues, as a result of which the leverage of immobile labor vis-à-vis mobile capital erodes. Thus, in the neoliberal countries workers are obliged to accept greater instability in earnings and hours worked, if not lower wages altogether; to pay a larger share of their own benefits (as has become all-too-evident in the area of pensions) and improvements in working conditions; and to accept more frequent job changes. Along similar lines, Jagdish Bhagwati uses the term "kaleidoscopic" rather than "flexible" to describe the highly volatile U.S. labor markets, thereby better conveying the nervousness they induce.[29] In the more traditional social democracies and social market economies where income levels and employment are more secure, labor is obliged to accept higher rates of chronic unemployment and lack of job creation.

Thus, the impact of globalization on wage stagnation in the U.S. and high unemployment in Europe remains at minimum an open question for the economy as a whole. Of course, it is not an open question for workers in the industries affected most directly by job-displacing imports, who may have to accept lower-paying work. And if domestic compensatory measures erode at the same time, as discussed in the previous section, then labor's opposition to globalization should hardly come as a surprise.

Identity and Accountability

On the eve of the WTO's 1999 Seattle ministerial meeting, the University of Maryland's Program on International Policy Attitudes published a study of American's attitudes toward trade, and globalization more broadly.[30] A solid majority expressed support for trade liberalization in principle. Only 30% felt it was going too fast; the rest that it was proceeding at the right speed (62%) or too slowly (23%).

But in practice business was seen to be the prime beneficiary: 61% of respondents felt that business was better off as a result of lower barriers, compared to only 25% who believed workers were. Overwhelming majorities felt that US trade policymakers were giving "too little" consideration to "working Americans" (72%), "the general public" (68%) or "people like you" (73%). Furthermore, 60% felt that policymakers paid to little attention to trade's "impact on the environment."

However, overall support for trade liberalization soared (to 84%) when respondents were offered the option that the government would help workers adapt to changes associated with increased trade. Moreover, 78% felt that the WTO should consider issues like labor standards and the environment when it makes trade decisions; and respondents were fully prepared to support trade sanctions to advance these (and related) social goals. As for globalization – conceived as the broader process of growing interconnectedness in the world – respondents saw it as having a mixture of positive and negative elements, with the positives moderately outweighing the negatives.

In short, the Maryland study makes it clear that the American public is far from being protectionist. But it views the benefits of open trade to be unequally distributed, and safeguards for workers, labor standards and the environment to be inadequate.

In a recent survey of Canadian public attitudes Matthew Mendelsohn and Robert Wolfe further differentiate attitudes toward trade liberalization from attitudes toward globalization. And they conduct a causal analysis relating those attitudes to relevant attributes of the respondents.[31]

Mendelsohn and Wolfe find that Canadians strongly support new trade agreements (65% positive responses), including a Free Trade Area of the Americas (67% positive). But they are dubious about encouraging more rapid globalization (only 45% positive). Moreover, while respondents strongly favored international cooperation and policy coordination – as is typical of Canadians' attitudes – they fundamentally opposed ceding national control over labor and workplace standards (a mere 27% positive) or standards for social programs (just 17%) – consequences they closely associate with globalization.

The causal chains behind these differences are even more striking.[32] The authors find that Canadians' attitudes toward trade reflect individuals' calculations of self-interest as economic agents – their level of education or skill, for example, and thus their sense of personal competitiveness in the global marketplace. But interest-based factors fail utterly to account for views about globalization. So whereas education, for example, is strongly related to attitudes toward trade, it is irrelevant to how the respondents feel about globalization. Instead, responses to globalization reflect Canadians' sense of identity as citizens and their core values concerning the kind of society in which they wish to live – and the respondents viewed the Canadian welfare state as a core feature of both.

If this is true in Canada it is bound to be all the more so within European Union countries, where identity politics is doubly jolted by globalization and political integration – the latter itself being, in part, a response to globalization.

To sum up, the industrialized countries appear to have passed through the 1990s with a fraying of domestic social safety nets, though not a dismantling. But the trend lines have been heading in negative directions. Moreover, anxieties about globalization appear to reflect individuals' fears not only about potential economic risks and losses, but also losses measured in terms of identity and control. Unless these doubts about globalization are countered, therefore, they can only be expected to grow.

But, as we shall now see, those same anxieties about globalization also have helped generate and sustain civil society initiatives aimed at managing the adverse effects of globalization more directly, without waiting for states or international organizations to get around to acting. I now turn to that subject, beginning with a brief sketch of the expanding role of civil society in global governance.

VOLUNTARY INITIATIVES

Once upon a time, governance at the international level was entirely a statist affair. Whether the instruments were international alliances, regimes, law and organizations, or transnational networks of national bureaucracies, states both monopolized the conduct of governance and they were the primary objects of their joint decisions and actions. That was the foundational premise of the traditional system.

In recent decades, actors and forces for which the territorial state is not the cardinal organizing principle have begun to outflank the state externally and to gnaw away at its governance monopoly from the inside. They may be driven by universal values or factional greed, by profit and efficiency considerations or the search for salvation. They include global financial markets and production chains, civil society organizations and such uncivil entities as transnational terrorist and criminal networks.

The place of non-state actors and movements remains poorly understood in the mainstream literature, largely because they tend to be viewed, implicitly if not explicitly, through the lenses of an "institutional substitutability" premise.[33] That is to say, if other institutional forms at the international level do not have the potential to *replace* the territorial state they tend to be regarded as unworthy of serious consideration: interesting in practice, perhaps, but not in theory. And the fact is that the state is not disappearing, even in the increasingly integrated European Union.[34]

Nevertheless, significant institutional developments *are* evolving at the global level, among them the emergence of what we might call a global public domain: an arena of discourse, contestation and action organized around global rule making – a transnational space that is not exclusively inhabited by states, and which permits the direct expression and pursuit of human interests, not merely those mediated by the state.[35] One of its major drivers is the expanding role of civil society, and the interplay between civil society organizations and the global corporate sector.[36] This institutional development does not and cannot take the place of states, but it introduces new elements and new dynamics into the processes of global governance.

