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Corporate Social Responsibility as Business Strategy

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Abstract

I argue that Corporate Social Responsibility (CSR), particularly the corporate code of conduct, has been one of global business' preferred strategies for quelling popular discontent with corporate power. By "business strategy" I mean organized responses, through organizations like the International Chamber of Commerce (ICC), to the threat public regulation poses to business's collective self-interest. Attention to CSR's historical development reveals it has flourished as discourse and practice at times when corporations became subject to intense public scrutiny. In this essay I outline two periods of corporate crisis, and account for the role codes have played in quieting public concern over increasing corporate power: 1) When developing countries along with Western unions and social activists were calling for a 'New International Economic Order' that would more tightly regulate the activity of Transnational Corporations (1960-1976); and 2) When mass anti-globalization demonstrations and high profile corporate scandals are increasing the demand for regulation (1998-Present).

Introduction

Four hundred years earlier, social responsibility shifted from the church to the state, as government replaced religious institutions as society's predominant force. At the dawning of the twenty-first century, business appears the next likely candidate to carry this mantle.

(Joel Makower & Business for Social Responsibility 1994, 33).

Recent global protest activity, from the streets of Seattle in 1999 to the fences of Cancun in 2003, has been largely impelled by the social, economic, and environmental 'externalities' associated with economic globalization (that is, inadequate wages, poor working conditions, deforestation, general environmental degradation). A solution to these externalities being increasingly forwarded by business organizations is private sector self-regulation. Self-regulation – more popularly known as Corporate Social Responsibility (CSR) – is presented as a way to balance the interests of business and society *without* expanding government intervention in the global market place.

What exactly is Corporate Social Responsibility (CSR)? CSR is defined by Business for Social Responsibility, a global non-profit funded by corporations, as "achieving commercial success in ways that honor ethical values and respect people, communities, and the natural environment" (2003, unpaginated). According to Jeremy Moon, Professor of Corporate Social Responsibility at Nottingham University,

Business social responsibility…refers to the voluntary contribution of finance, goods or services to community or governmental causes. It excludes activities directly related to firms' production and commerce. It also excludes activity required under legislation or government direction (2002, 385-86).

The common thread that weaves through the various definitions of "Corporate Social Responsibility" is the *voluntary* nature of the good practices referenced. What makes CSR initiatives "socially responsible" is that they are *not* mandated by governmental or intergovernmental institutions — they are voluntarily pursued.

The most celebrated mechanism in the CSR toolkit, and my focus in this study, is the corporate code of conduct. The Organization for Economic Co-operation and Development (OECD) defines corporate codes as "commitments voluntarily made by companies, associations, or other entities, which put forth standards and principles for the conduct of business activities in the marketplace" (1998, 5). But how effective can voluntary and largely unverified corporate efforts to minimize market externalities be?

More and more studies measuring the (in)effectiveness of voluntary corporate codes are being published every day. The results are mixed. Some find promise (Schrage 2004; Kolk, van Tulder, and Welters 1999) wheareas others are much more critical (Christian Aid 2004; Zarsky 2002; OECD 2003). The consensus underlying these divergent findings is that, even if voluntary codes have potential, they are not currently addressing globalization's externalities in a sustained way. But if voluntary codes have not proven effective, or if there is at least no consensus on their effectiveness, why then are corporations, intergovernmental organizations like the UN, and even civil society *so* interested in them? That is the central question guiding this paper. I begin with the less obvious: unpacking civil society's investment in voluntary codes of conduct.

For labor and social activists, corporate codes of conduct, even if voluntary, can strengthen efforts to hold corporations accountable. Simply put, condemning an organization for unethical behavior is easier when said organization has already and openly agreed that ethical behavior is virtuous. Bama Athreya of the International Labor Rights Fund concretizes this point in relation to her organization's campaign against Nike: "Let's face it, hypocrites are far more interesting than mere wrongdoers, and its been much easier to sensitize press and public to Nike's failure to implement its own code of conduct than to its failure to comply with Indonesian labor laws" (quoted in Klein 2000, 432).

Most labor and social activists supportive of corporate codes of conduct are also mindful of their limits. For one, activists lack the resources to monitor the plethora of TNC activity spanning the globe. Thus, a strategic hope for activists is that voluntary corporate codes of conduct developed by individual companies, and international organizations like the UN and OECD, will nurture more regulation friendly environments both nationally and internationally (Smith, 2003). There are thus long-term (gateway to binding social regulation) and short-term (immediate improvements in corporate conduct) rationales for supporting voluntary codes of conduct.

My aim in this paper, however, is to question whether the short-term gains provided by CSR and corporate codes are worth the costs. My argument is that the primary cost of supporting voluntary codes is the forestallment of precisely what global

civil society hopes to gain through them: the binding regulation of transnational corporations. I argue that the primary reason for business's trenchant interest in corporate codes is that they are an effective means of quelling popular discontent with corporate power and the political change that discontent might impel. My research has convinced me to approach corporate codes of conduct less as exemplars of business ethics and more as effective business strategy. By "business strategy," I mean organized responses, through organizations like the International Chamber of Commerce (ICC) and World Business Council for Sustainable Development (WBCSD), to the threat that public regulation (both domestic and international) poses to business's collective self-interest. Thus in simple terms, by unpacking why business is so invested in corporate codes of conduct, I aim to convince civil society organizations and concerned members of the business community to become disinterested.

I support this aim with an historical analysis. Attention to the corporate code of conduct's historical development reveals that it has flourished as discourse and practice at times when corporations became subject to intense public scrutiny. In this paper I examine two recent periods of crisis for the business world – times when the threat of public regulation loomed large:

1) (1960-1976) When developing countries along with Western unions and social activists were calling for a 'New International Economic Order' that would more tightly regulate the activity of Transnational Corporations.
2) (1998-and after) When mass anti-globalization demonstrations and high profile corporate scandals (Enron and World Com), are increasing demand for regulation.

By accounting for the corporate codes' role in business' bid to avoid regulation at a time when global opposition to corporate power was even stronger than today (1960-1976), I argue that recent CSR flourishings should be approached with more concern than optimism. In other words, the strategic hope that voluntary mechanisms can create regulation friendly environments is problematic when, historically, corporate codes have been self-consciously invoked by business to avoid social regulation.

World Order Contended – (1960-1976)

While the beginnings of what we today term Corporate Social Responsibility began with the emergence of the modern corporation itself at the end of the 19th century (See Marchaud 1998 and Nace 2003), the business crisis in the late 1960s and 1970s saw modern CSR discourse take shape. To communicate the depth of this global crisis, I begin my historical account in the United States, where even the putative beneficiaries of American Hegemony and US Corporate power – the American people – were becoming increasingly opposed to corporate power at home and abroad.

The US American Scene

The United States emerged as the world's dominant economic actor in the aftermath of World War II. The US government's encouragement of corporate participation in European economic recovery abetted the outflow of U.S. foreign direct

investment. In the post-war era, the TNC became a symbol of American economic power (Gilpin 1975, 139). But while the national economic growth impelled by the internationalization of U.S. capital materially benefited Americans in general, the costs of an increasingly global economy (even if dominated by American corporations), was being felt at home by the mid 1960s.

Mounting unemployment through the 60s and early 70s was attributed by organized labor to increasing import penetration as European and Japanese economic power increased, but also to 'capital flight' – the closure of American plants and factories, and the shifting of jobs to the developing world.

American labor was not alone in its concerns. Other movements for consumer safety, environmental protection, and social justice were becoming increasingly concerned by the power, flexibility, and unaccountability of transnational corporations operating at home and abroad.

Broad-based concerns over TNC misconduct coalesced and were intensified by the death of Chilean President Salvador Allende on September 11th, 1973. Eight months prior to his death, Allende had alerted the UN's General Assembly to plans of the International Telegraph and Telephone Company (an American TNC), to overthrow his democratically elected government with the help of the CIA:

> Last July, the world learned with amazement of different aspects of a new plan of action that ITT had presented to the US government in order to overthrow my government in a period of six months. I have with me the document, dated in October of 1971, that contains the 18-point plan that was talked about. They wanted to strangle us economically, carry out diplomatic sabotage, create panic among the population and cause social disorder so that when the Government lost control, the armed forces would be driven to eliminate the democratic regime and impose a dictatorship (1975, 239).

ITTs machinations in Chile impressed themselves on the public consciousness and became a rallying point for activists.

TNC image was not helped when more corporate scandal hit the front pages three years later. For business analyst John Kline: "While corporations were protesting that the isolated, atypical ITT incident had unfairly tarred the image of MNCs in general, nearly 500 of America's top corporations were being drawn into disclosures of improper payments abroad" (Kline 1985, 23). 1975 and 76 brought rolling revelations of bribery of foreign officials, laundered money used for illegal political payments, and secret off-the-book accounts. The TNC, continues Kline "had exploded on the American public consciousness in an extremely negative fashion. Imagery created by the ITT and bribery incidents helped paint MNCs as suspicious enterprises given to serious abuse if not closely watched and regulated" (ibid, 24).

Public mistrust of TNCs within the US contributed to a regulation-friendly environment that was capitalized on by labor and other social movements. For business historian Archie Carroll: "The late 60s and early 70s was a period during which social movements with respect to the environment, worker safety, consumers, and employees were poised to transition from special interest status to government regulation (1999, 6). Indeed, as Judith Richter notes: "between 1965 and 1977, the US Congress enacted 20

new regulatory laws governing, for example, occupational health and safety, consumer product safety, clean air, clean water and toxic waste, and created an elaborate regime for assessing environmental impacts and regulating the financial system" (2001, 19). This era is nicely summed up by historian Edwin Epstein: "A critical difference throughout much of the 1960s was that federal and state governments were no longer reluctant to enact laws that transformed general public expectations about business responsibilities into specific legal requirements. A new era in the interaction between business and other sectors of society was emerging" (1998, 6).

The Global Scene:

The friendly regulatory climate within the US during the 60s and early 70s was consonant with the global scene. This was a time when post-colonial states were actively seeking the economic and political autonomy self-determination promised in name. Salvador Allende's Chile and some twenty other developing nations passed legislation controlling TNC activities in the late 1960s and early 1970s. Nationalization of foreign corporations reached a peak in the first half of the 1970s (Richter 2001, 20). Allende's speech to the UN General Assembly just prior to his death remains one of the more pithy accounts of developing country concern and captures the mood of the time:

> The nationalization of basic resources constitutes an historic demand. Our economy could no longer tolerate the subordination implied by having more than 80 percent of its exports in the hands of a small group of foreign companies that have always put their interests ahead of the country in which they make their profits…We are potentially wealthy countries and yet we live a life of poverty. We go here and there, begging for credits and aid and yet we are – a paradox typical of the capitalist economic system – great exporters of wealth" (1975, 234).

Developing countries were not only nationalizing industries and imposing national regulations on foreign capital, but were also busy pursuing international regulation for TNCs. The UN was a key venue and vehicle for their organizing efforts. The Group of 77 – a coalition of 77 developing countries – was formed at the 1964 United Nations Conference on Trade and Development (UNCTAD) to promote an international agenda and structure more responsive to their needs.

The Group of 77 found their break in 1973. This year not only brought the assassination of Salvador Allende, and the strengthened solidarity it forged between less developed countries (LDCs), but also the OPEC orchestrated oil crisis. The quadrupling of world oil price "resulted in a massive transfer of resources from the developed to the less developed countries, both directly to the oil producing countries themselves, and indirectly to oil-importing Third World countries through the recycling of the capital surpluses of some OPEC member countries (so-called 'petrodollars') by the international banking system" (Hoogvelt & Puxty 1987, 169). Most importantly for my purposes, the 1973 oil crisis emboldened developing countries and strengthened demands for a reformed global economy.

"Developing countries," for John Kline, "had complained before about MNC abuses, even if they were perhaps less dramatic than the ITT incident. The crucial

difference now was that the context for complaints changed when developing countries perceived oil resource power as an indication that they finally had some leverage to effect changes in the international economic system" (1985, 21).[1] The first manifestation of this newfound power was the 1974 adoption by the UN General Assembly of a declaration on the establishment of a New International Economic Order (NIEO). The understanding that the "colonially imposed 'old' international division of labour coupled with the free – that is, unregulated operations of world markets systematically disadvantages the poorer, ex-colonial countries of Africa, Asia and Latin America" now had the beginnings of an international political program (Hoogvelt and Puxty 1987, 162-3).

