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Corporate Codes of Conduct: Profit, Power and Law in the Global Economy

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CORPORATE CODES OF CONDUCT: PROFIT, POWER AND LAW IN THE GLOBAL ECONOMY

H.W. ARTHURS*

1. INTRODUCTION: WHAT ARE CORPORATE CODES?

Industry self-regulation has a long history,¹ but corporate codes of conduct have become a focus of political and social controversy, and of scholarly inquiry, only over the past two or three decades. The ambition of this chapter is to locate these codes along the changing coordinates of global political economy and law. Codes, for these purposes, are not a subject but an object; they are important not so much in themselves but for what they reveal about other phenomena. True, codes are an object which is infinitely various: they operate in different industrial and commercial, social and political contexts, take on different institutional forms with different formal and informal affinities to state law, and yield variable practical and symbolic outcomes.² However, in order to offer a brief preliminary description of what they are (and are not) and what they do (and do not do) it is necessary to at least begin by treating them in terms of their common characteristics, rather than their differences.

¹ I have briefly reviewed this history in H. Arthurs, *"Without the Law": Administrative Justice and Legal Pluralism in Nineteenth Century England* (Toronto: University of Toronto Press, 1985), and in *Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation* in J. Conaghan, K. Klare, M. Fischl (eds.) *Transformative Labour Law in an Era of Globalization* Oxford: Oxford University Press, 2002). See also M. Baker, *Tightening the Toothless Vice: Codes of Conduct and the American Multinational Enterprise* (2001) 20 *Wisconsin International Law Journal* 89.

² N. Gunningham and J. Rees, *Industrial Self-Regulation: An Institutional Perspective* (1997) 19 *Law & Policy* 363.

Corporate codes are, first of all, corporate. That is to say, they are adopted by corporations or collectivities of corporations, usually unilaterally and as a result of a decision taken in the upper reaches of management.³ True, adoption may result from the corporation's unilateral decision to modify its conduct or alter its image, from its desire to demonstrate its adherence to best practice which has evolved in a particular business context, from its response to government or international initiatives designed to encourage corporate self-regulation, or by way of reaction to sanctions or rewards proposed by market or social actors.⁴ Analytically, however, it does not matter how or why a corporation reaches a decision that its interests would best be served by adopting a code; what is crucial is that neither the adoption of a code, nor its content, nor the modalities of its enforcement are explicitly mandated by legislation.⁵ It is this feature which distinguishes corporate codes from law *per se*. Why this binary distinction - law/non-law - is important, and what it signifies in contemporary legal theory and state practice will be examined later in this chapter. However, for present purposes it is sufficient to reiterate that corporate codes are by definition adopted and administered by corporations themselves - not by states or supra-state agencies.

³ S. Salbu, 'True Codes versus Voluntary Codes of Ethics in International Markets: Towards the Preservation of Colloquy in Emerging Global Communities' (1994) 15 U. of Pennsylvania Journal of International Business Law 327.

⁴ See generally B. Purchase, 'The Political Economy of Voluntary Codes' (Ottawa: 1997, Voluntary Codes Project, Industry Canada).

⁵ By contrast, some codes have legal effect: codes of conduct adopted by self-governing professional bodies exercising their statutory powers to discipline their members, codes laid down by government agencies or departments for the conduct by licenced practitioners of particular trades, and codes promulgated by private bodies such as standards organizations which are subsequently adopted by the state.

Second, corporate codes are normative.⁶ They prescribe behaviour by the directors, officers, and employees of the corporation which adopts them and often by closely-related entities such as subsidiaries, suppliers, distributors or sub-contractors. What behaviour? As the case studies in this volume suggest, corporate codes deal with business practice, the treatment of workers, relations with public officials, environmental impacts, human rights, or all of these.⁷ More specifically, they require that firms and individuals addressed by the code adhere to some positive standard and abstain from conduct which violates that standard. Since those addressed are all in some way vulnerable to sanctions for violations - corporate officers may be dismissed, employees may be disciplined, suppliers may be denied contracts - corporate codes are presumably meant to be obeyed. But in general, sanctions are neither specified *ex ante* nor applied *ex post*.

⁶ K. Getz, 'International Codes of Conduct: An Analysis of Ethical Reasoning' (1990) 9 *Journal of Business Ethics* 567.

⁷ K. Gordon and M. Miyake, *Deciphering Codes of Corporate Conduct: A Review of their Contents* Paris: OECD, Directorate for Financial, Fiscal and Enterprise Affairs, Working Papers on International Investment No. 99/2 (1999)

The absence of specific enforcement mechanisms and of sanctions for disobedience points to a third characteristic of corporate codes: though normative or prescriptive in form, they often appear to be merely didactic or hortatory in application. Many lack certain features which are conventionally found in public and private normative systems which are intended to shape conduct on an ongoing basis and in situations involving complex interactions. For example, the language of corporate codes is often more vague and open-textured than legislation and too vague either to give useful guidance to those who wish to comply or to permit offending conduct to be stigmatized. Nor is there, usually, any attempt to translate vague code language into operational specifics. For example, interpretative bulletins are seldom issued; code administrators are seldom well-trained; high-profile incidents of compliance or violation are seldom used as the occasion for adumbrating secondary meanings⁸. And most importantly, corporate codes seldom establish institutional structures or procedures which might generate pressure for compliance and make them more effective.⁹ Only a small number appear to fix a specific corporate officer with responsibility for compliance; procedures for complaints by, say, aggrieved workers are seldom laid down; proactive monitoring of compliance, while somewhat more common, remains sporadic and impressionistic; forums for the adjudication of alleged violations and the imposition of appropriate sanctions are infrequently provided, and when provided are even more rarely located at arm's length from the corporation's own authority structure. To somewhat understate, though corporate codes may set standards of behaviour, they do not do so in ways which are optimally designed to ensure that such standards are

⁸ A field survey of offshore clothing manufacturers shows that only about 30% posted their codes in the plant, and only about 30% offered any compliance training to local management. See U.S. Bureau of International Affairs *The apparel industry and codes of conduct: a solution to the international child labor problem?* Washington: U.S. Department of Labor, 1996 at p. 115-116.