Civil Society Organizations

Real world players have come to recognize the involvement of civil society organizations (CSOs) in several areas related to global rule making – where by "recognize" I mean that the other players regard CSOs' participation to be more or less legitimate, and in varying degrees they actually count on them to play those roles.[37] In other words, the roles have become institutionalized – much as, for example, the environmental movement did within the industrialized countries a generation ago.[38]

To begin with, civil society organizations have become the main international providers of direct assistance to people in developing countries, be it foreign aid, humanitarian relief or a variety of other internationally provided services. Governmental entities, such as the United States Agency for International Development, largely have become contracting agencies while CSOs deliver the goods.

In a normative vein, CSOs play increasingly important roles in generating, deepening and implementing transnational norms in such areas as human rights, the environment and anti-corruption. They do so through their own global campaign activities, but also by direct involvement in official governance forums like the UN's human rights machinery, where the documentation provided by an Amnesty International, for example, carries weight precisely because it is detached from any national interest.[39]

CSO coalitions also have become a significant, if still episodic, force in blocking or promoting international agreements. Two exemplars have acquired iconic status. The most celebrated blockage was of the Multilateral Agreement on Investment, negotiated at the Organization for Economic Cooperation and Development (OECD), which would have been the high water mark of the neoliberal quest in the 1990s.[40] And the most dramatic instance of successfully promoting a new agreement – even participating fully in its negotiation – is the land-mines ban, which was begun, literally, by two people with a fax machine, and ended up helping to produce an international treaty over the opposition of the most powerful bureaucracy in the world's most powerful state: the US Pentagon.[41] More conventional CSO lobbying contributed to the creation of the International Criminal Court. CSOs also are a powerful source of political pressure for reforming international organizations, especially the Bretton Woods institutions and the WTO.[42]

Coalitions of domestic and transnational civil society networks also perform indispensable roles in the defense of human and labor rights, environmental standards and other social concerns within countries where the normal political process impedes or opposes progress in those areas. A key mechanism is the so-called boomerang effect, first identified by Keck and Sikkink, whereby domestic civil society actors link up with international actors, including other CSOs, states and international organizations, to bring external pressure to bear on the target state(s).[43]

Finally, civil society organizations have become a major force to induce greater social responsibility in the global corporate sector, by creating transparency in the overseas behavior of companies and their suppliers and creating links to consumers back home.[44] The last of these is of greatest interest for the purposes of the present chapter.

Corporate Social Responsibility

The rights enjoyed by transnational corporations have increased manifold over the past two decades, as a result of multilateral trade agreements, bilateral investment pacts and domestic liberalization. Along with those rights, however, have come demands, led largely by civil society, that corporations accept commensurate obligations. To oversimplify only slightly, as governments were creating the space for TNCs to operate globally, other social actors have sought to infuse that space with greater corporate social responsibility.

Civil society organizations have joined issue with the global corporate sector for several reasons. First, individual companies have made themselves targets by doing "bad" things in the past: Shell in Nigeria, Nike in Indonesia, Nestlé in relation to its breast milk substitute products, unsafe practices in the chemical industry as symbolized by Union Carbide's Bhopal disaster, upscale apparel retailers purchasing from sweatshop suppliers, unsustainable forestry practices by the timber industry, and so on. Even where companies may be breaking no laws, they have been targeted by activist groups for violating the companies' own self-proclaimed standards or broader community norms in such areas as human rights, labor practices and environmental sustainability. CSOs seek to induce companies to undertake verifiable change.

Second, the growing imbalance between corporate rights and obligations itself has become a major factor driving CSO campaigns and, as I suggested earlier, it has particular resonance where it touches on life-and-death issues like HIV/AIDS treatment and related public health crises. In that particular instance, the pharmaceutical industry's pricing policy, combined with its insistence on protecting patent rights, prevented access to treatment for millions of poor people in poor countries. Civil society successfully framed price reductions as a corporate obligation.

Gradually, however, the sheer fact that the corporate sector, unlike states and international organizations, has global reach and capacity has become its most compelling attraction to other social actors, together with its ability to make and implement decisions at a pace that neither governments nor intergovernmental agencies can possibly match. In the face of global governance gaps and governance failures, civil society – and increasingly other actors as well, including states – seek to engage the corporate world's global platform to advance broader social objectives. Kofi Annan's Global Compact, discussed below, is based entirely on this rationale.

The universe of transnational corporations consists roughly of 63,000 firms, with more than 800,000 subsidiaries and millions of suppliers.[45] Improving those companies' social and environmental performance has direct benefits for their employees and the communities in which they operate. But equally important is the potential for generating positive social spillover effects. In the developing world, the adoption of good practices by major firms may exert an upward pull on the performance of local enterprises in the same sector.[46] And in the industrialized countries, the gradual diffusion of good practices by major companies' social and environmental performance abroad may lessen the fear that a global "race to the bottom" will undermine their own policy frameworks for achieving social inclusion and economic security at home.

In sum, as a result of pressure from civil society, companies and business associations began to accept, on a voluntary basis and at a modest pace, new corporate social responsibilities in their own corporate domains, and more recently vis-à-vis society at large. The decision by firms to engage is driven by a variety of factors, but above all by the sensitivity of their corporate brands to consumer attitudes.

Certification Institutions

Transnational corporations have adopted scores of codes of conduct and negotiated others within industry associations and with CSOs. Gary Gereffi and his colleagues call these "certification institutions."[47] By now they exist in most major economic sectors, including mining, petroleum, chemicals, forest products, automobiles as well as textiles, apparel and footwear. A recent OECD survey inventoried 246 codes, though the total number remains unknown.[48] In that survey, labor standards (heavy concentration in the apparel industry) and environmental concerns (high in extractive sector) dominate other issues addressed (148 and 145 cases respectively), with some codes including both.

The initial wave consisted largely of unilateral company codes. They made it possible for firms to claim that their behavior was governed by a code of conduct, but without, for the most part, sharing its details with the public. Of the 118 companies with individual codes included in the OECD survey, for example, only 24 indicated any form of public disclosure of accompany compliance.[49] And company codes are far more likely to address practices found objectionable by industrialized country consumers than possibly more pervasive problems that entail fewer reputational risks – in the area of labor standards, for instance, workplace harassment and child labor dominate, with freedom of association trailing well behind.