Binding international codes of conduct for TNCs were a central component of the program. In 1974 the UN Economic and Social Council (ECOSOC) set up the UN Commission on Transnational Corporations, with the UN Centre on Transnational Corporations (UNCTC) as its special research and administrative body. The centre was entrusted with three basic tasks:

1) Monitor and provide reports on the activities of TNCs;
2) To strengthen the capacity of developing countries in dealing with TNCs; and
3) To draft proposals for normative frameworks for the activities of TNCs (Richter 2001, 9).

In 1976, the UN Commission on Transnational Corporations made the formulation, adoption and implementation of a draft UN Code of Conduct on Transnational Corporations one of its top priorities.[2] It must be reiterated that the proposed code would have been comprehensive and legally binding.

The prospect of a comprehensive and legally binding international code regulating the activities of TNCs put the global North on serious alert. While the draft code by itself was not a radical threat to Northern economic interests, there was real concern that it might initiate a dangerous dynamic -- that "such an international code might gradually evolve into a mechanism which would unduly limit and restrict…the activities which constitute the core responsibilities of business" (McQuade qtd in Pijl 1993, 49).

It was soon determined that the "best form of defense against the G-77 onslaught on Western economic interests and values was attack" (Robinson 1983, 164). This 'attack' took the form of apparent concession, the OECD Guidelines on Multinational Corporations – a voluntary code of conduct. For John Robinson, a business writer at the time, the voluntary guidelines were a "calculated compromise by Western governments between, on the one hand, the need to sensitise firms to their social, economic, and political responsibilities and, on the other, the need to make the rest of the world aware, and in particular the LDCs negotiating a UN code of conduct for transnational corporations, that the West is not prepared to see excessive constraints imposed on their major creators of wealth: MNCs" (1983, 7). Robinson continues: "The speed with which the Guidelines moved from conception to decision was dramatic, and was a direct product of the rich world's belief that it had to go into the UN negotiations on

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[1] Craig Murphy has gone as far to suggest that the "Soviet Union was never as much of a fundamental threat to the post-war western system as OPEC was from 1973 through 1983" (1988, 154).
[2] The ICFTU initially proposed the idea of a UN code on TNCs in 1969 -- international trade union support was central to the push for a binding code.

multinationals with a coherent and apparently progressive position with which to confront the developing countries clamour….for more radical and compulsory control" (1983, 117).[3]

To cut a long story short, suffice it to say that Northern efforts to derail negotiations of a binding code for transnational corporations were successful. By the time negotiations on the code began in 1977, it had already been agreed that it would be voluntary. While a draft code was nearly complete by 1981, negotiations were stalled and more or less abandoned a short time later.[4] For my purposes, the simple point is that the OECD Guidelines were a tool used to forestall more compulsory control being sought at the UN. 1976 marks the entrance of the voluntary code of conduct into business' strategic repertoire.

I need to clarify two parts of my narrative. Firstly, the voluntary guidelines drafted at the OECD were not the only reason the binding UN code failed. More important in this regard was the global recession of 1980-82 (the "Reagan Recession"), brought on by record-high interest rates in the United States and Europe, which caused resource prices to collapse and developing country debt to skyrocket. The recession eliminated Third-World economic leverage and opened way to talk of 'structural adjustment' more than new international economic orders.

There are numerous analyses accounting for how the Reagan administration administered the 1980-82 recession that helped pave the way for neoliberal, or economic globalization.[5] This is a complicated history that I cannot address here. My simple point is that the first voluntary code of conduct on the global stage – the OECD Guidelines – was invented to forestall the binding international regulation of TNCs.

John Kline nicely accounts for what business learned about the power of CSR during this period:

> Events in the 1970s forced MNCs onto the defensive. An opportunity now exists to change this posture into a positive forward outlook and plan of action. One step in this direction is to build a public affairs program that uses the intergovernmental code movement as public guidance rather than just defending against it as possible law. Individual MNC codes can play a vital role in this effort, counterbalancing the use of intergovernmental codes as political levers while also creating a better understanding of corporate operations that could preclude more restrictive actions in the future (1985, 161).

While some of Kline's recommendations were pursued through the 80s and into the 90s, business interest in CSR and codes of conduct faded without the agitations of developing countries, the international trade union movement, and social activists. As will be

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[3] It should be noted that Robinson's *Multinationals and Political Control* is meant as a guide for 'the business reader' (Robinson 1983, xv), and is not a critical work on global political economy.

[4] The code, along with the UN Center on Transnational Corporations, were officially terminated in 1992. More below.

[5] For a particularly good account see Craig Murphy and Enrico Augelli's *America's Quest for Supremacy and the Third World* (1988). For Murphy and Augelli "The global recession engineered by the US made the Third World less-powerful in the world trading system than it had ever been before in the entire history of American supremacy within the world economy" (1988, 165).

discussed below, events through the 90s would again put TNCs on the defensive, and make Kline's 'plan of action' more politically pressing.

Before pursuing recent history, I need to make another clarification regarding the 1960s-1976 period, and my claim that CSR is *business* strategy. As noted the official players in the bid for, and defense against, binding international control of TNCs were developing country *governments*, Northern *governments,* and *intergovernmental* bodies like the OECD and the UN. Where was the business?

The international business lobby – working through the Business and Industry Advisory Committee (BIAC) at the OECD -- actively participated in the drafting of the voluntary Guidelines, and the International Chamber of Commerce lobbied hard to derail negotiations on a binding code at the UN.[6] Western transnationals, however, did not have to push their home government hard to resist the code being drafted at the UN. TNCs are great creators of wealth -- wealth that contributes to state coffers, finances foreign policy objectives, and trickles down to grease class divisions within First World societies. There are structural reasons for First World states to defend their corporations on the global stage (See Gilpin 1975).

But even given this structural advantage, business learned during the 1960s and 70s that it had to be much better organized at the international level if it was going to secure its interests. Writing about global struggles between business and labor at the end of the 1970s, John Robinson noted that "Business's task has been uphill, not just because of the general trend towards interventionism, but because of the nature of the adversary organizations...Whereas the trade unions are a relatively homogenous group with an organization to match, 'business' is in fact a collective misnomer for diversified interests with often only a low common denominator" (1983, 197). Developing country governments, in conjunction with the international trade union movement had come close to having a binding code established that would have made doing global business a much more complicated and expensive affair, and could well have spiraled into more profound transformations of the global political economy. This period of crisis taught business that it should not take Northern government support, or the support of international organizations, mainly the UN, for granted.

It is thus in the midst and just after this period of crisis that international business began organizing itself in a sustained way. In 1971, Klaus Schwab established the World Economic Forum (WEF), and in 1973 David Rockefeller established the Trilateral Commission (TLC). The ICC also enjoyed a spike in membership and support during and just after this period.

These business policy and lobby groups can be said to function, in Gramscian terms, as "collective intellectuals" or agents of the capitalist class "entrusted with the activity of organizing the general system of relationships external to…business itself" (Gramsci 1971: 6 also see Carroll and Carson 2003: 32). Thus, by 'business strategy,' I mean strategy developed by these collective intellectuals. Again, while business

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[6] Indeed, the roots of the OECD guidelines can be found in a voluntary code of conduct adopted by the ICC in 1972. In the introduction to the code, as reported by Pijl, "it was stated that the aim was to 'create a climate of mutual confidence', and that it was hoped 'these guidelines will be helpful to the United Nations' and other organizations in their efforts to 'promote constructive discussions of the problem'" (1993, 50). While it might make more sense to mark 1972 as the voluntary code of conduct's birth-year, 1976 saw the voluntary code's emergence, in the form of the OECD Guidelines, as a salient political force.

organizations were heavily involved in the fight against the UN code, this period taught transnational corporate capital that it had to become much more organized -- that it needed to become a class not only in-itself, but for-itself.

Before clarifying the development of a transnational class consciousness and its concomitant organizations, I'd like to briefly account for domestic business organizing in the US in response to the 1960s and 70s crisis. Not only was this organizing an important U.S. export, and important to the more 'global' story being told, but it also provides a nicely focused account of business' rise as a self-consciously political force.

'Attack on American Free Enterprise System '

My account begins in 1971 when a US Chamber of Commerce memorandum written by Lewis F. Powell, Jr., was circulated to top business executives.[7] The influential memorandum, entitled "Attack on American Free Enterprise System," perfectly articulates business' political program of the past 30 years, and is worth considering in detail.[8]

Powell's basic argument, like John Robinson's, is that business is losing in the battle over American hearts and minds:

> But what now concerns us is quite new in the history of America. We are not dealing with sporadic or isolated attacks from a relatively few extremists or even from the minority socialist cadre. Rather, the assault on the enterprise system is broadly based and consistently pursued. It is gaining momentum and converts…The most disquieting voices joining the chorus of criticism come from perfectly respectable elements of society: from the college campus, the pulpit, the media, the intellectual and literary journals, the arts and sciences, and from politicians (1971, unpaginated).

While Powell's memorandum shows appropriate disdain for business' adversaries, it evinces respect for their ideological and organizing prowess. What progressives have that business lacks, is cohesion. And this cohesion stems from a common project – the radical upheaval or at least radical reform of the free enterprise system. By focusing on 'the system' instead of just its individual symptoms (chemical pollution, low wages, unsafe products), progressives have forged powerful alliances among different social movements.

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[7] In 1971, the same year the memorandum was published, Nixon appointed Powell to the Supreme Court where he served, in a surprisingly moderate fashion until 1987 (See Landay 2002).

[8] I am not suggesting that American business followed Powell's suggestions programmatically. His memo does, however, brilliantly articulate a set of concerns and responses that were disparately circulating at the time; it also *did* make a difference in the world. For one Powell's memo convinced Joseph Coors, President of the Adolph Coors Company, that American business was 'ignoring a crisis' (Landay 2002, 13). Coors was compelled to act. According to Jerry Landay, Coors contributed the "first $250,000 to fund the 1971-72 operations of the Analysis and Research Association (ARA) in Washington, D.C." – the original name for the Heritage Foundation (ibid). As Landay continues "Heritage became the trend-setting model for scores of policy institutes and lobbying operations that compose the radical-right appparat. Heritage has been a major beneficiary of the Coors' Castle Rock Foundation ever since" (ibid). See Landay 2002, for a more extensive account of Powell's direct impact on US business.

If progressives have found strength and cohesion decrying the system, business can find the same defending it: "If our system is to survive, top management must be equally concerned with protecting and preserving the system itself…" And for Powell, this has to be a collective project:

> …independent and uncoordinated (sic) activity by individual corporations, as important as this is, will not be sufficient. Strength lies in organization, in careful long-range planning and implementation, in consistency of action over an indefinite period of years, in the scale of financing available only through joint effort, and in the political power available only through united action and national organizations (ibid).[9]

Powell's advice was heeded. According to journalist Thomas Edsell: "From 1971 to 1979, the number of corporations represented by registered lobbyists grew from 175 to 650…The National Association of Manufacturers moved to Washington in 1973…chief executive officers of Fortune 500 companies formed the Business Roundtable in 1972. Membership in the Chamber of Commerce more than doubled, from 36000 in 1967 to 80000 in 1974" (1990, 248).

For Powell, business' newfound organization and power should be directed towards two fronts: U.S. culture and politics.[10] On the cultural front, Powell argues that business needs to make its presence felt more in the Academe, on television, and in other news media – what he sees as bastions of 'liberal' and even 'left' thought. Again, his advice was heeded. The period after Powell's memo marked: "growing corporate grants to the Public Broadcasting System, from $3.3 million in 1973 to $22.6 million in 1979; the key role of corporate-funded foundations in the financing of Jude Wanniski's *The Way the World Works* and George Gilder's *Wealth and Poverty*; grants to the Heritage Foundation and the American Enterprise institute; the endowment between 1974 and 1978 of forty 'free enterprise' chairs primarily at liberal undergraduate colleges" (ibid, 248).