⁹ For a recent survey of 182 corporate codes of conduct which substantiates this description see *Report of the Working Party of the Trade Committee of the Trade Directorate, Codes of Corporate Conduct - An Inventory*, Paris: OECD TD/TCWP(98)74, 1999.

adhered to.¹⁰

Finally, like most normative systems, corporate codes may serve symbolic as well as practical functions. For employees and contractors, adoption of a code may signal the corporation's commitment to a set of values and practices. Ideally, this signal will have an educative or acculturating effect; the values will be internalized; and appropriate behaviour will be volunteered making unnecessary recourse to complaints, investigations, adjudication or sanctions. For those outside the corporation - governments, consumers, social movements, the media - adoption of a code may send a similar message: that the corporation is committed to high standards of conduct; that compliance will be forthcoming; and that recourse to legislation, prosecutions, boycotts, adverse publicity and other third-party sanctions is unnecessary.¹¹

It is fair to say that much of the voluminous recent literature on corporate codes addresses these four key features: their provenance; their normative character; their structural and procedural shortcomings; and their symbolic significance. But relatively little of this literature attempts to comprehend these features within larger developments in the fields of international political economy and the sociology of law.

¹⁰ For supporting Canadian data, see R. Lindsay et al, 'Instilling ethical behaviour in organizations: A survey of Canadian companies' (1996) 15:4 *Journal of Business Ethics* 393; C. Force, *Commerce with Conscience: Human Rights and Corporate Codes of Conduct*, Montreal: ICHRDD, 1999. A more recent survey of major Canadian companies doing business abroad discloses that over 85% professed to have a written document dealing with corporate ethics relating to labour, environmental and business practices, including about 50% which described such statements as 'Rules of conduct' or 'Guidelines'. However, over 60% did not train their staff to administer such documents; that virtually all those which did spent 4 hours per year or less on such training; that only 15-25% of such companies applied any aspect of their ethics codes to suppliers and only 2-12% reported to their Boards of Directors on compliance; and that similarly low rates of Board oversight were exercised even with regard to the firms' own practices. Bribery stands apart as receiving somewhat more intensive and extensive scrutiny. See KPMG, *Ethics Survey 2000 - Managing for Ethical Practice* <<http://www.kpmg.ca/english/services/docs/fas/ethicsurvey2000e.pdf>>

¹¹ F. Furger, 'Assessing the Credibility of Voluntary Codes: A Theoretical Framework' in T. Dietz and P. Stern, *New Tools for Environmental Protection: Education, Information, and Voluntary Measures* (Washington: National Academies Press, 2002).

That is the business at hand.

2. *CODES IN THE GLOBAL POLITICAL ECONOMY*

Globalization, most would agree, is one of the formative developments of recent decades. But there are two very different accounts of globalization, as well as variations on each.¹²

The Amainstream@ account is distinctly optimistic. Its emphasizes, first, a dramatic increase in the volume and volatility in the movement of capital, goods, services and ideas across national borders. Hence a second feature: the appearance of an elaborate normative framework - treaties, doctrines of customary international law, contracts, interpretative conventions, national laws, a *Alex mercatoria@* - which makes that movement orderly and provides security and predictability for global business transactions.¹³ And a third: the repeal or amendment of legal regimes - especially national laws - which are perceived to constrain or distort the globalization of markets. And finally: all of these features are subsumed within a justificatory rhetoric which celebrates globalization as the source not only of general prosperity, but also of world-wide democratization and political liberalization.

¹² See e.g. Y. Sakamoto (ed.) *Global Transformations: Challenges to the State System* (New York: United Nations University Press, 1994); D. Held, A. McGrew, D. Goldblatt, J. Perraton *Global Transformations: Politics, Economics and Culture* (Stanford: Stanford University Press, 1999); R. Falk *Predatory Globalization: A Critique* (Cambridge: Cambridge University Press, 1999).

¹³ V. Gessner and A. Budak, *Emerging Legal Certainty: Empirical Studies in the Globalization of Law* (Aldershot & Brookfield: Ashgate, 1998); R. Appelbaum, W. Felstiner, V. Gessner *Rules and Networks - The Legal Culture of Global Business Transactions* (Oxford: Hart Publishing, 2001).

Situated within this optimistic account of globalization, corporate codes can be easily explained. New forms of economic activity have created the need for new normative regimes, not least to fill the void left by the inability of states to regulate business activity beyond their borders. Responsible corporate actors - working with international institutions, national governments and transnational NGOs - are responding to that need, and are contributing to the good governance of the global economy by constructing these new regimes in the form of codes, resulting in the trans-national dissemination of best practice including respect for the environment, workers' rights and human rights, and universal adherence to the highest standards of business ethics and good corporate citizenship.¹⁴ No doubt there is some validity in this explanation for the sudden proliferation of corporate codes over the past decade. But there is an alternative, more critical account of globalization which casts the whole project in quite a different light.

In this alternative account, increased transnational economic activity originates in a very small number of advanced countries - the EU, Japan and especially the U.S.; it is dominated by a handful of large (and constantly consolidating) corporations within those countries; it has primarily benefited a small elite of corporate actors and their agents and advisors; it has brought some advantages to some people in both the first and third worlds; but it has also caused considerable damage to many economies, communities, eco-systems and cultures. More to the point, while economic globalization has taken (and might yet take) many forms, in its current manifestation, it is closely identified with neo-liberalism. This is to say that its proponents favour not simply reduced barriers to trade, but reduced levels of taxation and state expenditures and of regulatory interventions in general. The corporations which are the principal agents and beneficiaries of globalization are also amongst the principal political supporters and advocates of neo-liberal public policies, especially in the United States. And the institutions which are most

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For an analysis of the potential advantages and shortcomings of this strategy, see B. Hepple, 'Race to the Top? International Investment Guidelines and Corporate Codes of Conduct' (1999) 20 *Comparative Labor Law and Policy Journal* 347.

influential in designing, coordinating and administering the global economy - the G-7, the OECD, the WTO, the World Bank - are pretty much committed to the adoption of neo-liberal policies by their member states.

Thus, it is hardly surprising that those persuaded by the more critical narrative should see globalization as a conditioning framework to prevent states from abandoning neo-liberalism,¹⁵ as a strategy designed not merely to promote neo-liberalism but to constitutionalize it and protect it against erosion by the periodic ebb and flow of the political tides.¹⁶ Nor is it surprising that they should be suspicious of institutional manifestations of globalization and regional economic integration, such as the World Bank, the WTO, NAFTA and the proposed FTAA.