Individual exceptions have always existed, such as Levi Strauss, which pioneered a transparent worldwide code for manufacturing and contractors as long ago as 1991.[50] In 2002, the Royal Dutch/Shell group became the first company to combine its social and financial reports into one, believing that investors should see the full picture of the company's performance.[51] In the interval, some branded apparel retailers began to audit supplier compliance with company codes, in many cases using respected third-party instruments like SA8000.[52] Two major standardized systems for reporting companies' social and environmental performance are now on stream as well, AccountAbility1000 and the Global Reporting Initiative.[53]

Other companies are learning that talk is not cheap. Nike, for example, is in the California courts under that state's Unfair Business Practices Act, accused of making misrepresentations, false statements and material omissions in literature about working conditions in its supply chain in an attempt to maintain or increase sales. The California Superior Court ruled that Nike's promotional statements were not protected as free speech but constituted commercial speech, and it allowed an individual consumer's suit against the company to go forward.[54]

The most ambitious and typically the most transparent certification arrangements tend to be sectoral in scope, and to involve several companies and/or business associations along with civil society participants. Their aims range from ensuring that the price paid to cooperatives of small-scale family farmers growing coffee beans in Costa Rica includes a premium for growing the beans in an environmentally sustainable manner (Fair Trade Certified Coffee); to ensuring that plywood ending up at Home Depot and other participating home improvement outlets is produced in accordance with sustainable forestry practices (Forest Stewardship Council); to certifying that sweatshirts sold in college bookstores or cashmere sweaters destined for Fifth Avenue department stores and upscale suburban malls are knitted in conditions that meet agreed labor standards and conditions (Workers Rights Consortium, and either the Fair Labor Association or an individual company code with compliance audited by SA8000). A certification institution called Responsible Care – triggered by Bhopal – now operates in the U.S. chemical industry, while the Global Mining Initiative was recently launched in that sector.

Many such arrangements now exist – there are 22 additional certification institutions in the forest products industry alone, for instance, and the U.S.-based Workers Rights Consortium is closely coordinated with European initiatives like the Clean Clothes Campaign.[55] Their rate of increase over the past decade has been extraordinary.

The Global Compact

Kofi Annan coupled his 1999 warning to the world's business leaders about the fragility of globalization with an initiative called the Global Compact (GC). It is *not* a code of conduct – which has been a major point of contention vis-à-vis anti-globalization activist groups.[56] A partnership between the United Nations, business, international labor and major transnational civil society organizations, the Compact instead seeks to engage companies in the promotion of certain UN principles within corporate domains.[57] The principles themselves are drawn from the Universal Declaration of Human Rights, the International Labor Organization's Fundamental Principles on Rights at Work and the Rio Principles on Environment and Development.[58]

Companies are encouraged to move towards "good practices" as defined through multi-stakeholder dialogue and partnership, rather than relying on their often superior bargaining position vis-à-vis national authorities, especially in small and poor states, to get away with less. The Compact employs three instruments to achieve its aims.

Through its "learning forum," it is designed to generate consensus-based understandings of how a company's commitment to the nine principles can be translated most effectively into corporate management practices. The idea is for the UN to publicize these norms, thereby providing a standard of comparison for – and adding public pressure on – industry laggards. The learning forum is still in its infancy and so its performance cannot yet be assessed.

By means of its "policy dialogues," the Compact generates shared understandings about, for example, the socially responsible posture for companies when operating in countries afflicted by conflict. This particular dialogue has explored how companies can conduct impact assessments and reduce the risks that their own behavior may fuel such conflicts; achieve greater transparency in their financial transactions with the parties to conflicts; and devise revenue sharing regimes that will benefit local populations.[59] The results from these dialogues play a normative role in the broader public arena, and they directly inform the UN's own conflict prevention and peacemaking activities.

Finally, through its "partnership projects" in developing countries the Compact contributes to capacity building where it is needed most. Ongoing cases include support for microlending, investment promotion, HIV/AIDS awareness programs for employees in sub-Saharan Africa, devising sustainable alternatives to child labor, and a host of initiatives in ecoefficiency and other dimensions of environmental management. One of the success stories at the Johannesburg World Summit on Sustainable Development was the Global Compact partnership effort to promote investment in the least developed countries.[60]

Companies initiate participation in the Compact with a letter of commitment from their Chief Executive Officer to the Secretary-General, a step that often requires Board approval. Since a kickoff event in July 2000, some 400 companies worldwide – based in Europe, the United States, Japan, Hong Kong, India, Brazil, Thailand and elsewhere – have done so. [61]

Organizationally, the Compact comprises a series of nested networks. The Secretary-General's office provides strategic direction, policy coherence and quality control. The participating UN agencies, companies, international labor, transnational NGOs, and university-based research centers do the heavy lifting in the learning forum, policy dialogues and partnership projects.

The Global Compact has triggered several complementary regional, national, and sectoral initiatives. Typically, they take a subset of interested GC participants beyond its minimum commitments. For example, Norway's Statoil and the International Federation of Chemical, Energy, Mine and General Workers' Unions reached an agreement within the GC framework whereby Statoil is extending the same labor rights as well as health and safety standards to all its overseas operations that it applies in Norway – including Vietnam, Venezuela, Angola, and Azerbaijan.[62] A Nordic Global Compact Network has been established, as has a "Friends of the Global Compact" network in Germany, both pursuing additional work programs of interest to their participants. Pilot projects for country-level counterparts – "local compacts" – are under way in some twenty developing countries, under the leadership of the United Nations Development Program. In addition, a number of initiatives intended for other purposes have associated themselves with the GC. The most unusual is the multi-stakeholder Committee for Melbourne, which incorporated the GC principles into the strategic plan it developed for that Australian city (City Plan 2010), and is encouraging all firms doing business there to embrace them.[63]

As noted, the Compact is not a code of conduct but a social learning network.[64] It operates on the premise that socially legitimated good practices will help drive out bad ones through the power of transparency and competition. The UN General Assembly could not generate a meaningful code of conduct at this time even if that were deemed desirable; the only countries that would be eager to launch such an effort are equally unfriendly to the private sector, human rights, labor standards and the environment.[65] In any event, many of the GC's principles cannot be defined at this time with the precision required for a viable intergovernmental code. No consensus exists on precisely what a "precautionary approach" comprises – that in the face of environmental uncertainty the bias should favor avoiding risk – even though the principle was enshrined at the 1992 Rio Conference. Similarly, no consensus exists, even among advocates, on where, in long and complex chains of relationships, to set the threshold of corporate "complicity" in human rights abuses.[66] Accumulated experience – through trial, error and social vetting – will gradually fill in the blanks.