Like Gramsci, Powell felt this cultural war should be guided by political ends:

> …one should not postpone more direct political action, while awaiting the gradual change in public opinion to be effected through education and information. Business must learn the lesson, long ago learned by labor and other self-interested

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[9] This quote falls under the heading 'Responsibility of Business Executives' in Powell's memo. For Powell, it is 'socially responsible' for business to organize against assaults on the free-enterprise system. My project is meant to account for how CSR has become part of the toolbox business uses to fulfill its responsibility to the system benefiting it.

[10] It is doubtful Powell ever read Antonio Gramsci's *Prison Notebooks*, but his plan of action deeply resonates with Gramsci's thinking on the modern political terrain. Margaret Kohn provides a nice synopsis: "[Gramsci] realized that unlike Russia's absolutist state, the modern bourgeois state was fortified by institutions like the church, school, political parties, and media…In order to build a counter-hegemonic bloc, the socialist vanguard had to also fight on the terrain of civil society and create a new cultural/moral vision capable of unifying workers and peasants. Socialism had to become the new common sense, embodied in institutions, practices, and beliefs" (1999, 218-19). This was a period when the American left was succeeding on Gramscian terms, and one when business was worriedly studying – even if not formally -- those terms. As will be discussed below, American business has learned a tremendous amount from leftists and social reformers.

groups. This is the lesson that political power is necessary; that such power must be assiduously (sic) cultivated; and that when necessary, it must be used aggressively and with determination – without embarrassment and without the reluctance which has been so characteristic of American business (1971, unpaginated).

Again, learning from labor, corporations began organizing Political Action Committees – what had previously been the preserve of unions. According to Edsall: "In 1974 there were 89 corporate PACs, in 1978 there were 784, and by the end of 1982 there were 1,467…Labor PACs, in turn, grew only from 201 to 380 in the period from 1972 to 1982" (1984, 131). "During the 1970s," writes Edsall, "the political wing of the nation's corporate sector staged one of the most remarkable campaigns in the pursuit of power in recent history. By the late 1970s and the early 1980s, business and Washington's corporate lobbying community in particular, had gained a level of influence and leverage approaching that of the boom days of the 1920s" (1984, 107).

Powell ends his memo ominously: "It is time for American business – which has demonstrated the greatest capacity in all history to produce and to influence consumer decisions – to apply their great talents vigorously to the preservation of the system itself" (1971, unpaginated). Needless to say business has succeeded in its charge.

The problems faced by business in the US – vigorous social movement and a regulatory state – were also shared by business globally. I am now better positioned to account for the rise of a global business consciousness and its related organizations – a process that borrowed from and contributed to the more American story I've just told.

Global Business becomes *Global* Business

Writing about the 1960 and 1970 period, Stephen Krasner notes how "The South has been able to take two legacies of the North – the organization of political units into sovereign states and the structure of existing international organizations – and use them to disrupt, if not replace, market-oriented regimes over a wide range of issues" (1985, 124) The business response to this more global crisis was not perfectly coherent. A main line of tension, speaking generally, was between the *money* and *productive* capitalist fractions. To explain this difference, and the forging of a more global perspective for business, a theoretical digression is required.

Capitalist Fractions and Karl Polanyi's Double Movement

For political economists Henk Overbeek and Kees van der Pijl: "Fractions of total capital are aggregates of capitalist interests which crystallize around a particular function in the process of capital accumulation" (1993, 3). *Money* capital means, very simply, investors who buy and sell money (e.g. J.P. Morgan), while *productive* capital means capitalists who buy and sell product (e.g. General Motors), be it raw or processed. If your business is buying and selling money, you will want as much flexibility and freedom of movement for your product as possible; it is in your best interest to have barriers to investment removed – barriers that include burdensome social regulations and high taxes.

Productive capital has tended to be more parochially minded. It has historically *sought* barriers to trade – barriers meant to protect domestic industry from foreign

producers. This barrier-seeking reached its peak in the US American context with the Smoot-Hawley tariffs in 1930. But tariffs have not been the only kind of protection productive capital has been inclined towards. Productive capital's literal boundedness, it's spatial fixity exemplified by the factory, has put it in closer proximity to tangible factors of production, including human labor and raw materials (or the natural environment). This proximity has predisposed productive capital to the protection of the human labor and natural environs it relies upon, what appears to money capital as "non-market, non-value aspects of the productive process" (Overbeek & Pijl 1993, 4). In other words, productive capital has tended to be more friendly towards the protective social regulations money capital has been historically interested in removing.

Thus in economic historian Karl Polanyi's terms, money and productive capital, represent the two sides of the 'double movement' that has historically characterized market societies. For Polanyi: "Social history in the nineteenth century was thus the result of a double movement…While on the one hand markets spread all over the face of the globe and the amount of goods involved grew to unbelievable dimensions, on the other hand a network of measures and policies was integrated into powerful institutions designed to check the action of the market relative to labor, land and money" (2001, 79).

Polanyi helps clarify the distinctly capitalist quality of productive capital's protective impulse. Polanyi's central argument in his influential work of economic history, *The Great Transformation,* is that truly unregulated -- or what he terms 'disembedded' – economies are impossible: "Our thesis is that the idea of a self-adjusting market implied a stark utopia. Such an institution could not exist for any length of time without annihilating the human and natural substance of society; it would have physically destroyed man and transformed his surroundings into a wilderness" (2001, 3). Polanyi's rationale for why the purely free market is both myth and dream is that the three most central commodities to market economies – labor, land, and money – are *fictitious*, they are inventions, they need to be continually made and remade. Labor and land are the most important 'commodities' to consider for my purposes here. Labor, for Polanyi, is "only another name for a human activity which goes with life itself, which in its turn is not produced for sale but for entirely different reasons, nor can that activity be detached from the rest of life…" (ibid). And land is only another name for nature – what is not produced by humans.

Polanyi's point is that incredible work is required to commodify bare life and land – work that markets cannot do on their own. Historically, organized political intervention has always been a prerequisite for the establishment of 'free markets': "There was nothing natural about laissez-faire; free markets could never have come into being merely by allowing things to take their course…laissez-faire itself was enforced by the state" (ibid, 145).

Not only is state intervention integral to the constitution of markets, but perhaps even more importantly for Polanyi, public regulation is necessary to ensure markets do not destroy what makes them possible in the first place: commodified land, labor, and money. There is no logic internal to the market that keeps it from exploiting land and labor in profoundly unsustainable ways. Indeed, with profit as the market's primary engine, there is incentive to extract as much is humanly and environmentally possible. But both labor and land have natural limits. These limits are for Polanyi, what makes the purely free-market impossible -- if these limits are transgressed, markets will destroy

their very own bases for existence. States must thus intervene to protect labor and land, and ensure that markets do not destroy themselves.

This intervention, or 'counter-movement,' is impelled by a confluence of social forces. What we now term 'social movements' have been important sparks for protective counter-movements, but so too has business. Indeed, Polanyi provides ample historical evidence of laissez-faire proponents inside and outside of government pursuing interventionist policies without any pressure from social movements: "on the contrary, everything tends to support the assumption that objective reasons of stringent nature forced the hands of the legislators" (ibid, 154). Historically even devout capitalists – mostly of the productive ilk -- have understood the fundamental limits to labor and land's commodification, and have pushed for state intervention. Regardless of where the agitation for regulation originated, Polanyi's argument is that state intervention on behalf of society and nature, has historically been integral to the 'free-market's' existence.

Thus the brokering of the New Deal in the US, and its corollaries in other Western countries, had the support of productive capital, whose view, especially following the Great Depression, was dominant at the time. "The productive capital perspective," According to Overbeek and Pijl, "was dominant at the national level in the period from the First World War to the 1950s" (1993, 6).

The 1960s/70s crisis threw productive capital's protective impulse into relief. Instead of serving to strengthen and enable the free market system, the welfare state had apparently enabled demands that, for business, or 'total capital,' were looking increasingly illiberal both nationally and internationally. Socialism was only a distant fear -- the more imminent concern was the use of the state to more tightly regulate capital domestically and internationally. From capital's perspective, the state was suffering a reverse 'legitimation crisis.'[11] Instead of revealing its 'inherently capitalist nature,' the state appeared open – domestically and internationally – to social demands of an uncapitalist, or highly moderating nature. And this opening appeared to be emboldening social forces and enabling even more radical demands. The state was proving a useful weapon in the 'Attack on the Free Enterprise System.' *It was in the face of this common threat that traditional tensions between money and productive capital subsided.*

This new unity of historical fractions was abetted by transformations in the production process. A more global business outlook had traditionally been the preserve of money capital, but productive capital was finding it increasingly profitable to globalize. Technological advances in transport, telecommunications and, automation, enabled the globalization process but what we term 'globalization' is also a *project* -- the result of conscious political decisions (Went 2000, 53). According to Robinson and Harris, one of the primary reasons for globalizing production was to weaken domestic labor demands – demands that were posing serious problems for capitalist accumulation, and that were partly enabled by productive capital's protective impulse itself (2000, 27). By moving, or outsourcing production to where labor costs were cheaper – countries in the Global South

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[11] Wendy Brown provides a nice definition of this term: "whenever the state was required to ostentatiously intervene on behalf of capital (whether through overt bail-outs and subsidies or slightly more covertly through policies that favored it), the state ran the risk of a 'legitimation crisis' as it tipped its hand in this way. That is, at such moments, the state revealed itself as a 'capitalist' state while its legitimacy depended upon perceived independence from social and economic powers" (Brown 2003, 30).

– both domestic labor's bargaining position was weakened, and more profit could be accrued.

It is important to note how crucial a colonialist ethos is to the globalization project. A return to Polanyi is useful here. For Polanyi, what moderates over-exploitation of labor and land are human and natural limits -- limits that if transgressed, will result in the destruction of the market's very bases of existence. But Polanyi's humanism blinds him from the elasticity of the category 'human.' While there are general limits to how hard the human body can be worked, determining those limits remains a contextual affair. For Northern capital, Third world labor can be worked more than First world labor. Speaking abstractly, the cost of sustaining labor power -- reproducing workers -- is similar for all laborers. But speaking historically, years of colonialism have produced structural conditions under which Third world labor power is simply worth less. Third world laborers can thus be more easily compelled both legitimately (capitalist exchange) and illegitimately (slave labor) to work more for less, and thus produce more profit. And returning to Polanyi's terms, the compulsion to intervene on behalf of destitute Third World laborers is less for Northern capital because these laborers are lesser humans -- a racist or colonialist interpretation objectified, or made historically real in the global labor market. The important point here, is that globalized production allows 'total capital' to push the bounds of 'the human' and thus stall the protective impulse integral to market societies.

In the 1960s and 70s post-colonial states were not only defending against this capitalist 'utopia,' but were moving to restructure the global economy in profound ways. It was in this context of the failed protective impulse in the North (intensive worker organizing, social movement, and an increasingly regulatory state), the resulting push for globalized production, and the increasing power of Third World states, *that a new capitalist consensus developed around the traditionally money capital position – the opening of new markets and deregulation of existing ones.*

While the economic liberalism of money capital had enjoyed earlier periods of prominence – much of the nineteenth century for instance (See: Polanyi 2001, 3-35) -- the late 1970s was novel. The primary difference now was that the globalization of production was contributing to the formation of a new transnational capitalist class (TCC) – one unmoored from the protective impulse of nationally bounded production. For Robinson and Harris: "As national productive structures…become transnationally integrated, world classes whose organic development took place through the nation-state are experiencing supra-national integration with 'national' classes of other countries" (2000, 17). The still forming TCC contains elements from both money and productive capital: "transnational corporations and financial institutions, the elite that manage the supranational economic planning agencies, major forces in the dominant political parties, media conglomerates, and technocratic elites and state managers in both North and South" (ibid, 12).[12]

My focus in this study is on 'supranational economic planning agencies.' [13] This phrase references both multilateral economic institutions like the IMF, WTO, World

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[12] For Robinson and Harris, traditional capitalist fractions are being replaced by a new one: national vs. transnational capital (2000, 23). Given the intensity of globalized production, this fraction does not easily graft onto the former productive/money division.

[13] For a more sustained account of the TCC in general see (Sklair 2001).

Bank, and OECD, and business planning forums like the WEF, TLC, and the ICC that are, formally speaking, removed from state apparatuses. More particularly, my focus is on the role of these latter 'agencies,' mainly the International Chamber of Commerce, in articulating global business vision and strategy.

