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Sustainable capitalism or ethical transnationalism: Offshore production and economic development ☆

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Abstract

Multinational firms are increasingly facing pressures from consumer groups and activists to become more socially responsible. These pressures include calls for more environmentally safe production, improved labor conditions, and fair trade among transnational subsidiaries. While some describe the effects of globalization and the Corporate Social Responsibility (CSR) movement as ratcheting up transnational social standards, others claim that these efforts merely serve as a legitimizing mechanism of global capitalism, which sustains unequal distributional effects under the rhetoric of human rights.

JEL classification: J8; K2; L5; O2

Keywords: Corporate Social Responsibility; Labor markets and globalization; MNCs

1. Introduction

In this article, I argue that the duality between the two rival ideas of social responsibility and global mobility is largely false. For example, in the field of labor and employment regulation, the debate about the effects of globalization of labor standards must be approached with a more complex lens. While some contexts of globalization have undermined national industrial relations systems and eroded labor protections causing a global race to the bottom, other developments have had positive effects on the mobility and opportunities of labor. These latter forces have created competitive pressures to ratchet up production processes and work conditions and have pushed forward skills, training and economic development. Importantly, the mere

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debate about globalization – is it good or bad? – is largely archaic. Scholars of trade and the international and transnational political economy must recognize that the train of globalization has already left the station. Similarly, the idea that we can choose between forms of activism and regulation, between public legal regimes and voluntary private initiatives, or between domestic and international norms, is misleading. Most legal regimes are composed of public and private norms. The task then, for students of globalization and human rights, is to produce more nuanced analysis of mechanisms, incentives, and strategies for promoting social standards.

In the following sections, I offer some observations from my studies of labor standards and multinational corporations (MNCs), as well as my studies of employment law and work regulation in various legal systems. I argue that these often-false ideological left/right dichotomies in the controversies surrounding globalization and human rights impede our abilities to find common grounds and apply lessons about socially responsible global production. A primary example for this is the choice between hard and soft strategies for regulation. There is a range of different frameworks and mechanisms with which the question of global standards can be approached. These include conventional domestic law, through court litigation or administrative regulatory enforcement, international law, human rights non-governmental activism, and transnational labor networks. Supplementing conventional legal protections, an emerging school of thought within the legal academy argues that distinct from the approach of formal domestic and international laws in attempting to prevent a race to the bottom, there can be an effective framework for promoting labor practices that seeks to promote a ‘‘race to the top,’’ through privatized, softer approaches to work standards (Lobel, 2004; Sabel, Fung, & O’Rourke, 2001). This framework favors the adoption of ‘‘best practices’’ that will raise labor standards and create a positive spill over from multinational corporations to domestic firms.

The Corporate Social Responsibility (CSR) movement demands that corporations, because of their dominance as global institutions, address social and environmental problems around the world. Increasingly, as a response to public pressure from consumers, investors, unions, and NGOs, corporate codes of conduct are voluntarily adopted by MNCs. The main criticism, however, of these approaches is ineffective implementation, the absence of monitoring, and lack of incentives to comply. Yet, as law and society scholars have shown in various contexts, legal strategies must be understood as part of a dynamic and complex set of strategies, from both the public and private sectors, which bring about social change. In the following sections, I will demonstrate these complexities by looking at two paradigmatic examples for the push for Corporate Social Responsibility: the apparel industry during the 1990s and the mass-retail industry at the beginning of the 21st century.

Both contexts teach us that the past decades have seen significant changes in the types of demands the human rights community can make on the business community. By comparing the 1990s with 21st century activism, I will offer observations on the transformations in the scope of legitimate practices in the global arena and describe the frontiers of transnational social justice. In particular, I will demonstrate these developments through two paradigmatic corporations that have been the target of human rights investigation, media attention, litigation, grassroot consumer action: Nike and Wal-Mart.

2. From intentional ignorance to reactive declarations

While during the 1980s firms routinely responded to challenges by human rights activists with dismissal, using legal constructs to defer responsibility, recent years have seen a change in attitude and a broadening of legitimate claims over corporation. In the first stage, throughout the

1990s, it is useful to observe the struggles surrounding the Nike Corporation as a paradigmatic player in the apparel industry. Today, unlike only several decades ago, the large majority of apparel manufacturing is global. The change in production patterns has been dramatic. As late as the 1960s, only 4% of the clothes sold in the United States were imported. Since the turn of the century, imports account for over 60% of distributed products. In some areas, such as the apparel industry, imports are over 90% of the total products. As a result, workplaces across the globe are increasingly intensely connected by contractual and subsidiary ownership links.