Moreover, ex ante standards often become performance ceilings that are difficult to change – witness the inability of the U.S. Senate to muster the political will to improve automobile fuel efficiency standards that have not been altered since 1985, long before the prevalence of so-called sports utility vehicles.[67] In contrast, the Compact seeks to peg company performance globally to evolving international community-based “good practices,” thereby potentially “ratcheting up” performance on an ongoing basis.[68]

The Global Compact is based on principles that were universally endorsed by governments, thus stipulating aspirational goals of the entire international community. It enlists partners in the corporate sector and civil society to help bridge the gap between aspiration and reality – to become agencies for the promotion of community norms. Thus, the Compact is a heterodox addition to the growing menu of responses to globalization’s challenges that engage the private sector – including corporate codes of conduct, social and environmental reporting initiatives, and various other means to promote and monitor corporate social responsibility.

A Global Public Domain

Despite the great progress that has been achieved in promoting voluntary initiatives, their scope remains limited. For example, the Forest Stewardship Council has certified 70 million acres of forests, which amounts to a mere four percent of the total acreage controlled by timber companies.[69] Similarly, sales of Fair Trade Certified coffee are estimated to have been 30 million pounds in 2001, a tiny fraction of total global coffee sales.[70] Fewer than 200 firms out of a total of 1,500 participate in the US chemical industry’s Responsible Care program.[71] Of the 400 companies subscribing to the Global Compact, perhaps no more than a fourth are deeply engaged. And so on, throughout other industry sectors. By themselves, therefore, they do not and cannot constitute the entirety of solutions.

At the same time, these company-based initiatives are significant not only for what they achieve directly, however, but also because they are triggering broader second-order consequences. Consider some of the main elements and actors.

First, the investment community has shown growing interest, which brings large amounts of capital into play. Instruments for socially responsible investment, like the Domini and Calvert mutual funds, are proliferating, and major pensions funds, including America's largest, the California Public Employee Retirement System, have made socially responsible investment a priority.[72]

Second, the public sector is slowly entering the picture. Several OECD countries – the UK, France and the Netherlands – have begun to encourage or require companies to engage in social reporting, for example, and to promote corporate social responsibility through other means; the European Union has issued a green paper on the subject.[73] And the 2002 World Summit on Sustainable Development would have been an outright failure were it not for the many public-private partnership projects it generated.[74] Some governments entered these in part to avoid more binding commitments, to be sure, including the United States, which sought to avoid any targets or timetables; but they also look to such partnerships as a means to leverage limited resources, and to learn by doing in the face of high risk and uncertainty.[75]

Where labor is included in voluntary initiatives – as in the Global Compact – it gains a global platform that may help compensate for, and possibly overcome, its stagnant and even shrinking platform at the national level. Indeed, no social partner has made more effective use of the Global Compact than labor.

Perhaps the most significant development politically is the emergence of a new advocate for a more effective global public sector: business itself. Corporate leaders at the frontier of corporate social responsibility issues have begun to realize that the concept is infinitely elastic: the more they do, the more they will be asked to do. As a result, business leaders themselves have begun to ask, "*Where* is the public sector?" Three elite global business groups – the World Economic Forum, International Chamber of Commerce, and World Business Council for Sustainable Development – recently launched governance initiatives, not to *curtail* the public sector but to clarify where private sector responsibility ends and public responsibility begins.[76]

Similarly, in the staggering HIV/AIDS treatment crisis in Africa, as the major pharmaceutical companies have been forced to lower their prices, and as employers such as Anglo American Mines have been obliged to begin gratis treatment programs for their employees – a third of whom are infected in Anglo's case – they have become strong advocates for public sector capacity building in education and public health alike.[77]

Finally, at the end of the day the accumulation of experience inevitably will lead to a desire for greater benchmarking, for moving from "good" to "best" practices and even formal codification, so that some of the "soft law" products of voluntary initiatives are likely to become "harder" law down the road. The advocates will include industry leaders to lock in their own first-mover advantages, or wanting a level playing field vis-à-vis laggards – as happened when several major energy companies lobbied the U.S. Congress for some form of greenhouse-gas limits after President Bush rejected the Kyoto Protocol.[78] Laggards have a harder time opposing standards based on actual achievements by their peers than ex ante standards.

This terrain is fraught with strategic manipulation and the potential for shirking. But it also opens the door to more firmly institutionalizing an emerging global public domain by bringing the public sector into it. Globalization was a one-way bet for the business community: governments were needed to create the space within which business could expand and integrate, but they were not otherwise welcome. The combination of global governance gaps and governance failures, however, created an organizational niche that civil society actors began to occupy, and from which they have been engaging the global business community in the attempt to balance its newly acquired rights with new social responsibilities. Now we are slowly beginning to come full circle: business wants help to channel some of the pressure it faces into the construction of at least minimally effective public sectors, including at the global level. This sets of up the possibility of a very different political dynamic than existed as recently as the 1990s.

CONCLUSION

When we reflect on how hard it was and how long it took to institute the original embedded liberalism compromise at the national level, the prospect of achieving a similar social framing of global market forces seems exponentially more daunting. But if there is one similarity between the two eras, and the two levels of social organization, it is in the respective roles of the private sector as an inadvertent transformational force – be it the hegemony of the great "trusts" in the late 19th century, the abysmal failure of financial institutions in the interwar period, or the spread of multinational corporate empires today. The international political arena differs radically, characterized, as it is, by the absence of government. And so at the global level there will be many more zigs, many more zags, and quite probably many more failures. But our discussion has outlined both a dynamic of possible change and a possible trajectory.