To be sure, this critical account of globalization is no more nuanced than the mainstream account. It fails to take account of the persistence especially within the EU (albeit in attenuated form) of a commitment to social democratic and social market policies. It does not record the reconsidered views of some leading figures in the global economy who have acknowledged that so far globalization has failed to deliver on many of its promises. And of course, it does not acknowledge considerable variations amongst countries, corporations or communities in their sensitivity to issues of social justice and environmental responsibility. But to the extent that the critical account of globalization is accurate, it places corporate codes in a more controversial perspective.

¹⁵ R. Grinspun and R. Kreklewich, 'Consolidating Neoliberal Reforms: Free Trade as a Conditioning Framework' (1994) 43 *Studies in Political Economy* 33.

¹⁶ H. Arthurs, 'Constitutionalizing Neo-conservatism and Regional Economic Integration: TINA x 2' in T.J. Courchene (ed.) *Room to Manoeuvre? Globalization and Policy Convergence* (Kingston: McGill-Queen's University Press, 1999).

Instead of viewing corporate codes as having fortuitously appeared to fill a normative vacuum in the global economy, it is possible to argue that they have been deliberately promulgated by self-interested corporations (and encouraged by intervention-averse governments) to reinforce the neo-liberal contention that state regulation is more intrusive and expensive than self-regulation, if not altogether inappropriate or counter-productive.¹⁷ No less importantly, self-regulation - by codes and otherwise - is designed to legitimate corporate behaviour which might otherwise be found socially undesirable or contrary to state law.¹⁸ Indeed, codes can be seen as part of a larger trend to assign increased influence, prestige and power to global corporations while that of states declines. Corporations, for example, have long dominated the field of technical standard-setting, the necessary housework of capitalism,¹⁹ though ultimately, these standards receive the formal imprimatur of state law. And they have come to enjoy more and more scope to create the legal rules which govern their own cross-border business transactions, which states seem less and less inclined to supercede.²⁰ However, voluntary codes take the process one step further: they allow corporations to make something resembling law without state approval *ex ante* or *ex post*.²¹

¹⁷ For a critique see W. Scheuerman, 'Reflexive Law and the Challenges of Globalization' (2001) 9 *Journal of Political Philosophy* 81.

¹⁸ The whole theory of legitimation is admittedly controversial. See e.g. A. Hyde 'The Concept of Legitimation in the Sociology of Law' [1983] *Wisconsin Law Journal* 379.

¹⁹ L. Salter, 'The Housework of Capitalism: Standardization in the Communications and Information Technology Sectors' (1993) 23 *International Journal of Political Economy* 105.

²⁰ See e.g. *The Bremen v Zapata Off-Shore Co.* 407 US 1 (1972), *Mitsubishi Motors v Soler* 473 US 1 (1985), *Morguard Investments v De Savoye* [1990] 3 SCR 1077.

²¹ G. Teubner (ed.) *Global Law without a State* (Aldershot: Dartmouth Publishing Co., 1997).

Nor is this development surprising. Once it is accepted that many global corporations are richer and more powerful than states, it is a short step to acknowledge that they are almost the juridical equivalent of states. This tendency reached its apotheosis in the *Global Compact* signed by the Secretary-General of the UN with 100 of the world's largest companies, asking them to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards and the environment. But while enactment has legislative connotations for those subject to their control, corporate signatories do not themselves incur substantive legal obligations by subscribing to the nine core principles set out in the Compact. They acquire only a moral commitment to publically report each year at least one example of a practical initiative undertaken to implement these core principles. Their reports are to be published on the Global Compact website, which is intended to become an accessible forum for the exchange of information about corporate best practices, and for a policy dialogue amongst corporations, labour, NGOs and international organizations.²² In all these respects - self-regulation based on power, self-interest, non-binding commitments, vague principles, the absence of effective sanctions, and the promise of good governance - the Global Compact is, in essence, a voluntary meta-code. It epitomizes the current search for regulatory strategies which ultimately depend on appeals to corporate conscience and on moral suasion and socio-economic sanctions organized by civil society groups, rather than on the coercive power of the much-maligned and now-diminished state legal-administrative system.²³

²² The text is found at www.unglobalcompact.org. For a summary of the first corporate postings see <http://www.unglobalcompact.org/un/gc/unweb.nsf/content/newsletter.htm>. I have reviewed this development in H. Arthurs, *Corporate Self-regulation: Political Economy, State Regulation and Reflexive Labour Law* in T. Wilthagen and R. Rogowski (eds.) *Reflexive Labour Law* (vol. 2) (forthcoming, 2003).

²³ A. Fung, D. O'Rourke & C. Sabel, *Realizing Labor Standards* (2001) 26:21 *Boston Review*, online: <http://bostonreview.mit.edu/BR26.1/fung.html>; see also C. Sabel *et al.* *Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace* (2000) <http://www.law.columbia.edu/sabel/papers/ratchPO.html>.

Why would the Secretary-General - as well as states, social movements and labour unions - willingly acquiesce in what amounts to self-regulation by global business? The reasons are essentially pragmatic. Codes - the Global Compact included - are typically promulgated in the wake of egregious episodes of corporate misconduct which mobilize public indignation. As the Global Compact itself notes:

...[R]ising concerns about the effects of globalization on the developing world ... suggest that, in its present form, globalization is not sustainable. The Global Compact was created to help organizations redefine their strategies and courses of action so that all people can share the benefits of globalization, not just a fortunate few.²⁴

This is a praiseworthy objective, no doubt, but it is much less ambitious than attempting to readjust the balance of power between the corporations which dominate the world economy and the states, communities and peoples who are adversely affected by their >strategies and courses of action@.

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Text of UN Global Compact, supra note 22.

Individual states face similar problems when confronting these corporations. If they do not respond at all to allegations that corporations are abusing workers, consumers, the environment or human rights, they risk alienating public opinion and having to deal with disruptive boycotts organized by NGOs or labour unions. But if they respond too vigorously, they risk alienating foreign investors and having to defend themselves before a trade tribunal.²⁵ States - like the UN - therefore tend to opt for symbolic rather than effective responses. Specifically, they are often willing to pronounce themselves in favour of better corporate behaviour, and to accept assurances of such behaviour in the form of voluntary codes. As in the case of the UN, what is most important to the political authorities - and the offending corporation - is to be able to say that the problem has been addressed, and that safeguards have been put in place to aensure against repetition.