A key development has been a shift in the responses of companies to reports linking them with abusive practices around the world. As late as the early 1990s, it was still a common practice and was considered legitimate for a multinational to respond to critiques about labor standards by its subsidiaries by explaining that the multinational did not own the manufacturing companies. A CEO felt comfortable to simply state "we have no knowledge or responsibility of their practices." Indeed, the incentive was to *know less* rather than more about subsidiaries. Surveys of chief executives of multinationals indicated that they pervasively did not know who and how many subsidiaries are involved in manufacturing their products. By the late 1990s, this was no longer considered a valid strategy. As a result of the combination of pressures from consumers, NGOs, governments and the media, global and visible firms in the apparel industry moved to declarations about efforts to improve their practices and monitor their subsidiaries. Therefore, when Nike was sued in California by an activist named Kasky for false advertisement under California consumer protection laws, the action was already enabled by Nike's response to grassroot activism through a Corporate Social Responsibility public relations campaign (Kasky, 2002).

Viewed in this light, a central critique of using litigation strategies in such cases is that the effects are counter productive. The concern is that litigation halts the positive cooperation between civil society-business and the move to increased transparency by the MNCs. For example, in reaction to the law suit against Nike in the Californian courts, the Nike Corporation reacted by removing manufacturing information from its website, so as not to be open to increased challenges by consumers. In the long run, despite this valid concern about counter productive effects, it is the market effects and in particular, consumer and investor consciousness on human rights issues that are likely to have the greatest impact. There is no doubt that there have been critical achievements in this direction. Empirical studies indicate that a majority of consumers are willing to pay for fair labor standards and environmental responsibility (New Marymount University Survey, 1999). Yet, such willingness is limited in its depth and breadth, namely, it will only be significant when the product includes a brand name and when consumers are able to process the information about corporate processes. Consumer movements, therefore, can only complement, rather than replace, the actions of investors, labor unions, governments, and international organizations. A key issue for researching the connections between social activism and Corporate Social Responsibility is thus the divisions of labor among these transnational actors and the relative strength of each.

A second key aspect of the struggles of private consumer activism is the push for more nuanced campaigns. Rather than demanding from corporations to pull out of countries that abuse human rights, there is increasingly a demand for engaging in improvements within a problematic region. In the beginning of the 1990s, companies would simply cut off their connections with subsidiaries and entire countries because of findings of abusive practices. Today, there is more of a demand for staying in the developing country and building the needed infrastructure for responsible production. For example, the Nike Corporation, in collaboration with local NGOs has been developing initiatives to redirect the children from child labor to educational programs funded by the corporation. A broader-based initiative is that launched by the World Federation of the Sporting Goods Industry (WFSGI), an international association of sports apparel industry, founded in 1978, which includes such corporations as Nike, Adidas, Reebok, New Balance, and Puma. Since the mid 1990s, the WFSGI has been increasingly involved in questions of fair trade and ethical production. In 1995, WFSGI established a Committee on Ethics and Fair Trade (CEFT). The committee has commissioned independent monitoring and reports on the problem of child labor.

In this context, the problem of ethical conduct is complicated by massive subcontracting. Yet, the practice of shutting down production or pulling out from countries known to employ children in manufacturing has been that the bottom line result is an adverse effect on these countries. For example, children who are eliminated from production processes in the apparel industry were found to be pushed into more risky and exploitative industries. Following this lesson, the WFSGI reacted by an increased commitment to the provision of educational settings for these children. In 1997, the industry's central MNCs, in cooperation with the International Labor Organization (ILO), agreed to participate in an educational program for eliminating child labor in Pakistan. The program includes a mechanism for independent monitoring, including surprise inspections, as well as transitional schooling for displaced children and micro-credit loan plans for families. The program has had recognized achievements, including a robust participation by local manufacturers in Pakistan. As a result, WFSGI reports that 95% of Pakistani export production in the sports goods industry is regularly monitored and certified as free of child labor (Gorgemans, 2005).

The WFSGI–CEFT has been recently renamed the Corporate Social Responsibility Committee, and in early 2005 has held an international meeting in Shanghai, China to discuss extending its approach to child labor elimination to other human rights issues in global production. The lessons of this initiative are that economic development is unlikely to be achieved through single sided boycotts, but rather through an ongoing commitment to improvement and cooperation.