Global business planning forums are both the product of, and preconditions for, a transnational capitalist class. While organizations like the WEF are enabled by transformations in the production process, they are also integral to the articulation of class-consciousness; it is these organizations that have made the TCC a class not only in-itself, but for-itself. For William Carroll and Colin Carson, global business planning forums "provide intellectual leadership that is indispensable in the ongoing effort to transform transnational capital from an economically dominant class to a class whose interests take on a sense of universalism." (2003, 37). I am not claiming that these forums dictated the business fight-back against encroachments on its interests – the regulatory state -- in the North and the South. The business fight-back was more an 'accumulation of tactical responses' than the product of centralized strategy making (Zinn 2003, 59). But business policy forums *did* play a crucial role – one that has increased over time – in articulating a self-conscious political program for global business.

What was the program? It is worthwhile, in this regard, to recall business writer John Robinson's doldrums at the end of the 1970s. Not only did Robinson worry that 'global business' was only a "collective misnomer for diversified interests with often only a low common denominator," but also that *"there is no binding ideological force which is such a cohesive element in the trade unions' organisation"* (1983, 197 – emphasis added). Robinson's concerns are jarring for the current reader. As we well know, a new ideological specter was haunting the world.

If the trade union and developing country position can be termed 'social democratic,' the business position was 'neoliberal.' If the 'social democratic' strategy was to use the state to better regulate Western capital in its home countries, moderate its effects in the global South, and work through international organizations to reform the global political economy itself, the neo-liberal position was to use the state to deregulate markets in the North, open and deregulate markets in the South, and work through international organizations to reform the global political economy itself.

But neoliberalism was not merely reactive. As Stuart Hall remarks in regards to the advent of neoliberalism in the UK:

> If the crisis is deep – 'organic' – these efforts cannot be merely defensive. They will be *formative:* aiming at a new balance of forces, the emergence of new elements, the attempt to put together a new 'historic bloc', new political configurations and 'philosophies'…These new elements do not 'emerge': they have to be constructed. Political and ideological work is required to disarticulate old formations, and to rework their elements into new ones. (qtd. In Overbeek and Pijl, 1993, 14).

Part of what makes neoliberalism formative and 'neo' is its attempt to stall the previously *capitalist* impulse to protect the very bases of markets (labor and land) from commodification-to-death. As noted, this requires a radical – though uneven –

reformulation of the categories 'human' and 'nature.' This reformulation requires sustained cultural, ideological, political, and economic work on a multiplicity of scales. I cannot account for all of this multi-frontal and leveled work. My focus is more general -- on neoliberalism as a global political-economic project that "seeks to achieve the conditions in each country and region of the world for the mobility and free operation of capital" (Robinson and Harris 2000, 41).

What is confusing about this global and apparently anti-statist project is that its primary vehicles are Northern states, and international economic institutions dominated by Northern governments. As Powell's memo helps us understand, a key plank in the business fight-back has been 'state reclamation,' or at least clarifying whose side the state is on. Globally, neoliberalism has informed calls for all governments (North/South) to reduce trade and investment barriers (like burdensome regulations), and the intense pressure Northern countries have placed on Southern countries – using multilateral economic institutions like the IMF, World Bank, and WTO -- to 'liberalize' their national economies. In other words, to deregulate industry, privatize state functions and resources, cut social programs and generally make their economies more open to foreign investment from TNCs mostly based in the First World.

While I agree with Overbeek and Pijl that "neo-liberalism is the fundamental expression of the outlook of transnational circulating capital" (1993, 15) I am not claiming a passive role for the state in this story. There are structural incentives for rich countries – especially hegemons like the US – to actively pursue a "liberal world economic order" (Gilpin 1975, 142. Also see Lake 1983). My simple claim is that events in the 1960s and 1970s – mainly regulationist claims being made on the state in the North, South, and globally – jarred business into sustained self-organization. This self-organization has enabled an impressive counter-offensive against the 'social democratic' bloc that emerged during this period. It other words, it has enabled the emergence of a *radical* political program – neoliberalism -- that could not have been so vigorous in content and pursuit without business' sustained self-organization.[14]

Voluntary codes of conduct would not become a crucial part of the neoliberal program until the 1990s. I submit, however, that the threat of a binding UN code contributed significantly to neoliberalism's constitution. For Pijl, "the threat and the transformative potential of the code of conduct challenge were sufficiently well perceived to fuel a vehement counteroffensive along a much broader front" (1993, 54). And so they did.

History's Sequel (1998-Present)

The 1980s were a decade of relative calm for transnational corporate capital. The Berlin Wall crumbled; the Soviet Union disintegrated, and so did, for many commentators, any alternative to the capitalist mode of production and social organization. But while the 1990s were supposed to be the end of history's happy

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[14] It is telling that the phrase 'The Washington Consensus' – often used interchangeably with neoliberalism – was coined in 1989 by John Williamson, an analyst working for the Institute of International Economics (IIE) -- a corporate funded think-tank established in 1981. The phrase was used to summarize a list of policy reforms in Latin America that the IIE suggested the US pursue. See http://www.iie.com/staff/jwguide.htm#topic3 for Williamson's reaction to the popularity of his term.

beginning, transnational corporations quickly became lightening rods for global protests against the neoliberal consensus and its deleterious effects – plant closures in the North, brutal labor conditions in the South, unrestricted exploitation of environmental resources worldwide, human rights abuses, corporate concentration, shrinking democratic accountability… Richard Howitt, member of the European parliament, provides a nice summary of recent anti-corporate activity:

> [The] early 1990s saw a stream of exposes of sweatshop conditions within the supply chains of major US clothing suppliers, in particular in Central America. Royal Dutch Shell was attacked relentlessly for its role – or lack of it – in relation to the killing of Ken Saro-Wiwa and oppression of the Ogoni people in, then, non-democratic Nigeria. The 1998 Soccer World Cup was skillfully exploited by activists to highlight child labour in South Asia's sportswear industry (2002, xiii).

In North America, popular frustrations over corporate rule and power crystallized on November 30th 1999, when approx. 60 000 people flooded the streets of Seattle and succeeded in shutting down meetings of the WTO's Third Ministerial.[15] The popularity of the anti-corporate sentiments impelling the mass demonstrations was confirmed by a *Business Week* poll conducted in September 2000. Pollsters asked Americans what they thought of the statement "Business has too much power over too many aspects of our lives." 52% said they 'strongly' agreed and an additional 30% said they agreed 'somewhat' (Nace 2003, 10). This is powerful sentiment, especially from the putative beneficiaries of US Hegemony and the 'liberal world economic order.'

Popular anti-corporate sentiments in the US were strengthened when Enron's scandalous bankruptcy hit the front pages. Enron, for five years running, had been named 'most innovative' company by none other than *Business Week* magazine (ibid, 178). Its primary innovation, however, was creative accounting that enhanced the company's financial appearance thus inflating stock price. When financial reality finally caught up to appearance, thousands of Enron employees lost their jobs *and* retirement savings. Many thousand more working Americans were impacted. Before going bankrupt, Enron was the 7th largest company in the nation and a favorite, and supposedly secure, investment for various employee pension and retirement plans.[16]

Enron might have been written off as an unfortunate exception to the rule of corporate responsibility, but by "by July 2002, the scandal sheet included over a dozen corporations, including Adelphia, AOL Time Warner, Arthur Anderson, Bristol-Meyers Squibb, Global Crossing, Halliburton, Johnson&Johnson, Qwest Communications, Tyco, WorldCom and Xerox" (Nace 2000, 179). Investors, and ordinary Americans whose retirements are dependant on healthy stock prices -- people who may not have been 'anti-corporate' before -- now had immediate reasons for demanding more government control over corporations. The corporate scandals that turned the century lay bare and

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[15] It is important to recall that the 'Battle of Seattle' was not fought solely in Seattle. According to George Katsiaficas there were major demonstrations in "14 US cities; twenty thousand people marched in Paris; eight thousand in Manila, three thousand in Seoul and thousands more around the world. In Mexico city a few days later, ninety-eight people were arrested and tortured for demanding the release of arrested Seattle demonstrators" (2002, 29).

[16] Apparently Enron's code of conduct has been a hot seller on E-bay (See Vargas 2002).

popularized concerns of a global anti-corporate movement that was vibrant *before* news of the scandals broke. The growing chorus of peoples from around the world actively opposed to neoliberal globalization and corporate rule has put capital in a defensive position -- one it has not had to assume since the mid 1960s and 70s.

In reponse to this crisis, business has predictably turned to a trusty tool in its repertoire of contention: "In an era when reputation began to exceed all other factors in determining company sales and value," Richard Howitt writes about the past decade, "executives could not afford to wait for a change in the political wind. The more enlightened ones began to admit to the problem, and say only they could do something about it" (2000, xiii). Corporate Social Responsibility is born, again.

The corporate code of conduct has been a favored business response to threatened profits. Whether in response to direct criticism or in scrambles to avoid that criticism, corporations worked hard through the nineties to stem growing frustration with corporate abuses. According to Naomi Klein, all of the decade's major corporate codes were drafted by public-relations firms in the wake of threatening media investigations:

> Wal-Mart's code arrived after reports surfaced that its supplier factories in Bangladesh were using child labor; Disney's code was born of the Haitian revelation; Levi's wrote its policy as an answer to prison labor scandals. Their original purpose was not reform but to 'muzzle the offshore watchdog' groups, as Alan Rolnick, lawyer for the American Apparel Manufacturers Association, advised his clients (2000, 430).

Every major corporation now has a code of conduct or at least makes mention of commitments to social responsibility on its website and in shareholder literature. Indeed, CSR has become a growth industry. Writing about the past decade, Dwight Justice of the International Confederation of Free Trade Unions (ICFTU), notes how "CSR moved from a concept to become an industry as consultants and enterprises emerged, offering CSR services to business. Among these services were social auditing and reporting as well as 'risk assessment' services" (2002, 99). "The trade union concern with this industry," Justice continues, "is that is assisting business in redefining the expectations of society instead of responding to them" (ibid). Business has been intent on redefinition since labor and social activists have been working to capitalize on popular discontent and lobby for more market regulation nationally and globally.

One of civil society's more challenging regulatory moves through the nineties was global labor's attempt to link "the ILO with the WTO, hoping that the ILO's rights-oriented culture might join with the WTO's enforcement power and sanctioning process" (Monshipouri 2002, 26). Ian Hurd nicely outlines the WTO's appeal to labour activists:

> The WTO is a strong intergovernmental organization with a clear mandate to review domestic regulation in member states and issue legally binding remedies when states violate the set of agreed-upon rules. This appears to satisfy the institutional structure that many labour-standards advocates seek. Adding new rules to this set (perhaps, for instance, on hours of work or the right to unionise) seems a smaller task than creating an entirely new organization and might be able to take

advantage of the unusually strong dispute-settlement mechanisms already built into the WTO (2003, 103).

The 'new rules' the labour movement wanted enforced were the ILO's core labour standards including freedom of association, the right to collective bargaining, abolition of forced labour, prevention of discrimination in employment, and a minimum age for employment (O'Brien 2000, 83). The key to having these standards as part of the WTO is, for Robert O'Brien, "that for the first time they would become enforceable and not depend on the whims of individual states. Labour wanted the WTO Sheriff to include core labour standards on its beat" (ibid). Labor's bid was ultimately defeated, but was reminiscent of the earlier period, and caused grave concern in the business community.[17]

One way of acknowledging concern with labor rights without compromising capital accumulation is, of course, the voluntary code of conduct. According to a 1997 editorial in the *Journal of Commerce*: "The voluntary code helps defuse a contentious issue in international trade negotiations: whether to make labor standards part of trade agreements. If…the sweatshop problem is solved outside the trade context, labor standards will no longer be tools in the hands of protectionists" (qtd. in Klein 2000, 437).

Two of the most prominent organizations business has partnered with to solve 'the sweatshop problem' – a phrase that serves as a synecdoche for all of neoliberal globalization's externalities, and the protests they impel -- have been the OECD and the UN. These organizations were where the battle over compulsory vs. voluntary regulation was fought in the 70s, and where it is being fought today. The primary difference between now and then, however, is that *both* the OECD and UN are on the same side – that of business and the voluntary code of conduct.[18] Stranger yet, while the OECD offered up its relatively vacuous voluntary Guidelines on Multinational Corporations in 1976 *as a counter* to the UN's binding code of conduct, the OECD's current Guidelines are much more stringent than the UN's recent contribution to the regulation debate – the Global Compact.