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D. Schneiderman, ANAFTA's Takings Rule: American Constitutionalism Comes to Canada (1996) 46 University of Toronto Law Journal 499.

Social movements also have reasons for acquiescing in the very imperfect outcomes likely to be achieved by voluntary codes.²⁶ They have limited mandates, are always short of resources and their greatest weapon - aroused public opinion - is inevitably a wasting asset. They too will therefore often welcome the chance to solve a particular problem, to win a particular struggle, by securing the adoption of a code. And finally, while labour unions do not suffer from the same institutional debilities as social movements, they are hard pressed to confront transnational corporate activities which adversely affect their members or workers abroad. They wield less bargaining strength, political influence and legislative protection than they once did; sympathetic or secondary action in solidarity with offshore unions is likely to be held illegal both at home and abroad; and the intended beneficiaries of such solidarity - third world workers - may suspect (rightly) that transnational labour standards will operate as a form of protectionism, which keeps first-world jobs at home and denies first-world market access to goods from low-wage economies. Thus, corporate codes may be the best that unions can hope for as well, but they testify to the current weakness of organized labour: they are adopted and administered unilaterally by the employer - arguably under pressure, but with no significant democratic participation by workers either through the electoral process or through collective bargaining.²⁷

²⁶ R. O'Brien, NGOs, Global Civil Society and Global Economic Regulation and R. Mayne, Regulating TNCs: The Role of Voluntary and Governmental Approaches in S. Picciotto and R. Mayne, *Regulating International Business - Beyond Liberalization* (New York: St. Martin's Press, 1999).

²⁷ A. Blackett, Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct (2001) 8 *Indiana Journal of Global Legal Studies* 401

However, experience with corporate codes has been disappointing for all concerned. Because of their structural and institutional limitations, canvassed above, codes seldom do actually address or solve problems - at least in their early iterations. As this has become better understood, all parties have modified their code strategies accordingly. Corporations have taken to developing codes in anticipation of crises rather than in reaction to them. They have attempted to enhance their efficacy by better drafting, by assigning clear responsibility for compliance, by engaging monitors and, in a few instances, by committing themselves to some form of third-party adjudication. Governments have begun to encourage the adoption of codes by providing technical advice and assistance, and in some cases, by providing incentives for effective code regimes.²⁸ Indeed, legislation has been proposed - unsuccessfully - in several jurisdictions which would require corporations to adopt codes under threat of losing their access to export loan guarantees and other government benefits.²⁹ Social

²⁸ The Canadian government has been particularly active in this regard. It has commissioned a series of research studies which were presented to a major stakeholders= conference on >Exploring Voluntary Codes in the Marketplace= (Sept. 1996) issued an extensive report - *Standards Systems: A Guide for Canadian Regulators* (Ottawa: Industry Canada, 1998) - and worked with stakeholders to develop a users= guide - *Voluntary Codes: A Guide to their Development and Use* (Ottawa: Industry Canada/Treasury Board, 1998). It has also maintained an ongoing Voluntary Codes Project with an activist Director [Kernaghan Webb, webb.kernaghan@ic.gc.ca] and a website [<http://www/strategis.ic.gc.ca/volcodes>]. Finally, it has helped or is helping to promote the use of voluntary codes, especially by Canadian-based firms doing business abroad. See e.g. Corporate Social Responsibility Initiative funded by Human Resources Development Canada in cooperation with the Conference Board of Canada, described in G. Khoury, J. Rostami, P. Turnbull, *Corporate Social Responsibility: Turning Words into Action* (Ottawa: Conference Board of Canada, 1999); International Code of Ethics for Canadian Businesses, described in R. Culpepper and G. Whiteman, *The Corporate Stake in Social Responsibility* in M. Hibler and R. Beamish (eds.) *Canadian Corporations and Social Responsibility* (Ottawa: The North-South Institute, 1998).

²⁹ In the United States, see the Corporate Code of Conduct Act, HR 4596 IH (Rep. McKinney) introduced June 7, 2000. Complying corporations would receive preferential treatment in the awarding of federal contracts, participation in trade and development programs and access to export-import credits and loan guarantees. The proposal did not pass. In Australia, a similar Corporate Code of Conduct Bill 2000 was introduced by Senator Vicki Bourne as a private member=s bill. it received First and Second Reading and was referred on 5 October 2000 to the Parliamentary Joint Committee on Corporations and Securities for inquiry and report by 31 March 2001 (subsequently extended to 28 June 2001). The Committee held public hearings and issued a report in June 2001 recommending against adoption on the grounds that the Bill was unnecessary and unworkable=. See <http://search.aph.gov.au/search/parlinfo.ASP?action=>

movements have bid, sometimes successfully, for a role in the initial drafting and ongoing administration of codes.³⁰ And a veritable industry of code consultants, monitors, auditors and experts has grown up to ensure that successive generations of codes do not suffer from the same defects as the first.³¹

browse&Path=legislation/.

³⁰ See H. Arthurs, *Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation* in J. Conaghan, K. Klare, M. Fischl (eds.) *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (Oxford: Oxford University Press, 2001)

³¹ By way of example, one of the Big five accounting/consulting firms advertises that it will develop corporate codes of conduct ... , ensure the integrity of regulatory controls, and investigate for regulatory compliance. See Pricewaterhouse Coopers http://www.pwcglobal.com/ca/eng/about/svcs/dai_lp.html. See also Deloitte, Touche, Tohmatsu <http://www.deloitte-sustainable.com/services/CSR.htm>. and KPMG <http://www.itcilo.it/english/actrav/telearn/global/ilo/code/ageof.htm>. However, auditing by these firms, which provide other services for their clients as well, has been criticized, see e.g. D. O'Rourke, *Monitoring the Monitors: A Critique of PricewaterhouseCoopers (PwC) Labor Monitoring* (Cambridge: Massachusetts Institute of Technology, 2000) For examples of independent monitoring agencies see: Social Accountability International [SA 8000] <http://www.cepaa.org>, Bureau Veritas Quality International [BVQI] www.bvqi.com and Interek Testing Services [ITS] www.itsqs.com. The Fair Labor Association [FLA] - an advocacy group - maintains a list of FLA Accredited Monitors, see <http://www.fairlabor.org/html/monitors/accredited-monitors.html>. The Ethical Trading Initiative [ETI] - a tripartite organization of companies, NGOs and trade unions likewise supports a Monitoring and Verification Working Group. See <http://www.ethicaltrade.org>.