I have argued that, as a result of the expansion of civil society and its engagement with the corporate sector, a global public domain is emerging. I take that to mean an arena inhabited by various actors for whom the territorial state is not the cardinal organizing principle, as well as by states; and wherein a variety of human interests is expressed and pursued directly, not merely those mediated – promoted, filtered, interpreted – by the state. Indeed, some areas of global public policy would barely exist were it not for non-state actors. And in addition to the traditional machinery of interstate governance, the likes of essentially private certification institutions are becoming significant components of global rule making. But private governance produces only partial solutions, and its own unfolding brings the public sector back in.

It is difficult at this early stage to be more precise, and thus it is doubly imperative not to exaggerate either the virtues or the defects of these institutional developments. In view of the fragility of voluntary initiatives like certification institutions and the Global Compact, it seems highly implausible to depict them as expressions of the rise of global "corporatism," for example, let alone conjuring up the ghost of corporatism's fascist ancestry as a scenario for the global future.[79] At the same time, it also seems at least premature to view them as expressions of cosmopolitan democracy.[80] Greater pluralism, perhaps; but we are a long way from turning rich country consumers, the employees of transnational corporations or even dedicated activists into global citizens. Moreover, the skewed distribution of agential capacity between North and South is too pronounced, accountability problems too pervasive and the distributional consequences of these kinds of global governance instruments too poorly understood for us to believe that they reflect some new stable equilibrium.

What we can say is that a fundamental recalibration is going on of the public-private sector balance, and it is occurring at the global level no less than the domestic. Haltingly and erratically, something akin to an embedded liberalism compromise is being pulled and pushed into the global arena, and the corporate connection is a key element in that process.

[1]John Gerard Ruggie, "International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order," *International Organization*, 36 (Spring 1982). The essay drew on Karl Polanyi's classic and still unsurpassed account of these wrenching struggles in *The Great Transformation* (Boston: Beacon Press, 1944); for a recent economic history see Harold James, *The End of Globalization: Lessons from the Great Depression* (Cambridge, Mass.: Harvard University Press, 2001).

[2]Kofi Annan, "A Compact for the New Century," 31 January 1999 (UN, SG/SM/6881).

[3]For a cross section of critiques see Robin Broad, ed., *Global Backlash: Citizen Initiatives for a Just World Economy* (Lanham, MD: Rowman & Littlefield, 2002). Also see the excellent analysis by Susan Ariel Aaronson, *Taking Trade to the Streets* (Ann Arbor: University of Michigan Press, 2001).

[4]"Working for a Better Globalization," Remarks by Horst Köhler at the Conference on Humanizing the Global Economy, Washington, D.C., 28 January 2002.

[5]The difficulties of statistical measurement are formidable. Robert Wade's chapter in this volume ("Globalization, Poverty and Income Distribution: Does the Liberal Argument Hold?") addresses the methodological issues and substantive findings, and reaches a pessimistic conclusion; also see Branko Milanovic, "The Two Faces of Globalization: Against globalization as we know it," available at www.worldbank.org/research/inequality/pdf/naiveglobl.pdf. On the other side, see Xavier Sala-i-Martin, "The Disturbing 'Rise' of Global Income Inequality," National Bureau of Economic Research Working Paper No. 8904, April 2002.

[6]The Census Bureau reports that the share of total household income accounted for by the bottom quintile increased to 3.7% in 1995, from 3.6% in 1993, but by 1997 it had dropped again to its earlier level, where it remained as of 2000. Carmen DeNavas-Walt, Robert W. Cleveland and Marc. I. Roemer, *Money Income in the United States: 2000* (US Census Bureau, September 2001), Table C, p. 8. Current figures are noted in Louis Uchitelle, "Stagnant Wages Pose Added Risks to Weak Economy," *New York Times,* August 11, 2002.

[7]For example, Dani Rodrik has led the way in rigorously challenging World Bank claims that trade liberalization leads to greater success in promoting economic growth and poverty reduction. Among other things, he shows that that in China and India the main trade reforms followed, not preceded, the onset of higher growth – and, indeed, that substantial increases in the volume of trade preceded trade policy liberalization. Rodrik, "Comments on 'Trade, Growth, and Poverty,' by D. Dollar and A. Kraay, available at http://ksghome.harvard.edu/~.drodrik.academic.ksg/Rodrik%20on%20Dollar-Kraay.PDF.

[8]For detailed surveys of what gets "regulated" at the global level, and how, see P. J. Simmons and Chantal de Jonge Oudraat, eds., *Managing Global Issues* (Washington, D.C.: Carnegie Endowment, 2001), and John Braithwaite and Peter Drahos, *Global Business Regulation* (New York: Cambridge University Press, 2000).

[9]The business community itself felt that the big pharmaceutical companies put themselves in an untenable position. Gardiner Harris and Laurie McGinley, "AIDS Gaffes in Africa Come Back to Haunt Drug Industry at Home," *Wall Street Journal*, April 23, 2001.

[10]Vito Tanzi and Ludger Schuknecht, *Public Spending in the 20th Century* (New York: Cambridge University Press, 2000).

[11]David R. Cameron, "The Expansion of the Public Economy: A Comparative Analysis," *American Political Science Review,* 72 (December 1978); and Peter J. Katzenstein, "The Small European States in the International Economy," in John Gerard Ruggie, ed., *The Antinomies of Interdependence* (New York: Columbia University Press, 1983).

[12]Garrett seems to think that embedded liberalism should be measurable by some fixed formula linking year-to-year increases in the degree of openness to levels of growing social expenditure, allowing for a time lag. Geoffrey Garrett, "Capital Mobility, exchange rates and fiscal policy in the global economy," *Review of International Political Economy,* 7 (Spring 2000). But broad social frameworks of this sort work as constitutive expectations pertaining to an overall order of relations, not fixed bargains that govern every transaction. For a discussion of this difference in perspectives, see John Gerard Ruggie, "What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge," *International Organization,* 52 (Autumn 1998).