Linking the OECD Guidelines and UN Global Compact is the significant contribution made to each by the International Chamber of Commerce. The ICC is not the sole author of these documents but, as will be discussed below, its vision is deeply

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[17] One of the crucial controversies at the 1999 WTO ministerial meeting in Seattle was U.S. President Clinton's desire – stoked by the mass protests outside the meetings – to begin negotiating a labor- standards protocol for the WTO (Hurd 2003, 103). It is unclear how satisfied the global labor movement would have been with Clinton's proposal, but it held some promise for enforced standards. According to Hurd, the proposal failed because of developing country objection -- LDCs were concerned the standards were cover for either Western protectionism or neo-imperialism (2003, 103). For developing countries, high labor standards meant increased production costs, reduced foreign investment, and reduced competitiveness for their export goods. The failure of the US proposed protocol nicely signifies the impressive political economic shifts that have occurred since the mid-1970s. I would like, however, to problematize the tendency for commentators to suggest that developing countries are now proponents of economic globalization (Ruggie & Kell 1999 is exemplary). First of all, there is an ugly history to the support, or at least consent, Southern governments lend to neoliberal policies. Secondly, an increasing number of Southern governments (Brazil, Venezuela, Argentina…) are opposing the neoliberal model. Indeed, the latest meeting of the WTO in Cancun saw the beginnings of a new Southern oppositional bloc – the Group of 20+. More on the G-20+ below.

[18] The OECD and UN, particularly the latter, are not homogenous organizations. But for the most part, their institutional direction is now much more in line with business than civil society. Discussed more below.

etched in both. Carroll and Carson nicely articulate the relationship between business policy forms like the ICC and more formal political bodies like the OECD and UN:

> [Business policy forums] operate at one remove from the structural adjustment programmes, 'poverty reduction strategies' and other enforcement mechanisms, including the capacity for military intervention, that are the province of statist bodies, whether national or international. They foster discussion of global issues among members of the corporate elite, often in combination with other influential political and professional elites. They facilitate the formation of a moving elite consensus that is framed within one or another variant of neo-liberal discourse. They educate publics and states on the virtues of the neo-liberal paradigm. In sort, they are agencies of political and cultural leadership, whose activities are integral to the formation of a transnational capitalist class (Carroll & Carson 2003, 53).

The ICC – what terms itself the 'voice of world business' -- has been the business organization most invested in the strategic deployment of codes of conduct.[19] The remainder of this section will track the role both the UN and OECD – with significant prodding from the ICC -- have played in forestalling a sustained regulatory solution to the 'sweatshop problem.'

The OECD Guidelines Redux

What the original OECD Guidelines for Multinational Enterprises had in common with the UN's proposed code of conduct was the recognition that unregulated business activity was causing serious social and environmental externalities. Where the Guidelines differed, however, was the lack of mechanisms for ensuring these problems were addressed in a sustained way. Summing up the gist of the OECD's original guidelines, Susan Aaronson and James Reeves note that "firms would not abuse citizens or the environment in these [OECD] countries, and governments would not try to control these firms" (2002, 11). Business, as the current flurry of debate on CSR suggests, did not keep its end of the bargain.

But, as noted, the economic stagnations of 1973-1975 and 1980-1982 – primarily the latter -- helped weaken public pressure on business and government and changed the terms of the international regulation debate. For John Robinson, writing in the early 80s, the "shifting emphasis of the OECD…from control of multinational companies to encouragement of international investment is now a central part of the strategy of those who, like the US administration, believe that there has been undue stress laid to date, and certainly up until the 1979 review of the Guidelines, on the 'negative' or control aspects of the decisions taken by the OECD council…" (1983, 146). With the specter of regulation exorcised, the discourse and practice of corporate social responsibility subsided – there is little incentive for business to concern itself with ethics when its

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[19] For William Carroll and Colin Carson, "The ICC's distinctive contribution to transnational class formation is to integrate capitalism's centre with its margins; hence the ICC board blends a smattering of the global corporate elite with various representatives of national and local capital" (2003, 45). The ICC is as a good a representative of 'total capital' there is.

conduct is not being heavily scrutinized. While the OECD Guidelines went under review in 1979, 1982, 1984, and 1991, no significant changes were made.

This all changed in 1998. "In 1998," write Aaronson and Reeves, "the OECD again began a review to make the Guidelines more useful and effective" (2002, 11). This review was higher stakes than the four previous. This same year, the OECD suffered a major political defeat with the collapse of talks it was hosting on the Multilateral Agreement on Investment (MAI).[20]

While there were indications that negotiations for an investment agreement were under way, the public did not become aware of the MAI and its implications until draft copies of the proposed treaty were leaked to citizen groups in March of 1997. By October of 1997, when the text was first officially released, a large and vocal protest movement was underway. By 1998 Toronto's *Globe and Mail* observed that the OECD governments "were no match...for a global band of grassroots organizations, which, with little more than computers and access to the Internet, helped derail a deal" (qtd. in Chomsky 1998, unpaginated). The *Financial Times* reported that "fear and bewilderment have seized governments of industrialised countries…their efforts to impose the MAI in secret have been ambushed by a horde of vigilantes whose motives and methods are only dimly understood in most national capitals" (ibid).

The defeat of the MAI by global civil society stunned the OECD ministers. Canadian Trade Minister Sergio Marchi remarked after talks had collapsed that "the lesson he has learned is that 'civil society'-meaning public interest groups-should be engaged much sooner in a negotiating process, instead of governments trying to negotiate around them" (Perlas 2000, unpaginated).

The OECD responded predictably to the MAI's defeat, and the emergence of a new global protest movement; it revamped its Guidelines for Multinational Corporations, and with a revamped 'feel-good' process. Over night, the OECD moved from a strategy of exclusion – the MAI was being negotiated in secret -- to one of accommodation. Civil society organizations that had rallied their constituents against the OECD were now invited to the bargaining table for a high-stakes review of the Guidelines for Multinational Corporations. Susan Aaronson and James Reeves nicely describes the redrafting process:

> The OECD adopted an unusual approach to revising the Guidelines. It hoped to build a broad international constituency by involving a wide range of groups and giving them a stake in the development and implementation of its code…Each group organized and presented a common position to the negotiators and OECD staff…Among the civil society groups involved were World Wildlife, Amnesty International, Friends of the Earth, Tradecraft Exchange, and SOMO of the Netherlands. In this way, the OECD embraced a new strategy for the development of international public policy, with a different approach to transparency and public participation (2002, 12).

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[20] The ICC was heavily involved in these negotiations. According to Corporate Europe Observatory (CE0), the ICC wrote the effective blueprint for the first MAI draft (CEO, 2000).
For an analysis of the MAI see Picciotto (1999).

Even with the OECD's inclusion of civil society, and the specter of regulation on the streets and the internet – a rallying cry of the anti-MAI protests was that we must "bring the rule of law to global capital" (Clarke & Barlow 1998, 4) -- business gave up very little on the redrafting.

On the surface, the revamped Guidelines look promising. Covering nine areas of business conduct including labour, environment, human rights, and information disclosure, the Guidelines are more comprehensive than most other codes of conduct (Ethical Corporation, unpaginated). [21] They are also the only multilaterally endorsed code of conduct for TNCs (Gordon 2001, 2). According to the OECD, "while observance of the recommendations by enterprises is purely voluntary, adhering governments sign a binding decision to participate in Guidelines implementation and to promote their observance by enterprises operating in or from their territory" (ibid, 9). OECD governments implement the Guidelines through National Contact Points (NCPs) responsible for promoting the Guidelines, handling inquiries, and helping to resolve issues that arise. [22]

The NGOs that participated in the re-drafting were quick to highlight their concerns in a June 6th 2000 document published soon after the new Guidelines: "Whilst we would prefer to see the text strengthened further, the key test of the Guidelines is their implementation. If adhering Governments fail to implement the Guidelines vigorously, transparently and effectively world-wide, then NGOs will be left with no option but to actively and publicly oppose the Guidelines" (NGOs 2000, unpaginated). The NGOs conclude "unless implementation is conducted in good faith there is a real risk that the Guidelines will be used to justify behaviour and practices by multinational enterprises which undermine sustainability." (ibid)

It is important to consider what 'implementation' means in the context of the non-binding Guidelines. At best, 'implementation' means the enaction of a well-resourced National Contact Point that will vigorously promote the Guidelines, and provide an impartial venue for citizens and organizations that want to report irresponsible corporate behaviour. 'Implementation' does *not* entail active enforcement or the punishment of wrongdoers. Since the text is non-binding, 'breaking' the Guidelines is legally impossible. Thus NGO support for the agreement hinges on active promotion of the voluntary Guidelines more than their enforcement.

Even with these minimal criteria for support, NGO threats have not been heeded: "As of this January 2002 writing," report Aaronson and Reeves, "many governments, such as the United States and Mexico, are doing virtually nothing or very little to implement the Guidelines. If, as example, the U.S. does nothing, most citizens will not pressure it to do more, because most Americans have no knowledge that the U.S. and

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[21] While broad in scope, the Guidelines are still weak on specifics. For instance, the human rights language in the text does not tackle high profile concerns like indigenous peoples' rights, or the corporate use of security forces to terrorize employees and stake holding populations. Neither do the Guidelines, unlike most codes of conduct, include language on wages and benefits including a sustainable living wage (Gordon 2001, 14).

[22] Infrastructurally, the NCPs "may be a senior government official or a government office headed by a senior official. Alternatively, the National Contact Point may be organised as a co-operative body, including representatives of other government agencies. Representatives of the business community, employee organisations and other interested parties may also be included" (OECD 2000).

other governments have ever agreed to implement such a code" (Aaronson & Reeves 2002, 13).

Civil society is growing increasingly wary of the OECD, but remains hopeful that the Guidelines will be useful for short-term campaigning, and the longer-term bid for an international and binding regulatory framework. The rationales for civil society's exuberant patience were outlined at a recent "NGO Training and Strategy Seminar on the OECD Guidelines for Multinationals." A strategic point made at the seminar was that even with their non-binding quality, the fact that the Guidelines are endorsed and supported by governments, provides some leverage to those wanting to push for more sustained market regulation. For Peter Pennartz of the International Restructuring and Education Network Europe (IRENE), the "Guidelines provide an opportunity to drag governments back into the arena of corporate social responsibility and pinpoint governments again at their responsibilities towards civil society" (qtd. in Smith 2003, 2).[23]

Beyond this larger strategic reason for continuing to use (and tacitly supporting) the Guidelines, the general consensus at the seminar was that since the Guidelines exist, they are worth testing: "the vast majority of participants voted in favour of continuing to use and develop the OECD Guidelines as an instrument in the toolbox for campaigning" (ibid, 11). There is thus a long-term (gateway to binding international framework) and short-term (immediate improvements in corporate conduct) rationale for working with the Guidelines. My concern with the consensus expressed at the NGO seminar, is that civil society support for the Guidelines will likely forestall the longer-term vision of a binding international framework while providing few short-term payoffs. This concern was voiced at the seminar by Matt Phillips from Friends of the Earth who:

> looked at the wider picture of campaigning which only brings success at the local level and argued for the need to drive a bigger picture of global change which needs binding international rules. He expressed concern about pursuing lots of cases through the OECD Guidelines and the danger that we will only get a whole set of ambiguous outcomes that don't give us any big change to the global development model (ibid, 7).

To unpack the argument that supporting the Guidelines will compromise bids for a binding regulatory framework, we need to analyze the OECD's logic in drafting the Guidelines. The OECD's strategy is clearly one of co-optation through limited accommodation. One gets a sense of this strategy in a statement made at the NGO seminar by Andre Driessen from OECD's BIAC, summarized here by rapporteur Lisa Smith:

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[23] The Dutch case is the most promising AND disturbing account of government acting on their "responsibilities towards civil society." Aaronson and Reeves report: " In December 2000, the Dutch Parliament requested the government to link the OECD Guidelines to government subsidies for international trade and investment as well as export credits. The government simply asked all applicants for export subsidies to state that they were aware of and working to comply with the Guidelines. The Business Advisory Group to the OECD complained alleging that this action made the Guidelines 'binding'….Thus, the Dutch government's effort to provide an incentive and to promote the Guidelines has led to international business opposition…the Dutch Government continues to persevere" (2002, 16).