In short, some codes now have what they previously lacked: relative sophistication, plausible prospects of compliance and a community of stakeholders including both corporations and their critics. What they do not yet have is a documented record of success: there is little or no evidence that codes actually change corporate behaviour.³²

Depending on which account one accepts of the provenance and significance of codes, the absence of evidence that codes accomplish anything is either without significance or precisely what might be expected. Those who accept the conventional account will be inclined to say that it is too soon to judge the efficacy of the most recent generation of codes, that efficacy in any event is difficult to measure since codes are only one amongst many variables determining corporate behaviour, and that even state law has been shown to yield unpredictable or perverse outcomes. Those who proceed from a more critical perspective on globalization will point to the fact that codes are written and administered by corporations which - they believe - have no interest in protecting, say, the environment or the rights of women. If they did, these same corporations would have supported stronger state laws instead of advocating their repeal or conniving in their avoidance.

3. *CORPORATE CODES AS AN EXAMPLE OF A LAW WITHOUT THE STATE*

³² The most rigorous empirical study to date suggests that in fact, codes tempt corporations to engage in bad behaviour because code subscribers are less likely to attract regulatory scrutiny. A. King and M. Lenox, 'Industry Self-Regulation Without Sanctions: The Chemical Industry's Responsible Care Program' (2000) 43 *Academy of Management Journal* 698.

What, then, is the relationship of corporate codes to law? As I have tried to show, corporate codes may be used to deflect state law, to create the illusion of law while fending off the reality of regulation. But that is not the whole story. Obviously, to the extent that law is understood in professional discourses and everyday speech as the distinctive normative system of the state,³³ corporate codes cannot be law in the strict sense; but they may certainly become symbiotically entangled with state law, whether by accident or design. The juridical and political implications of this entanglement will be briefly considered. Second, codes provide a valuable optic within which to reflect on the fate of law in an era of globalization, and on some more general issues of socio-legal theory.

(a) *The potential symbiosis of corporate codes and state law*

I have suggested throughout this chapter that corporate codes - for good or ill - have filled the normative vacuum created as globalization and neo-liberalism have combined to diminish the force of state law in the field of social and economic regulation. I now want to consider the opposite possibility: that corporate codes may be used in coordination with state law, to resuscitate it, and to focus it more accurately and with greater effect on particular domains of social and economic activity.

On the one hand, codes may theoretically be used to pour meaning and content into state (or, for that matter, international) law even though they are not designed for that purpose. For example, whether a corporate practice falls below a standard of reasonable care, thus attracting liability in tort, *might* be benchmarked by reference

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See e.g. Black's Law Dictionary (6th ed.): A Law is a solemn expression of the supreme power of the State ... a body of principles, standards, and rules promulgated by government; *Oxford English Dictionary*, 2nd ed., (Oxford: Oxford University Press, 2002) online: <<http://dictionary.oed.com>> Law: I. A rule of conduct imposed by authority. ... 1. a. The body of rules, whether proceeding from formal enactment or from custom, which a particular state or community recognizes as binding on its members or subjects.... 2. a. One of the individual rules which constitute the law (sense 1) of a state or polity....

to a voluntary corporate or sectoral code; codes adopted by agreement of the members of trade associations, or amongst companies and NGOs, *might* be enforced as contracts between the signatories, unless there is evidence that no such enforceability was intended; and code provisions, though not meant to be binding, *might* nonetheless be read in as implied terms of a corporation's contracts with workers who accept employment or consumers who purchase goods in reliance on them. *Might*: but so far, litigation has been relatively rare, empirical studies rarer still, and the possibilities of creative interaction between state law and voluntary codes remain largely a matter of speculation.³⁴

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For an excellent review of potential symbiotic relationships between state law and voluntary codes and a review of relevant common law jurisprudence see K. Webb and A. Morrison, 'The Law and Voluntary Codes: Exploring the Tangled Web' in K. Webb (ed.) *Voluntary Codes, Private Governance, the Public Interest and Innovation* (Ottawa: Carleton University Research Unit for Innovation, Science and the Environment, 2002) at 112 ff.

States and their courts have, from time to time, viewed voluntary codes as an illicit attempt to suppress competition or brushed them aside as an imperfect substitute for regulation.³⁵ However, quite often, states have deliberately chosen to authorize the adoption of corporate codes, given them legal effect or enforced them through the imposition of sanctions. For example, professional bodies such as Law Societies exercise delegated statutory powers to adopt codes and to discipline their members for non-compliance;³⁶ Canadian product safety legislation has long incorporated by reference standards established by the Voluntary codes of the International Standards Organization (ISO), and the Canadian Standards Association (CSA);³⁷ legislators in at least two countries have proposed that firms doing business abroad should be required to adopt and adhere to Voluntary codes in order to qualify for state-provided advantages such as export loan guarantees or sourcing contracts;³⁸ and one innovative U.S. court has required a group of abusive employers, with offshore production facilities in a dependent territory, to adopt a code of workers' rights, and to submit to court-supervised monitoring of compliance.³⁹

³⁵ Webb and Morrison, *supra* note 34, at 142 ff.

³⁶ See e.g. Law Society Act R.S.O 1990 c. L8 s. 10 which provides that Convocation may make by-laws, Authorizing and providing for the preparation, publication and distribution of a code of professional conduct and ethics.

³⁷ The Standards Council of Canada was established in 1970 by the Standards Council of Canada Act, now RSC 1985 C. S-16. It mandates the SCC to establish or recommend criteria ... relating to the preparation, approval, acceptance and designation of voluntary standards, to accredit non-governmental standards development organizations and to approve standards submitted by those organizations as national standards (s. 4(2)(c)-(e)). These voluntary standards then receive the imprimatur of regulatory authorities and acquire the force of law. See e.g. B.C. Reg. 234/96 (bicycle safety helmets), O. Reg. 82/95 (efficiency of electrical appliances).

³⁸ *Supra* note 29.

³⁹ For a history of the litigation, see Sweatshop Watch, Summary of the Saipan Sweatshop Litigation, http://igc.org/swatch/marianas/summary10_00.html.