[13]I concluded my 1982 article with the observation that the greatest threat to embedded liberalism came not from the so-called new protectionism, as was then widely assumed, "but the resurgent ethos of liberal capitalism" (p. 413). Also see Mark Blyth, *Great Transformations: The Rise and Decline of Embedded Liberalism* (New York: Cambridge University Press, 2002).

[14]Government expenditure on public debt rose rapidly from an average of 1.4 percent of GDP in 1970 to 4.5 percent in 1995. Tanzi and Schuknecht, p. 46.

[15]Mary Ruggie, *Realignments in the Welfare State* (New York: Columbia University Press, 1996).

[16]Clearly financial market integration has increased the cost of utilizing capital controls. For example, when Malaysia imposed targeted and time-bound controls to limit domestic spillover from the Asian financial crisis, for which it had no responsibility, all the major credit rating agencies downgraded Malaysia's sovereign risk rating – Fitch IBCA to "junk bond" status. Said a spokesperson for Fitch: "We are in no doubt about Malaysia's ability to service its debt. It is a question of willingness to do so" – even though the Malaysian government had done nothing to indicate any such unwillingness. See Rawi Abdelal and Laura Alfaro, "Malaysia: Capital and Control," Harvard Business School, Case 9-702-040 (June 4, 2002), p. 12.

[17]Dani Rodrik *Has Globalization Gone Too Far?* (Washington, D.C.: Institute of International Economics, 1997).

[18]Geoffrey Garrett, *Partisan Politics in the Global Economy,* (New York: Cambridge University Press, 1998).

[19]Of course, we would also want to know if globalization over time affects domestic coalitional possibilities. For one cut at this question see Jeffry A. Frieden and Ronald Rogowski, "The Impact of the International Economy of National Policies," in Robert O. Keohane and Helen V. Milner, eds., *Internationalization and Domestic Politics* (New York: Cambridge University Press, 1996).

[20]Geoffrey Garrett and Deborah Mitchell, "Globalization, government spending and taxation in the OECD," *European Journal of Political Research,* 39 (March 2001), p. 147; and Garrett, "Capital Mobility, Exchange Rates and Fiscal Policy," p. 157. Interestingly, Garrett and Mitchell find no signs that this relationship is true specifically of trade with low-wage countries.

[21]Garrett and Mitchell, p. 159.

[22]Congress agreed to spend up to $12 billion over a ten year period for such assistance, including a tax credit for 65% of the cost of health insurance should workers lose their jobs to foreign competition. Congress also authorized a pilot project for wage insurance to dislocated workers, under which they would receive some compensation for lower wages in a new job. "Promoting the noble cause of commerce," *The Economist*, August 3, 2002.

[23]See, for example, Richard B. Freeman and Lawrence Katz, "Rising Wage Inequality: The United States versus other Advanced Countries," in Freeman, ed., *Working Under Different Rules* (New York: Russell Sage Foundation, 1994).

[24]Edward E. Leamer, "Wage Inequality from International Competition and Technological Change: Theory and Country Experience," American Economics Association, *Papers and Proceedings*, May 1996.

[25]Robert Z. Lawrence and Matthew J. Slaughter, "International Trade and American Wages in the 1980s: Giant Sucking Sound or Small Hiccup?" *Brookings Papers on Economic Activity: Microeconomics*, (No. 2, 1993), citation on p. 165. One source of disagreement is that Lawrence and Slaughter find no evidence that labor-intensive tradable goods have declined in price (and thus driven down wages). Leamer suggests that a longer time span must be considered because prices take time to ripple through the economy.

[26]Paul Krugman, "Europe Jobless, America Penniless," *Foreign Policy*, 95 (Summer 1994); Krugman and Robert Lawrence, "Trade, Jobs and Wages," *Scientific American*, 270 (April 1994); and Krugman and A. J. Venables, "Globalization and the Inequality of Nations," *Quarterly Journal of Economics*, 110 (1995).

[27]*Op.cit.*, p. 311. Addressing specifically the effects of technological change, Leamer argues: "To do the job right, one really needs an accurate, complete, world-wide, long-run, general-equilibrium input-output model estimated from data that may or may not be available."

[28]Rodrik, *Has Globalization Gone Too Far?*

[29]Jagdish Bhagwati, "Trade and Wages: A Malign Relationship?" Columbia University, Department of Economics, Discussion Paper # 761, October 1995. Bhagwati's interpretation further stipulates that in such labor markets employers are reluctant to invest in training unskilled workers, putting them at a further disadvantage.

[30]"Americans on Globalization," http://pipa.org/OnlineReports/Globalization/global_rep.html.

[31]Matthew Mendelsohn and Robert Wolfe, "Values, Interests and Globalization: The Continued Compromise of Embedded Liberalism," paper presented at the conference on "Global Governance: Towards a New Grand Compromise?" University of Toronto, 29 May 2002, available at http://qsilver.queensu.ca/~wolfer/General/research.html. Also see Mendelsohn and Wolfe, "Globalization, Trade Policy and the Permissive Consensus in Canada," *Canadian Public Policy*, 28 (No 3, 2002).

[32]The regression results are reported in tables 3 and 4 of "Values, Interests and Globalization."

[33]I first flagged this issue in John Gerard Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization*, 46 (Winter 1993).

[34]Of course, individual states on the periphery may fail as a result of collapsed internal authority and the usurpation of the state's coercive apparatus for factional or private ends – as discussed in, for example, Mats Berdal and David M. Malone, eds., *Greed and Grievance: Economic Agendas in Civil Wars* (Boulder, CO.: Lynne Rienner, 2000).

[35]For good discussions of the concept of "public domain" – as distinct from, on the one side, the market and, on the other side, its narrower counterpart, the public sector – see Daniel Drache, ed., *The Market or the Public Domain: Global Governance and the Asymmetry of Power* (London: Routledge, 2001).

[36]I use the term "civil society organization" rather than NGO (non-governmental organization) to include transnational social movements, coalitions and activist campaigns as well NGOs.

[37]For useful introductions, see Sanjeev Khagram, James V. Riker and Kathryn Sikkink, eds., *Restructuring World Politics: Transnational Social Movements, Networks and Norms* (Minneapolis: University of Minnesota Press, 2002); Ann M. Florini, ed., *The Third Force: The Rise of Transnational Civil Society* (Washington, D.C.: Carnegie Endowment for International Peace, 2000); and Jessica Mathews, "Power Shift," *Foreign Affairs,* 76 (January/February 1997).