He sees the Guidelines as a two-way process and doesn't relate to them as a problem, he sees them as a solution…Andre concluded by saying that the debate can continue but the Guidelines should be used for what they are – they are a *compromise*. If we only focus on enforcement a whole part of the Guidelines will be lost. (ibid, 8 – emphasis added).

But what has business actually compromised in the redrafting process? What has business given up in order to convince civil society this was a largely a legitimate and worthwhile process? Business made two compromises that have captured (or distracted?) the interests of civil society. The first is simply admitting the problem – that corporate conduct has often been unethical during the past decade and that a remedy is required. The second is agreeing that government should play some role (even if extremely limited) in that remedy – the regulation of corporate conduct. I'll consider each compromise in turn.

Ceding ethical ground/acceptance of progressive norms

This compromise is not meaningless; it subjects business to ethical considerations beyond the bottom line and not previously in its purview. As aforementioned, condemning an organization for unethical behaviour is easier when said organization has already and openly agreed that ethical behaviour is virtuous.[24] The danger with business' admission of a spotty ethical record, and acceptance of progressive norms, however, is that it takes the sting out of civil society accusations. Since most civil society concerns already have a common-sense appeal (livable wages, the sanctity of human rights, environmental sustainability…) it is perhaps even more striking when business is completely eschewing them, rather than paying discursive lip-service. Business' acceptance of progressive norms has destabilized the ethical ground from which civil society garners its authority. Progressive terms ('sustainability' etc.) have been vacated of meaning while retaining their significance. This is to say that 'sustainability' or 'human rights' continues *signifying* responsibility and ethical progressivism to the constituents and consumers business wants to target, while *referring* to barely responsible and often irresponsible behaviour. In plain terms, business 'talks the talk' *so not* to 'walk the walk.' Indeed, by overtaking the talk, retaining its significance while vacating its content, business changes what it actually means to walk the walk in the first place. Business has assumed civil society's progressive language without assuming the accompanying practices or policies. While civil society organizations have had some success capitalizing on this contradiction, business has been the big winner from their 'compromise' – they understand better than most, especially in our increasingly mediated world, that significance often matters more than reference.

Governments and Implementation

The OECD understands that without an emphasis on implementation and enforcement, codes of conduct lack legitimacy. The OECD was sensitized to the power

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[24] It should be reiterated that there is not complete consensus on the virtues of CSR within the business community. For many commentators, admitting the virtue of business ethics is too significant a compromise (Henderson 2001).

of a disgruntled public in the late 90s, and takes the legitimacy problem seriously. The OECD's primary challenge in drafting the Guidelines was to solve the legitimacy problem – providing for some level of implementation and enforcement – without shifting the policy paradigm away from voluntary mechanisms. To fully grasp the OECD's challenge, we need to consider the series of studies they commissioned on Corporate Codes of Conduct while, and just after, reviewing and redrafting the Guidelines.[25] These are authoritative studies cited by both sides of the regulation debate. While the OECD's research is ideologically inflected – the organization is definitively on the voluntary side of the regulation debate -- these studies can be read as an immanent critique of voluntary regulation in general. The studies cannot hide that voluntary codes of conduct are ineffective at regulating corporate behaviour.

 In "Codes of Conduct: An Inventory," OECD researchers survey and analyze 233 codes of corporate conduct. The OECD reports that it is interested in codes because they "represent a relatively new way of addressing *certain issues* through mainly non-governmental bodies in ways that seek little direct impact on trade or investment flows" (OECD 1999, 4 – emphasis added). But the contents of the report suggest that codes of conduct also have little direct impact on the 'certain issues' (human rights abuses, environmental destruction, morbidly low wages) codes are meant to address. "A significant number of company and business association codes included in the inventory," reports the OECD researchers, "do not touch on the subject of monitoring at all. Where company codes have relevant provisions, almost all state that in-house staff will oversee implementation of and compliance with the code's standards – both by the company that issues the code and by its suppliers and other business partners. In other words, companies tend to prefer internal procedures or remain silent on this issue" (ibid, 17). The researchers continue: "*The effectiveness of codes in influencing the behaviour of corporations depends also on a strong enforcement mechanism…*Not all of the codes surveyed describe responses to breaches of code in great detail (ibid, 18 – emphasis added). A strong enforcement mechanism would entail external monitoring by a second or third party with some punitive powers. But according to a more recent OECD report on CSR, "External monitoring is the least used implementation technique examined – only two percent of the company codes mention it" (OECD 2001b, 11).

 These weaknesses in most private initiatives in play are a concern for the OECD. Codes of Conduct have the potential to assuage civil society concern with corporate (mis)conduct while minimally impacting trade or investment flows. But for private initiatives to satisfy (or at least distract) NGOs and labor, they must *at least* speak the language of implementation and enforcement. This is the beauty of the OECD Guidelines. They are voluntary and non-binding while simultaneously emphasizing the importance of implementation. Like with assumption of ethics-speak ('sustainability'), business is busy recuperating the meaning of implementation. 'Implementation' still signifies monitoring and enforcement even while it refers to the same old non-binding arrangements. And with the assumption of 'implementation-speak,' the OECD can claim an impressive advancement in the field of CSR. In the OECD's most recent study "The

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[25] Codes of Corporate Conduct: An Inventory (1999); Codes of Corporate Conduct: Expanded Review of their contents (May 2001); Corporate Responsibility: Results of a fact-finding mission on private initiatives (Feb 2001); OECD Guidelines and Other Corporate Responsibility Instruments: A Comparison (December 2001).

OECD Guidelines and Other Corporate Responsibility Instruments: A Comparison," the researchers smugly report that "by adding the weight of adhering governments' views to the general public debate on many issues in international business ethics, the Guidelines process has already succeeded in raising the legitimacy and profile of corporate attempts to address these issues. The Guidelines implementation procedures have also been enhanced, especially in relation to the functioning of the National Contact Points. They remain unique" (Gordon 2001, 7). The problem, as noted, is that large segments of civil society agree.

In a recent presentation to the National Policy Association, ANPED's Pieter van der Gaag noted that compared to other CSR initiatives, the Guidelines are an impressive regulative mechanism:

> The OECD Guidelines on the other hand, may have a bigger chance of bringing us the needed fast improvements. The OECD guidelines are a more detailed and complete document. …What is also needed is the systemised non-threatening dialogue that is offered by the implementation mechanism of the OECD Guidelines. The value of the different perspectives that are brought in while dealing with difficult issues like supply chain responsibility, implementation on the corporate level of the precautionary principle, human rights, whistleblower protection, and some of the other difficult points in the guidelines will start creating the common understanding needed to build good policy on. (2001, 3).

van der Gaag has apparently accepted the OECD's implementation 'compromise,' along with the consensus language preferred by BIAC. He still believes that government regulation is the only way to ensure corporate responsibility, but thinks the OECD Guidelines, and the forums for exchange it establishes between civil society, business, and government, can lead to such regulation. His strategy is made clear here:

> A combination of worldwide standardised information gathering and verification and multistakeholder dialogue will finally put in place the decision-making mechanism to create and protect sustainable societies. A start should be made with further developing the real-world…OECD Guidelines to effective, detailed global standard systems that generate the information needed and provide the space for networked information sharing and dialogue (ibid, 5).

The hope at the root of van der Gaag's strategy, and which the Guidelines stoke, is that corporations and governments can be convinced through friendly dialogue to change their behavior and accept the civil society call for an international and binding regulatory framework. Speaking generally, this hope flies in the face of one of history's most important lessons – that social and political change comes more from agitation, confrontation and challenge, than friendly conversation between adversaries (Richter 2001, 205). Speaking particularly, van der Gaag's hope contradicts the history being told here – voluntary mechanisms have been consistently invoked to prevent, not abet binding regulation. Business sees civil society as its adversary; it is time civil society respond accordingly.

It is interesting to note, however, that while van der Gaag is supportive of the Guidelines, he is very critical of most other CSR mechanisms. The other high profile mechanism he considers is the UN's Global Compact. For van der Gaag:

> The global compact and its UN Agency spin-offs are, however, part of a deal that seems to elevate companies above the usual consultative status that every other UN partner, such as NGOs, enjoy, onto an almost co-decisional arrangement. Some of my colleagues believe, and I tend to agree with them, that there will be advertising pay-offs for those companies who have joined, we call it the potential for blue wash…Now this 'all is well' approach, coupled with the above concerns may even mean that the Compact will cause a slow-down of the so necessary fast continuous improvement … the planet needs so much (2001, 3).

van der Gaag's enthusiasm for the Guidelines and suspicion of the Compact is a common position among activists. While the Compact enjoys some provisional civil society support (Amnesty, Human Rights Watch, ICFTU…), it is a less respected mechanism.

My argument, however, is that the Guidelines and Global Compact are different sides of the same coin. Both mechanisms have the same goal – forestalling regulation – but different audiences in mind. The OECD Guidelines are a more stringent and lower profile mechanism meant for a very specific audience – the organized elements of civil society: NGOs and Trade Unions. The Guidelines' concessionary language around implementation has piqued the interest, attention, and hopes of civil society organizations. The Global Compact, a largely vacuous but high profile mechanism, is targeted at the larger public – the Compact mobilizes the UN's profile and legitimacy to quell widespread public concern with corporate power. In other words, the OECD Guidelines are a 'Thinking Man's' Global Compact.

The ICC has been a pivotal driver behind *both* documents. While the ICC agree with van der Gaag that "the OECD Guidelines [are] the highest set of standards out there, and in the view of the ICC the most important code of conduct for business in the world," they also co-authored the Compact – what is sometimes termed the 'UN-ICC Global Compact' (qtd. in van der Gaag 2001, 4). Why the ICC would suggest the Guidelines are better than the Compact they directly crafted is unclear. But the different purposes of these tools are. The following section unpacks the Global Compact's strategic value for business.

The UN Global Compact

What is the Global Compact? The Global compact consists of nine principles, distilled from key environmental, labor, and human rights agreements, that the Secretary General asks business to abide by. Corporate participation is voluntary; there is no screening process, nor is there monitoring or enforcement (Bruno & Karliner 2000, 5).[26] "On the surface, then, the Global Compact is a fairly modest initiative," write Kenny

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[26] According to the UN website: "The Global Compact is not a regulatory instrument – it does not "police", enforce or measure the behavior or actions of companies. Rather, the Global Compact relies on public accountability, transparency and the enlightened self-interest of companies, labour and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based."

Bruno and Joshua Karliner, "yet it was inaugurated in July 2000 with great fanfare, with the CEOs of corporations such as Nike, Shell, Rio Tinto and Novartis sharing the stage with the Secretary General at U.N. headquarters in New York" (Bruno & Karliner 2002, 50). The Compact's meaning rests in the disconnect between its modest content and extravagant fanfare.

Fully understanding the Compact, however, requires a brief historical digression. I'd like to account for the political shifts within the UN that enabled the Compact's profound difference from the 1976 UN Code on Transnational Corporations.

The ICC goes to Manhattan

As noted earlier, the original UN code on Transnational Corporations, and the Center that was drafting it, was virtually terminated by 1992. This termination was at the behest of the U.S., Japan, and the European Community. The downsized Center on Transnational Corporations (CTC) was re-oriented towards "helping match up corporations and countries for foreign investments. This change had been an objective of the U.S. as well as some of the UN's most vocal critics, such as the Heritage Foundation" (Bruno & Karliner 2000, 11).

The deathblow to the CTC came at a turning point in world history. 1992 was one year into the 'New World Order' heralded by the fall of the Berlin Wall and the Soviet Union (Bush 1991). The 'End of History' was just beginning (Fukuyama 1992). Free market triumphalism was tempered however, by the growing threat, and vocal movements around that threat, of the 'end of nature' (McKibben 1989).