So indeed, as a technical matter, codes might be grafted onto state law, and made enforceable as if they were contracts or statutes, and could conceivably become the regulatory norms of the global economy. This would be a transnational instance of the widespread privatization and hybridization of legal functions which is occurring within the domestic domain of the neo-liberal *contracting state* - the shrinking state, the state which *contracts out* its responsibilities and powers.⁴⁰ Such a development is actively advocated by some scholars, including the editor of this volume.⁴¹

⁴⁰ See e.g. J. Freeman, *The Contracting State*, (2000) 28 Florida State University Law Review 155; M. Priest, *The Privatization of Regulation: Five Models of Self-Regulation* (1997-98) 29 Ottawa Law Review 233; H. Arthurs and R. Krelewich *Law, Legal Institutions, and the Legal Profession in the New Economy* (1996) 34 Osgoode Hall L. J.

⁴¹ W. Cragg this volume.

However, it is unlikely. If corporate codes were to become more closely entangled with state law, they would inevitably lose their distinctive corporate or voluntary character. This is likely to make them less attractive to key actors. After all, corporations initially adopted these voluntary codes precisely because they preferred self-regulation to state regulation. Why would they now willingly re-engage with state law? And why would states willingly return to more conventional forms of regulation, based on state law? After all, they originally acquiesced in or actively promoted the use of corporate self-regulation in the global economy, either enthusiastically as part of a neo-liberal project, or reluctantly out of fear that more conventional forms of state regulation would bring down the wrath of investors. Unless they have now abandoned neo liberalism or revised their estimate of the likely market reaction to state regulation why would they revive the old state regulatory apparatus, in either its original configuration or - in what would be perceived as a functional equivalent - in the form of a new hybrid of state-authorized, monitored and enforced no-longer-quite-corporate codes? And finally, states initially accepted corporate codes as a substitute for legislative regulation because to some extent they felt they had to: because they believed that corporate conduct lay beyond their jurisdictional reach, or because they lacked practical means to assert their regulatory powers. But at least the first of those constraints was always less definitive than it was made to appear. Under international law, states have the right to legislate and regulate extraterritorially, at least with respect to their own citizens, corporations which they charter, or activities which have a material domestic impact, though conducted abroad.⁴² True, practical problems of enforcement would remain: how to deploy inspectors to scattered sites around the world; how to gather reliable evidence from employees or informed observers on site; how to avoid conflicts with local legal and political authorities, how to

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See e.g. K. Messen, *Extraterritorial Jurisdiction in Theory and Practice* (Boston: Kluwer, 1996), J. Zimmeman, *Extraterritorial Employment Standards of the United States: The Regulation of the Overseas Workplace* (New York, Quorum Books, 1992).

avoid cultural bias in the application of the code.⁴³ But these problems would also confront states if they tried to conscientiously monitor compliance with corporate codes, rather than attempt to enforce their own labour or environmental laws.⁴⁴

In other words, a shift from purely voluntary codes to those mandated by law and monitored by the state, from pure self-regulation back to a system in which the state is seriously implicated in the regulatory process, represents the crossing of a Rubicon. And if so, why would states settle for half-measures? If they are being asked to place their imprimatur on corporate codes, whose contents and administration they do not directly control, but for whose shortcomings and misadventures they may be blamed, why would states not enact and enforce their own standards through law? If hybrid state-corporate regimes pose political, economic, juridical and practical risks comparable to those of regulatory legislation plain and simple, why would states not simply enact laws with extraterritorial reach? State norms, state administration and state sanctions, they might justifiably feel, are at least more democratic, and arguably more effective, than corporate codes.

⁴³ See S. Prakash Sethi, *Corporate Accountability Through International Codes of Conduct -- Theoretical Implications and Challenges to Cross Cultural Applications: The Case of Mattel, Inc.* (Sao Paulo: International Society of Business, Economics, and Ethics (ISBEE), Second World Congress, 2000).

⁴⁴ See K. Stone, *Labor in the Global Economy: Four Approaches to Transnational Labor Regulation* (1995) 16 *University of Michigan Journal of International Law* 987.

If this analysis is sound, if the evolution of codes foreseen and advocated by enthusiasts⁴⁵ does lead to the re-integration of corporate regulation with the state system, this might signal the beginning of the long march back from neo-liberalism to some version of our former social-democratic or social-market states. At the least, it would present us with a new map of regulation, shifting the focus from a borderless global economy ruled by codes and other manifestations of soft law⁴⁶ to the once-familiar contours of nation states striving to define and protect the public interest through laws which are applied vigorously and with effect.

(b) *The significance of corporate codes for socio-legal theory*

⁴⁵ I include our distinguished editor in this category. See W. Cragg, this volume.

⁴⁶ See e.g. C. Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 *International and Comparative Law Quarterly* 850; S. Sciarra, 'Social Values and the Multiple Sources of European Social Law' (1995) 1 *European Law Journal* 1; A. Boyle, 'Some Reflections on the Relationship of Treaties and Soft Law' (1999) 48 *International and Comparative Law Quarterly* 901; K. Stone, 'To the Yukon and Beyond' (1999) 31 *Journal of Small and Emerging Business Law* 93; H. Hillgenberg, 'A Fresh Look at Soft Law' (1999) 10 *European Journal of International Law* 499.

The possible symbiosis of corporate codes and state law is of interest not only from the perspective of political economy, but from the perspective of socio-legal theory. For two hundred years, law has been understood by lawyers as the will of the sovereign,⁴⁷ in modern parlance as the expression of state policy promulgated and administered by state institutions. Indeed, traditional legal theory adopts a binary approach: things are either law or they are not; depending on the presence or absence of a state nexus. The rule of law - a fundament of our constitution - requires that everyone be subject to the same law, and that law be authoritatively pronounced by state courts.⁴⁸ The promulgation of norms originating elsewhere - within public bureaucracies or corporations, for example - is said to violate the rule of law.⁴⁹ Customs and contracts likewise have no legal force except to the extent that they are found to conform to the requirements of state law.⁵⁰ And as my fellow contributor, Prof. Cragg, insists, even corporations - the authors of the codes we are discussing - are

...legal artefacts ... [which] could not exist without the active agreement and intervention of governments... [and which] are created and operate in that legal space⁵¹

This affinity of law and state, and the binary approach it necessitates, has of

⁴⁷ J. Austin *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, 1995; originally published 1832). In fact, Austin acknowledged the existence of laws by a close analogy - including laws of honour - as well as laws by remote analogy, but these differed from laws properly so called. See Lecture V at pp. 106-163.