[38]A good comparable discussion may be found in Cary Coglianese, "Social Movements, Law, and Society: The Institutionalization of the Environmental Movement," *University of Pennsylvania Law Review,* 150 (November 2001).

[39]On human rights, see Thomas Risse, "The Power of Norms versus the Norms of Power: Transnational Civil Society and Human Rights," and on anti-corruption, Fredrik Galtung, "A Global Network to Curb Corruption: The Experience of Transparency International," in Florini, *The Third Force*.

[40]A global coalition of CSO's made the case that certain of the MAI's provisions on investment protection would enable TNCs to challenge domestic environmental and labor standards on the grounds that they had the equivalent effect of expropriation, so that companies adversely affected could claim compensation. Supporting that fear was a 1996 case involving the Ethyl Corporation, which successfully sued the Canadian government under a similar provision of the North American Free Trade Agreement when Canada banned a gasoline additive Ethyl produced, with Canada agreeing to an out-of-court settlement of $13 million. Andrew Walter, "NGOs, Business, and International Investment: The Multilateral Agreement on Investment, Seattle, and Beyond," *Global Governance,* 7 (January-March 2001); and Stephen J. Kobrin, "The MAI and the Clash of Globalizations," *Foreign Policy,* 112 (Fall 1998). Both authors stress that factors other than activist pressure also contributed to the MAI's demise.

[41]Motoko Mekata, "Building Partnerships toward a Common Goal: Experiences of the International Campaign to Ban Landmines," in Florini, *The Third Force;* and Ramesh Thakur and William Malley, "The Ottawa Convention on Landmines: A Landmark Humanitarian Treaty in Arms Control?" *Global Governance,* 5 (July-September 1999).

[42]Robert O'Brien, Jan Aart Scholte, Marc Williams and Anne Marie Goetz, *Contesting Global Governance* (New York: Cambridge University Press, 2000).

[43]Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca, N.Y.: Cornell University Press, 1998). Also see Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton: Princeton University Press, 2001).

[44]Good overviews may be found in Gary Gereffi, Ronie Garcia-Johnson and Erika Sasser, "The NGO-Industrial Complex," *Foreign Policy,* 125 (July/August 2001), and several unpublished papers on their websites (www.env.duke.edu/solutions/colloquia-7th.html/, and www.env.duke.edu/solutions/research-envcert.html). On labor standards specifically, see Adelle Blackett, "Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct," *Indiana Journal of Global Legal Studies,* 8 (2001): 401-447.

[45]The number of multinationals and their subsidiaries are reported in the *World Investment Report* (Geneva: United Nations Conference on Trade and Development, 2001). It is impossible to calculate the actual number of suppliers; Nike, for example, has approximately 750, and it is at the lower end among comparable firms in the number of factories as a fraction of its revenue base (personal communication from Nike executive).

[46]Surprisingly little systematic research has been done on this question, in contrast to the volume of rhetoric it has generated. For a careful study in the environmental area, see Ronie Garcia-Johnson, *Exporting Environmentalism: U.S. Multinational Chemical Corporations in Brazil and Mexico* (Cambridge, Mass.: MIT Press, 2000).

[47]See the sources in fn. 42.

[48]OECD, Working Party of the Trade Committee, "Codes of Corporate Conduct – An Expanded Review of their Contents," TD/TC/WP(99)56/FINAL (7 June 2000). Identifying the total universe of cases would require conducting a company-by-company survey, coupled with complementary surveys of industry associations and relevant CSOs – a prohibitive undertaking. Accordingly, the OECD warns that its inventory is neither a random nor a representative sample. In light of these data collection problems, much of the literature focuses on the far smaller but better known universe of sectoral multi-stakeholder codes and certification agreements; see Gereffi, Garcia-Johnson and Sasser, "The NGO-Industrial Complex."

[49]"Codes of Corporate Conduct," Table 6, p. 35.

[50]http://www.levistrauss.com/responsibility.

[51]http://www.shell.com/html/investor-en/shellreport01/reports2001/frameset.html.

[52]SA8000, a system developed by Social Accountability International, covers a wide range of labor rights, health and safety standards, working conditions and compensation issues. It draws on the idea of quality control standards that are nearly universally used in the production of goods, and extend this concept to the treatment of workers. Companies subscribe to the SA8000 code or "management system," and their facilities are audited and "certified" by external auditors, who are themselves trained and certified by the SA8000 governing body. Deborah Leipziger, *SA8000: The Definitive Guide to the New Social Standard* (London: Financial Times/Prentice Hall, 2001.

[53]Their attempt is to make social and environmental reporting as routine as financial reporting. Interestingly, the two systems reflect their respective national origins in their orientation: the GRI, a U.S. invention, tries to capture the full range of possibilities by means of a large number of discrete indicators, whereas AA1000, which originated in the UK, is more concerned with instituting guiding principles and maximizing transparency. See http://www.globalreporting.org, and http://www.accountability.org.uk.

[54]Harriet Chiang, "Court says Nike must defend its PR; Free speech doesn't protect labor claims," *San Francisco Chronicle*, May 3, 2002.

[55]Erika N. Sasser, "Gaining Leverage: NGO Influence on Certification Institutions in the Forest Products Sector," paper presented at the 7th Annual Colloquium on Environmental Law & Institutions, Duke University, December 7-8, 2001; and Blackett, "Global Governance, Legal Pluralism and the Decentered State."

[56]Activist groups and some mainstream NGO's fear that because it is not a code of conduct, with explicit performance standards and compliance monitoring, the Compact gives companies a free ride. But as

the following discussion tries to make clear, the Compact is a mechanism intended to engage companies in the promotion of UN goals, not to regulate them. Regulation is a perfectly valid objective, but it is not the only one that counts. The most vocal critic on this score is an anti-globalization group called CorpWatch, at www.corpwatch.org.