As history was putatively screeching to a halt, so to was the earth's carrying capacity. It in this light that the 1992 UN conference on Environment and Development – the Earth Summit – was viewed by business as a threat to the forward march of neoliberal globalization. This threat was not unfounded.

In preparation for the negotiations, the then still running UN Center on Transnational Corporations was asked by the UN Economic and Social Council (ECOSOC) to prepare a set of recommendations on transnational corporations and other large enterprises that governments might use when drafting Agenda 21 – the summit's central document (Bruno & Karliner 2002, 25). The business lobby and Northern governments were intent on these recommendations getting dropped. According to Peter Hansen, former director of the UNCTC:

> The Recommendations were focused on Environment and Development…The U.S. and Japan both opposed them, as they had opposed the Center on Transnationals. The U.S. and Japan had also made it quite clear that they were not going to tolerate any rules or norms on the behavior of the TNCs, and that any attempts to win such rules would have real political costs in other areas of the negotiations (qtd. in ibid, 26).

By the time of the negotiations, the UNCTC had been all but disbanded. "Try as the UNCTC staff might," write Bruno and Karliner "…they couldn't get the Secretariat to accept their report, which might have laid the groundwork for a set of international standards on corporations and sustainable development" (ibid). Instead official

recommendations came, at the behest of Maurice Strong Earth Summit Secretary General, from the Business Council for Sustainable development – now the World Business Council for Sustainable Development (WBCSD). For Karliner: "The BCSD was made up of the CEOs of some of the world's most powerful corporations. Together with the ICC, the BCSD made sure that most every reference to transnational corporations – some of the world's most environmentally destructive entities – in the Earth Summit texts referred to self-regulation rather than any other mechanism to control their activities" (1999, 10). Bruno and Karliner elaborate:

> The WBCSD and ICC, who despite some friction for the most part closely coordinated policies, proceeded to demonstrate what self-regulation meant: making Agenda 21's chapter on business and industry compatible with their positions; lobbying, most often successfully, for the elimination of references to transnational corporations wherever possible throughout Agenda 21; and ensuring that the idea of even a minimal system of international regulations never gained public acceptance (2002, 30).

As has historically been the case, business had to at least address the concerns being raised by civil society as part of its strategy to effectively forestall the regulatory solutions being sought. It was in this context that the ICC's Business Charter for Sustainable Development was developed at the Second World Industry conference on Environmental Management in Rotterdam in 1991: "More than 1000 companies signed the nonbinding Charter, which urged that environmental management in a free market setting be recognized 'as among the highest corporate priorities'" (ibid, 28). Borrowing a strategy from the past, business recognized that the best defense against the environmental movements' arguments for more government control over corporate activities was attack. Business and Northern governments entered the Rio conference with the Charter, and its promises that business would clean up its act, in hand.[27] Just before Rio, Stephen Schmidheiny, founder of WBCSD, pleaded with business that unless "we promote self-regulation…we face government regulation under pressure from the public" (qtd. in ibid, 29). The promotion of self-regulation is business' version of the 'precautionary principle.'

Thanks to a concerted effort on behalf of business and Northern governments, the resulting document was business-safe.[28] For Jan-Olaf Willums and Ulrich Goluke from the ICC:

> In general, the feeling among business participants was that the substantive output of UNCED was positive. It could have taken a negative stance on market forces and the role of business, and there was at one time the real possibility that the conference might be pushed to lay down detailed guidelines for the operations of transnational corporations. Instead it acknowledged the important role of business…National governments have now begun to formulate their own policies

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[27] Like with the case of the 1972 voluntary code forged by the ICC, it is likely the 1991 Business Charter was a benchmark used in formulating the revised OECD Guidelines, and especially the Global Compact.

[28] In one glaring example of government-corporate collusion, the Canadian government hosted a series of meetings to coordinate corporate lobbying of the Earth Summit negotiations (Bruno & Karliner 2002, 30).

and programs in accordance with commitments given in Brazil. We expect that
these national laws and regulations will not be as stringent, bureaucratic and 'anti-
business' as some feared before UNCED (1992, 20-21).

Business successfully fended off the threat it perceived in the early 90s and enjoyed
relative calm until the latter half of the decade.

Birth of the Compact

In 1997 the Asian financial crisis shook confidence in the global market. Of equal
concern was the collapse of talks on the MAI months later. This collapse signaled the
emergence of a movement more international and broad-based than the burgeoning
environmental movement that posed a threat in the early 90s.[29] As aforementioned,
Seattle 99 further evinced growing frustrations with corporate power.

After the failure of the Seattle meetings, the ICC announced that its primary
strategic objective was 'restoring the momentum of trade liberalisation' (CEO 2000b,
unpaginated). Something had to be done to counter what ICC Secretary-General Maria
Livanos Cattaui called: "the growing globaphobia and rising criticism of multinational
business that poses a special challenge to the ICC" (qtd. in ibid).

A key plank in the business response to this new threat was to continue its work
from the early 90s, and further secure the UN as an ally in the globalization debate.
"Fearing an upcoming backlash against globalization that could threaten corporate-driven
trade and investment liberalisation," according to Corporate Europe Observer, "the ICC's
charm offensive towards the UN is a very proactive move to ensure that any regulation of
the global economy will be tailored to the interests of international business " (CEO
2000a, unpaginated).

The ICC is pursuing two goals. The first is to counter-intuitively *center* the UN as
an authority and venue for the globalization debates. As aforementioned, the ongoing
concern is that civil society and developing countries will seek to inject the multilateral
trade and investment regime with binding regulation. For the ICC "The multilateral
trading system should not be called upon to deal with such non-trade issues as human
rights, labour standards and environmental protection. To call on it to do so would expose
the trading system to great strain and the risk of increased protectionism while failing to
produce the required results. The right place for addressing these issues is the UN and its
appropriate agencies" (ICC 2000, unpaginated). But the right place must also be the right
UN. The ICC's second goal is to continue *decentering* the UN as a venue for capitalism's
critics. Business' plan is working.

In 1998, The ICC hosted the Geneva business dialogues "where high-level
officials from the WTO, the UN, the EU and the World Bank, and other top decision-
makers met with 450 global business leaders" (CEO 2000a, unpaginated). In his address,
UN Secretary-General Kofi Annan promised to "build on the close ties between the UN
and the ICC" (qtd. in CEO 2001, 2). Only seven months prior, at meetings with the ICC,
Annan had agreed to "forge a close global partnership to secure greater business input

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[29] Elements of the global justice movement, of course, grew out of the environmental activism of the late
80s and 1990s – these movements are deeply intermeshed.

into the world's economic decision-making and boost the private sector in the least developed countries" (CEO 2000a, unpaginated).

The UN's complicity with Business' agenda is not due solely to the ICC's lobbying or strategic prowess – the UN has strategic interests in mind as well. First off, in helping secure greater business input in the world's decision-making, the UN is seeking to increase *its* input in "global policy-making, which, during the last years of intense economic globalisation, has been predominantly controlled by the Bretton Woods institutions (World Bank, International Monetary Fund and the WTO)" (ibid). Secondly, the UN has a cash flow problem: "While the US continues to withhold US 1.6 billion it owes, the UN appears to be hoping that the ICC may be an effective lobbyist on its behalf" (Karliner 1999, 9). The ICC has already begun fulfilling its end of the bargain by lobbying heads of state at the 1998 and 1999 G-8 meetings for more UN funding (ibid).

It is important to note, however, that Annan's and the UN's interest in the ICC is ideological as well as instrumental. While the UN is a far from homogenous organization, Kofi Annan is a proponent of neoliberal globalization. His ideological alignment with the ICC is made clear in a remarkable speech he delivered to the 1999 World Economic forum in Davos, where he first introduced the idea of a Global Compact between the UN and business. Annan's speech wonderfully articulates the political terrain the various sides of the regulation debate find themselves on, and is worth considering in detail.

The Global Compact and the Double Movement

After beginning his speech with the typical There is No Alternative argument in favor of neoliberal globalization – "Globalization is a fact of life" (Annan 1999, 1) -- Annan proceeds with a critique: "The problem is this. The spread of markets outpaces the ability of societies and their political systems to adjust to them, let alone guide the course they take. History teaches us that such an imbalance between the economic, social and political realms can never be sustained for very long" (ibid). For Annan, the Western world's response to the Great Depression, provides a model for how we might address globalization's externalities: "In order to restore social harmony and political stability, they adopted social safety nets and other measures, designed to limit economic volatility and compensate the victims of market failures" (ibid). Annan continues: "Our challenge today is to devise a similar compact on the global scale, to underpin the new global economy…Specifically, I call on you – individually through your firms, and collectively through your business associations – to embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices" (ibid, 2).

What is astonishing about Annan's narrative is how he seamlessly moves from a discussion of public regulation during the post-war years to a discussion of private regulation and 'shared values' presently. This move is even more remarkable given that Karl Polanyi's theorizing is central to the Compact.

Polanyi finds his way into the UN-ICC endeavor via John Ruggie.[30] Recall that for Polanyi, *public* regulation is necessary for markets to survive. Ruggie and Annan

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[30] John Ruggie is professor of International Affairs and director of the Center for Business and Government at Harvard University. From 1997–2001 he was Assistant Secretary-General and chief advisor for strategic planning to United Nations Secretary-General Kofi Annan. His most oft-cited work on Polanyi is "International Regimes, Transactions and Change: Embedded Liberalism in

rationalize their emphasis on *private* regulation with reference to deepening globalization. For Ruggie, the public regulation Polanyi thought necessary is impossible to replicate on the global scale. "The reason is obvious," writes Ruggie, "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" (2003, 4).

Ruggie's argument is somewhat disingenuous. In his introduction to the latest edition of Polanyi's *The Great Transformation*, Fred Block notes:

> At the global level Polanyi anticipated an international economic order with high levels of international trade and cooperation. He did not lay out a set of blueprints, but he was clear on the principles…In other words collaboration among governments would produce a set of agreements to facilitate high levels of international trade, but societies would have multiple means to buffer themselves from the pressures of the global economy…This vision also assumes a set of regulatory structures that would place limits on the play of market forces (2001, xxxvi).

Ruggie is right that our current political climate is not regulation friendly. But this is a historical and political, not necessary fact. Moreover, international institutions are *not* too weak to compensate. This is why global labor has shown such interest in the WTO. Finally, it is not at all clear business is willing or able regulate itself in the ways Ruggie and Annan hope for.[31]

John Ruggie is not a cynical man. He genuinely believes that corporations can be socially responsible without public regulation. And interestingly, his and Annan's belief is rendered intelligible by Polanyi. Recall that for Polanyi, markets require a regulatory response to survive – otherwise their very bases for existence will be overrun. Annan trusts that business will come to see that its larger interests, its "enlightened self-interest," lies in *effective* (self) regulation. "Finally," says Annan "I choose these three areas [human rights, labor, and the environment] because they are the ones where I fear that, if we do not act, there may be a threat to the open global market, and especially to the multilateral trade regime" (1999, 2).

An interesting difference arises, however, in terms of how Annan and the ICC understand this threat. For Annan the threat is "protectionism; populism; nationalism; ethnic chauvinism; fanaticism; and terrorism" – 'isms' that all "exploit the insecurity and misery of people who feel threatened or victimized by the global market" (ibid, 4). Unnamed, but lurking on the sidelines of the list is the specter of socialism always threatening to become incarnate at the end of the end of history (everything ends). While business undoubtedly shares these fears, perhaps primary on their list is the very 'regulation' Annan celebrated in his account of past responses to economic strife. Unlike the ICC, Annan is not absolutely opposed to regulation, a fact made evident in his speech.

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the Postwar Economic Order," *International Organization,* 36 (Spring 1982). It is entirely likely that Ruggie wrote Annan's speech.

[31] The simple question rarely addressed in the CSR literature is that if business is truly serious about social responsibility, why are they so vehemently opposed to such responsibilities being formalized in law?

But even the mention of distant regulations, and the possibility of future legislation[32], was enough to put business on the defensive about a document largely in line with their interests. On the day of the Compact's unveiling, an editorial by the secretary-general of the ICC, Maria Livianos Cattui, appeared in the *International Herald Tribune* that while mostly supportive in its tenor warned that "business would look askance at any suggestion involving external assessment of corporate performance, whether by special interest groups or by UN agencies. The Global Compact is a joint commitment to shared values, not a qualification to be met. It must not become a vehicle for governments to burden business with prescriptive regulations" (Cattaui 2000, unpaginated).