⁴⁸ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (London: Macmillan, 8th ed., 1915) at 110.

⁴⁹ See G. Frug, *The Ideology of Bureaucracy in American Law*: (1984) 97 *Harvard Law Review* 1276.

⁵⁰ M. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1979) at 4; S. Waddams, *The Law of Contracts* (Toronto: Canada Law Book . 4th ed. 1999) at pp. 399-403.

⁵¹ W. Cragg, this volume.

course given rise to many difficulties. What of pre-modern societies which developed something that looked a great deal like law but no state structures we would recognize as such? What of state law in modern societies which becomes archaic and falls into disuse? What of patterned behaviours which develop within the interstices of state institutions such as police forces or welfare agencies, unsanctioned by state law and sometimes subversive of it? What of the complex normative systems generated within non-state social fields - ethnic and religious communities, workplaces, universities, family relationships, business networks - which are so powerful that they can deflect, reinforce, transform, capture or even cancel state law? And, of course, what of corporate codes?

These problems associated with an insistence on the state nexus of law, and on law's binary character, have given rise to a number of competing theories of law, which question both elements of the conventional position. These theories coalesce around the idea that state law is just one amongst many legal systems, that law is immanent in all social relations, and that the various normative regimes described above - including corporate codes - should be regarded as law no less than the particular set of rules promulgated and enforced by the state itself, so long as they exhibit similar characteristics or perform similar social functions. True, adherents of this view have sectarian tendencies. They include legal pluralists and polycentrists,⁵² followers of Bourdieu⁵³ and Teubner,⁵⁴ devotees of soft law⁵⁵ and postmodern chroniclers of

⁵² S. Moore *Law and Social Change: The Semi-Autonomous Field as an Appropriate Subject of Study* (1973) 7 *Law and Society Review* 719; J. Griffiths, *What is Legal Pluralism?* (1986) 24 *Journal of Legal Pluralism* 1; S. Merry *Legal Pluralism* (1988) 22 *Law and Society Review* 869; H. Peterson and H. Zahle (eds.) *Legal Polycentricity: Consequences of Pluralism in Law* (Aldershot: Dartmouth Publishing, 1995).

⁵³ P. Bourdieu *The Force of Law: Toward a Sociology of the Juridical Field* (1987) 38 *Hastings Law Journal* 808.

⁵⁴ G. Teubner (ed.) *Autopoietic Law: A New Approach to Law and Society* (Berlin/New York: Walter de Gruyter, 1988); G. Teubner, *Law as an Autopoietic System* (Oxford, Blackwell, 1992); J. Priban and D. Nelken (eds.), *Law's New Boundaries: The consequences of legal Autopoiesis* (Aldershot: Ashgate/Dartmouth, 2001).

Agovernance@.⁵⁶ True also, this more open-ended view of law has neither altered the conventions of daily speech, nor won over many lawyers and judges. It has not even attracted unanimous support in socio-legal circles.⁵⁷ Nonetheless, for purposes of the present analysis, it is important to understand that corporate codes constitute one amongst many examples of a widely-noted phenomenon in the socio-legal literature: Alaw without the state@.⁵⁸

⁵⁵ Supra note 46.

⁵⁶ See e.g. P. Millar and N. Rose, AGoverning Economic Life@ (1990) 19 *Economy and Society* 1; J. Matlary, ANew Forms of Governance in Europe? The Decline of the State as a Source of Political Legitimation@ (1995) 30 *Cooperation and Conflict* 99; B. Jessop, ACapitalism and Its Future: Remarks on Regulation, Government and Governance@ (1997) 4 *Review of International Political Economy* 561; G. Stokes, AGovernance as Theory: Five Propositions@ (1998) 155 *International Social Science Journal* 17; C. Hewitt de Alcantara AUses and Abuses of the Concept of Governance@ (1998) 155 *International Social Science Journal* 105.

⁵⁷ B. Tamanaha, AThe Folly of the Social Scientific Concept of Legal Pluralism@ (1993) 20 *Journal of Law and Society* 192.

⁵⁸ See A. Blackett, AGlobal Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct@ (2001) 8 *Indiana Journal of Global Legal Studies* 401; H. Arthurs, ALabour Law Without the State?@ (1996) 46 *U. Toronto L.J.* 1; Teubner, *Global Law without a State*, supra note 21.

If *Law without the state* - a quintessentially postmodern concept⁵⁹ - is an idea whose time has come in contemporary socio-legal theory, it is an idea whose time has also come in the new political economy wrought by globalization and neo-liberalism. Globalization, after all, stresses that state sovereignty, policy and law must be subordinated to the requirements of international trade and investment; neo-liberalism seeks to reduce state power and activity in almost all respects, including the production, interpretation and administration of law.⁶⁰ Indeed, legal scholars have stressed the transformative effects of neo-liberal globalization on how we think about public policy and translate it into law,⁶¹ if not on our very notion of what law is and does.⁶²

Whether it is mere coincidence that the de-centering of the state in legal discourse should occur simultaneously in socio-legal theory and in political economy, or whether the two are causally related, is a question for another occasion. However, everyone with an interest in the relationship of law to social ordering, must be interested in the phenomenon of corporate codes which are, after all, a striking example of *Law without the state* involving the most powerful actors in the global economy, in some of their most ethically significant and politically sensitive relationships.

⁵⁹ B. Santos, *Law: A Map of Misreading. Towards a Postmodern Conception of Law* (1987) 14 *Journal of Law and Society* 279 at 297.

⁶⁰ H. Arthurs & R. Kreklewich *Law, Legal Institutions, and the Legal Profession in the New Economy* (1996) 34 *Osgoode Hall Law Journal* 1.

⁶¹ H. Arthurs, *Globalization of the Mind: Canadian Elites and the Restructuring of Legal Fields* (1998) 12:2 *Canadian Journal of Law and Society* 219; M. Zürn *Sovereignty and Law in a Denationalised World* in R. Appelbaum, W. Felstiner, V. Gessner *supra* note 13.