3. Retailing under pressure

If the 1990s had Nike as the symbol of corporate misconduct in offshore production, at the beginning of the 21st century it is the Wal-Mart Corporation that is the new nemesis of transnational labor activists. Wal-Mart has made aggressive approaches to cost reduction on all fronts its trademark business technique. It therefore uses similar tactics in its relations with its employees domestically here in the US as with its suppliers abroad. In fact, Wal-Mart – the world's largest retailer and American service employer – should also be understood as one of the world's largest manufacturers. In other words, it is more accurate to understand Wal-Mart as a maker of goods as well as a retailer, which employs tens of thousands of workers around the world through subcontracting to manufacture the goods in a specified low cost. The common practice of the corporation is to pressure its suppliers to continuously lower their prices. These aggressive strategies are inevitably also an export of management practices. Wal-Mart exerts pressures on manufacturers around the world dictating outsourcing, lowering labor and environmental standards, eliminating jobs, avoiding unionization, increasing work hours, and decreasing pay and benefits (Cleeland et al., 2003). In addition to purchasing products from other brand manufacturers, Wal-Mart produces private-label apparel in about 50 countries around the world. As journalist Charles Fishman describes, Wal-Mart's suppliers must "turn themselves into shadow versions of Wal-Mart itself." Viewed in this light, Wal-Mart operates very similarly to apparel brands but on a larger scale and with more aggressive tactics. For example, when in 2003, the jeans and clothing manufacturer Levi Strauss entered into an agreement with Wal-Mart to become a supplier, it needed to develop a new less expensive line. Levi Strauss's sales and profits increased but it also closed its last two remaining US factories, laying off 2500 workers (21% of its workforce) (Fishman, 2003). The case of Levis is a particularly telling case because Levis was known for many years as a uniquely socially responsible corporation in the clothing industry.

Globally, Wal-Mart has recently moved its purchasing headquarters to China, demanding strong anti-union tactics from its suppliers. An irony for human rights activists is that even though Chinese labor unions are often deemed a sham by Western commentators, because of their relative subversion to government and corporations, Wal-Mart is demanding their elimination. Wal-Mart insists on union free environments despite the relatively slim power attributed to Chinese unions. In 2005, the Chinese Government and the All China Federation of Trade Unions (ACFTU) threatened to bring legal action against Wal-Mart for its practices of harassing and firing workers trying to organize and for violations of wage and overtime laws. To understand the magnitude of the effects of Wal-Mart management policies on the Chinese labor market, it is helpful to point out that in the past decade, Wal-Mart has had purchasing power in China that has exceeded all but seven countries. In other words, if Wal-Mart was a country, it would be China's eighth largest trading partner (Jingjing, 2004).

Activists contemplating ways in which to struggle for more responsible practices by Wal-Mart have cited antitrust principles to make claims against the corporation. In particular, the theory of predatory pricing – the practice of pricing goods below cost and incurring a loss in order to reduce or eliminate competition – can help frame the pressures Wal-Mart exerts on its suppliers. In the United States, similar to many other legal regimes, predatory pricing is an illegal anti-competitive practice (Brooke Group v. Brown & Williamson Tobacco, 1993; Crane, 2005). However, the legal prohibition has been rarely used and is unlikely to gain much legal teeth in the context of global retail. More likely, the economic theory of predatory pricing can be used as a conceptual tool for situating the degree of control Wal-Mart can have over subcontractors, as well as a way of showing that pricing must be formulated in a way that takes into account production costs. If a retailer is demanding continuous reduction of supply costs, there is a tipping point in which suppliers can no longer produce in compliance with labor and environmental regulations. For example, if a subcontractor manufacturing jeans in Vietnam faces a demand to further reduce costs when it is already paying no more than minimum wage to its manufacturer, further cuts are most likely to come at the price of violating minimum wage laws. Using the framework of economics for the service of human rights activists is a useful development in an area where economists are traditionally aligned with businesses. Corporate Social Responsibility movements are increasingly recognizing that demonstrating their claims through calculations and hard numbers is a powerful mechanism to make their point. Another example is that of the growing focus on statistically-based arguments in the debate on how Wal-Mart's labor practices are taking a toll on public welfare programs. A congressional report from last year shows that Wal-Mart salaries are on average below the American federal poverty line. As a result, workers must rely on public welfare and health provision, allowing Wal-Mart to shift social costs to the taxpayers (Miller Report, 2004). Economic studies now describe the ''Wal-Mart effect'' of *community-wide* poverty rates, finding that counties with more Wal-Mart stores experienced greater increases in family poverty rates during the 1990s. One explanation the researchers have offered is that ''Wal-Mart stores destroy civic capacity in the communities in which they locate by driving out local entrepreneurs and community leaders'' (Goetz & Swaminathan, 2004). Another economic study compares Wal-Mart's business practices with those of its competitor, Costco. In 2004, *Business Week* reported that because of the fact Costco pays its workers much higher wages than Wal-Mart, Wall Street financial analysts predict lower gains for Costco. The report indicates that such analysis may be severely flawed. ‘‘Surprisingly, however, Costco’s high-wage approach actually beats Wal-Mart at its own game on many measures. *Business Week* ran through the numbers from each company to compare Costco and Sam’s Club, the Wal-Mart warehouse unit that competes directly with Costco. We found that by compensating employees generously to motivate and retain good workers, one-fifth of whom are unionized, Costco gets lower turnover and higher productivity. Costco actually keeps its labor costs lower than Wal-Mart’s as a percentage of sales. Put another way, the 102,000 Sam’s employees in the US generated some $35 billion in sales last year, while Costco did $34 billion with one-third fewer employees’’ (Greenhouse, 2005; Holmes & Zellner, 2004).