Not only does the ICC see the threat differently — *any* kind of legally binding regulation is anathema — it simply has not accepted Polanyi's argument. Unlike Annan and the Global Compact office, business assumes that "human" and "natural" limits are elastic -- both have, so far, proven profitably pliable. But for Polanyi, as the limits to human and natural commodification are reached, reactionary counter-movements will *inevitably* arise to defend against market externalities. The closer we get to those limits, the more powerful and potentially disruptive the counter-movement will be. Indeed, with Polanyi's analysis in mind, Annan ended his speech with a final warning: "unless [the Compact's] values are really seen to be taking hold, I fear we may find it increasingly difficult to make a persuasive case for the open global market" (1999, 4).

Ten months after Annan's speech, the streets of Seattle were flooded with over 60 000 people protesting the WTO. Annan appeared vindicated, and business took note. In early May 2000, over 1000 industrialists gathered at the 33rd World Congress of the International Chamber of Commerce in Budapest. In his opening speech ICC president Adnan Kassar warned participants that the main challenge for business today, " takes the form of a highly vocal and well-organized array of special interest groups with their own agendas" (CEO 2000, 3). According to Corporate Europe Observer, "fears about a backlash to the corporate agenda were a constant worry among participants. Almost every session, regardless of the issue on the agenda, turned into a discussion on how to counter the globalisation-critics" (ibid). There was general agreement among Congress attendees that Annan's proposed Compact provided a golden opportunity for business to win the globalisation debate (ibid, 4).

But again, the ICC understands the Compact differently from the UN. Their different positions are registered in the different ways of reading Annan's warning "unless those values are really *seen to be taking hold*, I fear we may find it increasingly difficult to make a persuasive case for the open global market." Taking hold, and seen to be taking hold, are not the same thing. Annan has investment in the former, the ICC would settle for the latter.

I am not arguing that all ICC members and leadership are cynical, but I do think business has a keener appreciation than most that perception can be a reality unto itself. The Compact is a 'golden opportunity' less because it can better regulate and mold the behavior of business, and more because it can better regulate and mold the perceptions of those concerned with increasing corporate power. For Adnan Kassar "What the Global Compact does is to assemble a broad picture of company actions that *demonstrate* corporate citizenship in action in every part of the world" (qtd. in CEO 2001, 3 --

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[32] "Don't wait for every country to introduce laws protecting freedom of association and the right to collective bargaining" (1999, 3).

emphasis added). "In the past" Kassar elaborates, such initiatives "were often unnoticed, because they were conducted in isolation" (ibid). The ICC has the tendency to speak of the Compact less as a regulatory (even if self-regulatory!) tool, and more as a mechanism that can advertise all the good corporations are doing in the world – good deeds that have previously been disconnected and unknown.[33] At the ICC's 2000 Congress, plans were announced to enlist "the support of international media organizations to make the business response to the Global Compact even more widely known" (ibid, 6).

Two months after the ICC's congress, the Global Compact was officially announced, and, as aforementioned, with great fanfare. Corporations whose brands had been dragged through the mud were now hand in hand – on the covers of major world newspapers, and television screens worldwide -- with a widely recognized force for change in the world. As Kenny Bruno and Joshua Karliner note about the press conference, a synechdode for the UN-ICC relationship, CEOs like Nike's Phil Knight, got to literally align themselves with "with the UN flag, the symbol of international peace, and with the Nobel prize-winning Mr. Annan" (2002, 54).

According to the UNDP Guidelines and Procedures for Mobilization of Resources from the Private Sector, when a UN agency "is engaged in a public relations activity within the framework of a corporate relationship, a mutual image transfer inevitably takes place" (qtd. in Bruno & Karliner 2000, 7). This mass mediated image transfer is exactly what business has gained from the Compact.[34] As noted, acquiring organized civil society's support has not been a priority for business in its partnership with the UN. Business' primary target is the global public opinion that was turning against it while turning the century: "The twenty-first century started in Seattle," ran the headline of French newspaper *Le Monde* the morning following the November 30th protests. The Compact, simply put, is a sophisticated attempt by business to stem threatening anti-corporate criticisms without making significant changes to the business environment -- changes required to address the externalities impelling the protests.

 Self-regulation and the Truncheon

The problem of human and natural limits to commodification, however, is not totally avoidable. These limits might always be contextually determined, but they are still lived and felt by humans worldwide – humans with a stake in their (re)constitution and the (re)constitution of their natural environs. Perhaps the increasingly militarized response to global justice demonstrations should thus be read as a harbinger of neoliberalism's coming contribution to the 'countermovement' – to the state intervention required to keep markets open and running.

The OECD Guidelines and UN Global Compact are meant to stem deep frustrations with economic globalization without addressing their material roots. They

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[33] For Corporate Europe Observer: "The ICC's approach of presenting isolated, non-verifiable initiatives, however insignificant and unrepresentative of the companies' record, as proof of 'corporate citizenship', is deeply flawed. For instance, the fact that automobile and arms producer Daimler-Chrysler uses locally produced coconut fibers in a Brazilian factory producing car components says nothing about the company's overall environmental conduct" (2001, 3).

[34] The internet is the primary mechanism used to publicize the Compact. It is of note that the ICC eagerly launched its own official website three-months before the official Global Compact site was released (CEO 2000a, unpaginated).

operate at the level of perception, and have few material effects beyond the forestallment of public regulation. But while they might stall resistance -- the telos of which business reads as regulation -- resistance will still emerge. And if business does not capitulate to a *public* regulatory solution to the 'sweatshop problem,' it will need to push for regulation of another, more coercive kind. For now, in democratic countries, the disciplinary underside of voluntary mechanisms like the Global Compact are truncheons, rubber bullets, and tear gas.[35] The consent business cannot win through voluntary mechanisms, will need to be secured with "public regulation" of an overtly violent kind.

Recall that for Polanyi the life of market societies depend on two forms of state intervention. First, speaking generally, state intervention is required for turning humans and nature into labor and land (i.e., commodification of labor and enclosure). Secondly, intervention is required to ensure markets do not ravage the very humans and nature they depend upon. What makes the *neo*liberal political project novel, in the history of market societies, is its ambition and ability -- in large thanks to CSR -- to stall the regulatory impulse integral to previously liberal societies.

Neoliberalism's legacy, in Polanyi's terms, is its capacity to jam the second half of 'the double movement.' But this capacity comes with a cost. If human and natural limits are not actively minded, people will resist. Business must thus be prepared to support constant and active 'redefinition' of humans and nature; it must enlist the state in the perpetual pursuit of enclosure. In other words, as natural and human limits are surpassed, new humans and environments will need to be constituted, their limits redrawn (Luke 2003; Rowe 2003). Alternative visions will also need to be suppressed. The underside to self-regulation, whether business is prepared for this eventuality or not, is an increasingly regulatory state of the coercive kind. More pithily: The truncheon is the code of conduct's telos.

There are some indications, however, that codes of conduct and CSR more generally, are losing their lustre. In conclusion I'd like to highlight three developments in the debate over economic globalization that may suggest a shift away from the self-regulation paradigm.

Concluding Remarks

My basic argument is that codes of conduct have been historically designed to forestall public regulation more than ensure responsible corporate behavior, and should thus be resisted. This argument is particularly targeted at Civil Society Organizations (CSOs) that see voluntary codes as gateways to more binding regulation.

The first development I'd like to report, however, is that my argument is quickly losing its critical bite! A civil society consensus is already forming around the perspective supported here -- that the self-regulation paradigm has not fulfilled its promise. The clearest marker of this fast forming consensus is the recent report published

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[35] Eddie Yuen nicely captures the currently uneven, but increasingly generalized police response to 'anti-globalization' protestors: "As Genoa, Geneva, and Gothenburg in Europe and the Port of Oakland, Sacramento and St. Louis in the US have shown, Northern white activists are increasingly being treated like their counterparts in Argentina, the Philippines, or Harlem. Capitalist globalization is now characterized by a race to the bottom for basic freedoms and civil liberties as well as for environmental and working conditions" (xiii, 2004).

by Christian Aid, *Behind the Mask: The Real Face of Corporate Social Responsibility* (2004). Christian Aid's highly critical report has made media waves (See Macalister 2004 and Frean 2004), and elicited harsh denunciations from the business community (Macalister 2004a). I sense the report harkens more widespread civil society resistance to voluntary codes of conduct like the Global Compact and the OECD Guidelines. "We are advocating a move beyond corporate social responsibility" write the report's authors "to corporate social accountability – meaning that companies in the future will have a legal obligation to uphold international standards" (Christian Aid 2004, 3). The authors continue: "NGO pressure can influence multinationals' policy and practice in certain instances, [but] it is clear that it cannot, by itself, ensure that multinationals uphold environmental and human rights standards. In the long run, international NGOs may be more effective by throwing their collective weight behind the drive for international regulation than by tying up their scant resources in bilateral dialogues" (ibid, 14).

What made the 'drive for international regulation' so powerful in the 1960s and 70s was the impressive coalition between the international trade union movement, Western social activists and developing country governments. This social democratic coalition, broken in the 1980s, is reforming -- the second development worth highlighting. I cannot claim trade union resurgence, but as aforementioned, the global justice movement is much larger and stronger than its earlier incarnations. Perhaps more importantly is the emergence of a new developing country oppositional bloc – the G-20+.

The G-20+ was introduced to the world at the WTO's 5th ministerial meeting in Cancun where developing country governments organized themselves in response to longstanding concerns over agricultural subsidies and trade related intellectual property rights (TRIPS). [36] The G-20+ demands were not met, and the talks collapsed. According to Thomas Palley, an economist with the Open Society Institute: "The G-20+'s emergence represents a significant change in the landscape of multilateral trade negotiation. In the past, developing countries have been out-gunned by the superior negotiating capacities of the EU and US. Now, they have shown the ability to contest agendas they find unsatisfactory" (2003, 1).

The G-20+ alliance is shaky, with less power and cohesion than the G-77, but still holds promise for reformers. The hope is that a coalition between global labor, the global justice movement, and the G-20+ can reach a 'grand compromise' with business and Northern governments that includes international and enforceable labor and environmental standards coupled with guaranteed commitments of long-term development aid and debt relief for the developing world (See Shoch 2000 and Palley 2003).

The final development I'd like to report on is the compelling set of corporate responsibility Norms being compiled by the UN Sub-Commission on the Promotion and

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[36] Members of the G-20+ include Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Phillipines, South Africa, Thailand, and Venezuela. More than 51 percent of the world's population and 63% of farmers live in the G-20+ countries, which produce more than a fifth of global agricultural output and more than a quarter of farm exports (Capdevilla, unpaginated).

Protection of Human Rights. The legal status of the Norms remain murky, but their supporters see them as the first step towards the aforementioned 'grand compromise.'

Business sees the Norms similarly and has mounted a coordinated opposition. According to Stefano Bertasi from the ICC: "We have a problem with the premise and the principle that the norms are based on. These norms clearly seek to move away from the realm of voluntary initiatives…and [we] see them as conflicting with the approach taken by other parts of the UN that seek to promote voluntary guidelines" (CEO 2004).

The Norms overcame an impressive hurdle in April 2004 when the UN Commission on Human Rights, despite intense business pressure, opted to continue developing them. The Commission's decision was undoubtedly impacted by the widespread civil society support for the UN Sub-Commission's work. In March 2004 nearly 200 CSOs endorsed a statement supporting the Norms (Amnesty 2004).

The UN Norms are attractive to civil society because they provide a positive alternative to the self-regulation paradigm *and* the UN's general complicity with the ICC. The Norms are seen as a way to interrupt both of these trends – trends that have stalled attempts to regulate corporations in a sustained and enforceable manner. According to Christian Aid: "[We are] part of a growing network of NGOs, policy institutes, legal experts and development specialists arguing for an agreed set of legally binding obligations for business. There is an emerging consensus about the possible scope of such obligations, exemplified by the UN Sub-Commission on the Promotion and Protection of Human Rights' development of a set of norms covering corporate responsibility. The time is ripe to move this consensus towards legal obligations" (2004, 50). My research leads me to agree.

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