⁶² See e.g. W. Twining, *Globalisation and Legal Theory* (London: Butterworths, 2000); D. Dyzenhaus (ed.), *Recrafting the Rule of Law: The Limits of Legal Order* (Oxford: Hart, 1999); W. Scheuerman, *Global Law in our High Speed Economy* in R. Appelbaum, W. Felstiner, V. Gessner (eds) *supra* note 13; V. Gessner and A. Budak (eds.) *supra* note 13; B. Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (New York: Routledge, 1995).

CONCLUSION: IF CORPORATE CODES ARE THE ANSWER, WHAT IS THE QUESTION?

To this point, I have suggested that corporate codes serve the somewhat divergent purposes of various public and private actors in the global economy, that they may be mutating into new forms as their shortcomings become more obvious to those actors from their respective points of view, and that they can be seen as one amongst many examples of non-state legal orders which have come into focus during a period of neo-liberalism, globalization and post-modern socio-legal theorizing. What I have not said - because the evidence does not sustain the claim - is that codes are either demonstrably effective or democratically legitimate. In other words, if *How best to prevent anti-social corporate conduct in a global economy?* is the question, corporate codes are not the answer. Or, more accurately, they are not the answer except under certain conditions, when they may be a part of the answer. What are those conditions?

As numerous authors suggest,⁶³ codes work best when their corporate authors are under pressure to adopt them and live by them, which is to say when they are less *voluntary* rather than more so. For reasons canvassed above, pressure from unions and social movements in the form of sympathetic strikes, boycotts or political pressure may succeed in the short term, but is subject to many shortcomings. Pressure from the state, in the form of threatened or actual legislation and active oversight of corporate behaviour, is likely to be more successful. Moreover, state regulation mandating corporate codes, having emerged from a democratic political process, may be more credible and successful in legitimating self-regulation. But again there are problems. State regulation is in something of a crisis. State regulatory agencies have been

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See e.g. P. Fridd and J. Sainsbury, *The Role of Voluntary Codes of Conduct and Regulation - A Retailer's View* in S. Picciotto and R. Mayne (eds.) *Regulating International Business - Beyond Liberalization* (Basingstoke: Macmillan Press, 1999); K. Gordon, *Rules for the Global Economy: Synergies between Voluntary and Binding Approaches* Working Paper on International Investment No. 1999/3 (Paris: OECD, 1999) N. Gunningham and J. Rees, *supra* note 2; B. Hepple *supra* note 14; W. Cragg, *this volume*.

enervated by the attacks of neo-liberals and anti-state populists; their reach is circumscribed by globalization; their authority has been undermined by over-reaching reviewing judges; even in good times, they have difficulty in mustering adequate resources; they are notoriously prone to *capture* by those they are meant to regulate; and they are seldom able to cope with stonewall corporate resistance. Thus, there is a case to be made for state strategies which deploy positive and/or negative incentives to persuade or coerce corporations to police themselves, whether through codes or otherwise.⁶⁴ Such strategies may well reduce political resistance, economize on scarce resources, reduce corporate evasion, avoid the problem of extraterritoriality, turn the *capture* phenomenon on its head and shift the emphasis in regulatory relationships from hostility to cooperation.⁶⁵ But none of this is likely to happen if state action is not a clear and present alternative to self-regulation. In effect, then, the success of codes depends on them being less voluntary rather than more so. But paradoxically the less voluntary they are, the less likely they are to attract corporate endorsement and elicit corporate cooperation, and thus the less likely they are to secure all the hoped-for benefits.

Second, the institutional design and implement of codes is widely held to be an important determinant of their success. The more explicitly a code addresses the particularities of specific activities, sectors or enterprises, the more likely it is that its requirements will be met, or at least the more likely it is that violations will be identified and sanctioned. The more explicitly a code fixes responsibility for compliance upon designated corporate officers, and provides incentives and training for those with line responsibility for compliance, the more likely it is that they will do what they are supposed to do. The more explicitly a code provides channels for complaints,

⁶⁴ G. B. Doern *Institutional and Public Administrative Aspects of Voluntary Codes* in K. Webb (ed.), *supra* note 34; J. Rees *Reforming the Workplace - A Study of Self-Regulation in Occupational Safety* (Philadelphia: University of Pennsylvania Press, 1988).

⁶⁵ See e.g. K. Gordon, *supra* note 63.

protection for whistle-blowers, procedures for monitoring, and sanctions for violation, the more likely it is that violations will come to light and be dealt with appropriately. And the more explicitly a code provides for transparency, for second and third party participation, for arms-length evaluation and adjudication, the more likely it is that it will gain the respect, trust and participation of those who are its intended beneficiaries.

All that is pretty clear from the literature. But equally clear is the fact that most codes fall short of the ideal, often far short. This brings us to a third question: if there is a high degree of consensus about when codes work best - when they are linked to state regulation, carefully designed and aggressively and transparently administered - why has that consensus not produced a more rapid advance towards optimal approaches to code design, and to more effective protection for the ultimate beneficiaries of codes - workers, environments, consumers, human rights, vulnerable communities and a general public served by governments and businesses operating with integrity?

The mystery is not hard to solve. In part, the answer is power: its shift from states to markets, within markets to a shrinking number of larger and larger corporations, amongst such corporations to those located in a very small group of countries, within those corporations from local management closest to the social consequences of corporate activity to head offices closest to the economic outcomes, and within head offices from those involved with products and people to those involved with earnings and share prices. In part, too, the answer is a fundamentalist belief: that the business of business is business, that profits will ultimately trickle-down and benefit everyone in the global economy, that corporate commitment to a social agenda is misconceived and likely to dilute profits, and that state attempts to influence corporate behaviour - even indirectly - are likely to adversely affect both corporate and social welfare. In short, corporate codes in general have not evolved in the ways we believe they should because this would involve a retrenchment, however modest, of corporate power and the revision of the deeply held belief system of those who wield that power.

Is there no way forward? Of course there is. Many ways: the way of the corporate social responsibility movement, which hopes to change dominant belief systems within global corporations and to modify corporate behaviour, if only to save global capitalism from itself;

the way of social democratic and social market economies, which seek to re-balance the power equation as between state and market and to achieve a better mix of economic efficiency and social justice; the way of protest movements, which aspire to shift power from the global to the local, from corporations to communities, from the enhancement of profits to the protection of the environment, culture and human rights. But only when we begin to locate corporate codes of conduct within this large, complex and volatile debate about neo liberalism, globalization and the nature of Alaw@ can we hope to understand their true significance and potential contribution.

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