Most importantly, the business world has moved a long way in the past several decades. The case of Wal-Mart again indicates that the times when a corporation could respond to claims about human rights abuses by distancing its central organization from other parts in the production chain, whether outsourced or decentralized, have passed. No longer do corporations view a legitimate response to be ‘‘this practice is not our problem, it is our manufacturer/supplier/subcontractor that you should go after; and we lost (or never had) their address.’’ Even Wal-Mart’s has recently launched an expensive public relations campaign to signal its willingness to improve and to contribute social responsibility in the regions where it operates. Campaigns that demand consumers’ and investors’ ‘‘Right to Know’’ have increased economic transparency and have instituted non-governmental organizations that monitor and compare MNCs. In turn, multinationals increasingly make demands for regulatory compliance from their suppliers.

4. Lessons and caveats

While CSR campaigns that have focused on paradigmatic MNCs – Nike in the 1990s and Wal-Mart in the 2000s – have had positive effects, there are disadvantages of using iconic corporate symbols to attain larger goals. Activists risk reducing the message of human rights to the single context of a specific firm. Anti-sweatshop and social responsibility campaign should beware of making the icon into the singled out exceptional target. As such, Nike in the 1990s often became the sole focus of consumers, losing site of the greater goal of economic development and social responsibility. While Nike products were often produced under exploitative conditions, other corporations, remaining below consumers’ radar, were also pervasively involved in such conditions. Similarly, the choice of abusive practices against which to struggle has proven a continuous challenge. For example, the focus on child labor risks obscuring the difficult work conditions all workers face in certain manufacturing plants. Finally, an important lesson that grows from a bird’s eye exploration of recent decades of transnational production is the linkages between North and South countries. In the past, the human rights movement has been understood to universalize social consciousness, yet much of the critique against a unified movement has been the conceptual and economic gaps between Northern and Southern regions. Often, activists from developed countries feared they would be understood as protectionist if they demanded higher production standards for developing countries.

The context of Wal-Mart illuminates how a North/South divide is too simplified in several ways. First, the intense competition for development today occurs in effect among developing countries themselves. Wal-Mart’s demand for lowered production costs in fact pits factories in developing countries in Asia against each other, primarily India against China and both these two larger countries against smaller nations such as Vietnam, Bangladesh, and Taiwan. Second, even when jobs are not outsourced, the constant threat of the possibility of outsourcing creates downward pressures around the globe. The ability to move around the world means, for example, that anti-union tactics are quite easily employed. Once successful union efforts are identified in one worksite, a company can quickly move to shut down the plant and relocate. This means that workers are less likely to attempt organization in the first place. A third way in which North/South divides are challenged by today's realities is the growing existence of underground economies in developed countries. Globalization has meant not only capital flow from developed to developing countries, but also rapid migration flows from the developing countries to developed countries. As a result, global metropolitans experience informal sectors that are often described as "the third world within the first," where exploitative employment practices are common.

These realities of globalization and transnational networks present however not only challenges but also opportunities. The social responsibility campaigns, which have linked between low prices and unfair social practices allow consumers, investors, workers, and community organizers to find common ground for broad-based alliances. Moreover, the Internet offers a new frontier for social responsibility, both by allowing greater transparency and by reducing barriers of access and entry into social activism. The greatest challenge is to ensure that cooperative initiatives have long-term effectiveness and staying power in a global setting. The expanding commitment to the concept of a 'Triple Bottom Line' – financial, social, and environmental performance – promises to engage governments, industries, and civil societies in finding the fine balance between financial profitability and key social and environmental goals.

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