[57]The GC participants include the UN (the Secretary-General's Office, Office of the High Commissioner for Human Rights, International Labor Organization, UN Environment Program and the UN Development Program); the International Confederation of Free Trade Unions (ICFTU); more than a dozen transnational NGOs in the three areas covered by the GC, such as Amnesty International, the International Union for the Conservation of Nature and Oxfam; as well as individual companies and international business associations. For up-to-date information, see www.unglobalcompact.org.

[58]The 9 principles are: support and respect for the protection of internationally proclaimed human rights; non-complicity in human rights abuses; freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced and compulsory labor; the effective abolition of child labor; the elimination of discrimination in respect of employment and occupation; a precautionary approach to environmental challenges; greater environmental responsibility; and encouragement of the development and diffusion of environmentally friendly technologies.

[59]Consult www.unglobalcompact.org.

[60]Ibid.

[61]Brand vulnerability, as already indicated, is a key factor driving companies headquartered in the industrialized countries. In addition, some companies in cutting edge industries have found that they cannot sufficiently motivate the very best people with monetary rewards alone, as a result of which they have adopted more elevated social purposes as part of their corporate culture. Indeed, the GC has done best where companies have created mechanisms of internal communication that permit employees to comment on and report how their own work relates to the implementation of the nine principles – Novartis and Volvo being exemplars. On "internal branding" of this sort, see Bernard Stamler, "Companies are developing brand messages as a way to inspire loyalty among employees," *New York Times,* July 5, 2001. In the case of developing country firms, their rationale for participating also includes a belief about what is expected of aspiring global corporate players, and in some cases a perceived opportunity for them to navigate domestically around the dictates of their own governmental bureaucracies. (Based on interviews with participants.)

[62]"Statoil Signs Agreement with ICEM," *Europe Energy,* March 30, 2001.

[63]http://www.melbourne.vic.gov.au/cityplan/infopage.cfm.

[64]The distinction between the two approaches is discussed at greater length in John Gerard Ruggie, "The Theory and Practice of Learning Networks: Corporate Social Responsibility and the Global Compact," *Journal of Corporate Citizenship,* 5 (Spring 2002).

[65]In contrast, the General Assembly has endorsed Annan's approach to social partnerships, including the Global Compact, in "Towards Global Partnerships," A/Res/56/76 (24 January 2002).

[66]For a good discussion of the difficulties, see Andrew Clapham, "On Complicity," in Marc Henzelin and Robert Roth, eds., *Le Droit Pénal à l'Épreuve de l'Internationalisation* (forthcoming).

[67]David E. Rosenbaum, "Senate Deletes Higher Mileage Standard in Energy Bill," *New York Times,* March 14, 2002. The final vote was 62-38 against.

[68]This concept is due to Charles Sabel, Dara O"Rourke and Archon Fung, "Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace," John F. Kennedy School of Government, Harvard University, KSG Working Paper No. 00-010, May 2, 2000.

[69]Andrew C. Revkin, "Forget Nature. Even Eden is Engineered," *New York Times*, August 20, 2002; and Michael E. Conroy, "Can Advocacy-Led Certification Systems Transform Global Corporate Practices? Evidence and Some Theory," University of Massachusetts, Amherst, Political Economy Research Institute, DPE-01-07, September 2001. Conroy claims that the total acreage is more than five percent, and he points out that home improvement centers like Home Depot appear willing to pay a premium for FSC certified lumber. Home Depot got into the act in the first place because activists chose to boycott it to gain leverage over the timber companies, which lack sufficient public personae to be vulnerable to consumer pressure. All major U.S. home improvement outlets participate in the FSC.

[70]Conroy, "Can Advocacy-Led Certification Systems Transform Global Corporate Practices?"

[71]Andrew King and Michael J. Lenox, "Industry Self-Regulation Without Sanctions: The Chemical Industry's Responsible Care Program," *Academy of Management*, 43 (August 2000).

[72] Amy Domini, *Socially Responsible Investing: Making a Difference and Making Money* (Chicago: Dearborn Trade, 2001).

[73]Commission of the European Communities, "Promoting a European framework for Corporate Social Responsibility" (Brussels: COM [2001] 366 final, 18 July 2001). The OECD itself has issued guidelines for transnational corporations, but there is little evidence that companies have paid much attention to them. *The OECD Guidelines for Multinational Enterprises, Revision 2000* (Paris: OECD, 2000).

[74]Barry James, "Action plan of summit looks weak to activists," *International Herald Tribune*, September 3, 2002.

[75]Some of these partnerships fall into the broader category of "global public policy networks," tri-sectoral efforts that also include the World Commission on Dams, the Climate Action Network and the Roll-Back-Malaria campaign, among others; see Wolfgang H. Reinicke and Francis Deng, *Critical Choices: The United Nations, Networks, and the Future of Global Governance* (Ottawa: International Development Research Center, 2000).

[76]The World Economic Forum plans to publish an annual Global Governance Report, which will assess the respective contributions that various sectors of society are making to solving global problems; http://www.weforum.org/site/homepublic.nsf/Content/Global+Governance+Task+Force.

[77]Julia Finch, "Anglo Calls for Help on Aids," *The Guardian* (London), August 17, 2002.

[78]"These companies have concluded that limits on carbon dioxide and other greenhouse, or heat-trapping, gases are inevitable. …And to plan long-term investments, they want the predictability that comes from quick adoption of clear rules." Andrew C. Revkin and Neela Banerjee, "Energy Executives Urge Voluntary Greenhouse-Gas Limits," *New York Times*, August 1, 2001. The companies included the Royal Dutch/Shell Group, BP, several power-generating companies – and Enron, which hoped to capture the global permits trading business.

[79]Marina Ottaway, "Corporatism Goes Global: International Organizations, Nongovernmental Organizations Networks, and Transnational Business," *Global Governance*, 7 (September-December 2001). The referent is not corporations, of course, but the system of governance that closely integrated elements of

the state, business and peak labor associations to manage the early 20th century breakdown of capitalism in several European countries, including Germany and Italy.

[80]The major work in this genre is David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford: Stanford University Press, 1995); and, more recently, David Held, "Law of States, Law of Peoples: Three Models of Sovereignty," *Legal Theory,* 8 (No. 1, 2002).