THE ROLE OF THE TNC IN THE PROCESS OF LEGALIZATION: INSIGHTS FROM ECONOMICS AND CSR[1]

Andreas Georg Scherer
Institute of Organization and Administrative Science (IOU)
University of Zurich
Universitätsstr. 84, CH-8006 Zurich
andreas.scherer@iou.uzh.ch

Dorothée Baumann
Institute of Organization and Administrative Science (IOU)
University of Zurich
Universitätsstr. 84, CH-8006 Zurich
dorothee.baumann@iou.uzh.ch

Andreas Georg Scherer and Dorothée Baumann, "The Role of the Transnational Corporation in the Process of Legalization: Insights from Economics and Corporate Social Responsibility", in: Law and Legalization in Transnational Relations, Christian Brütsch and Dirk Lehmkuhl (Eds.), Oxford: Routledge 2007, pp. 202-225.

[1] Previous drafts of this paper were presented at the International Conference on 'Voluntary Codes of Conduct for Multinational Corporations: Promises and Challenges', NYU, New York City, May 12-15, 2004, and at the EGOS-Workshop 'Corporate Social Responsbility and Business Ethics', 2004 EGOS annual colloquium, Ljubljana (Slovenia), July 1-3, 2004. Some of the arguments proposed in this paper are further developed in Scherer, A.G., Palazzo, G., and Baumann, D., 'Global Rules and Private Actors: Toward a New Role of the Transnational Corporation in Global Governance', *Business Ethics Quarterly*, 16 (2006): 505–532. We thank BEQ editor Gary Weaver and the Philosophical Documentation Center for kind permission to make use of this material in the present paper.

Introduction: transnational corporations as addressees or authors of global rules?

Traditionally, the state has been regarded as the sole actor designing the legal framework that guarantees private rights, political rights and social rights for all members of society (Marshall 1965). In this ideal conception, companies are the addressees of public rules and regulations and the state apparatus enforces companies' compliance to the given legal framework. With globalization, however, the activities of companies go beyond the sphere of national regulations and transnational corporations (TNCs) are thus no longer subjected to individual national legal framework. For a functioning market economy though, some rules are indispensable. Therefore, even liberal authors who are very critical of state interventions would agree that some rules need to be in place (Friedman 1962; Nozick 1975; v. Hayek 1945). Yet on a global scale, frameworks that encompass global rules cannot be designed by a centralized governmental institution.

The analysis of global governance processes, referring to rule making and rule enforcement on a global scale, clearly demonstrates that the formulation of rules is no longer a task managed by the state alone (see, e.g. Braithwaite and Drahos 2000; Brozus, Take and Wolf 2003; Günther 2001; Kingsbury 2003; Shelton 2000; Zürn 1998). Rather, in recent years, civil society groups as well as TNCs increasingly participate in the formulation and implementation of rules in policy areas that were once the sole responsibility of the state or international organizations (Matten and Crane 2005). Rule making activities of TNCs and civil society groups include, e.g. protecting human rights (Breining-Kaufmann 2004; Kinley and Tadaki 2004; Campbell and Miller 2004; Cragg 2005), implementing social and environmental standards (Christmann 2004; Scherer and Smid 2000), or involvement in peace-keeping activities (Fort and Schipani 2002). Such activities indicate the shift in global

business regulation from state-centric towards new multilateral and non-territorial modes of regulation with non-state actors involved (Braithwaite and Drahos 2000).

In *legal studies*, however, only recently scholars have given credit to these developments. Some scholars acknowledge the significance of private rule making (Parker and Braithwaite 2003; Teubner 1997) and discuss the responsibility of private firms to implement human rights beyond the scope and territory of national regulation (Campbell and Miller 2004; Kinley and Tadaki 2004; Weissbrodt and Krueger 2003). Cragg (2005: 24) states that there is an 'emerging international consensus, (…) that respect for human rights is a basic obligation of multinational corporations operating at home and abroad'. At present, however, neither national nor international law is able to sufficiently regulate the behaviour of multinational firms (Avi-Yonah 2003). In their recent discussion on human rights responsibilities of TNCs, Kinley and Tadaki (2004: 1021) therefore conclude that

> [t]he state-centric framework of international human rights law and attendant institutions is at present ill-equipped to regulate powerful non-state actors like TNCs, which are, by definition, not constrained by notions of territorial sovereignty.

Obviously, the problems of globalization require new conceptions that go beyond traditional approaches in legal studies (see, e.g. Günther 2001; Kingsbury 2003; Parker and Braithwaite 2003). Kingsbury (2003: 295) stresses that an adequate theoretical approach to international law 'must be concerned with participation and with managing inequality'. Günther and Randeria (2001) analyse the transnationalization of the law and they identify international law firms, legal counsels and international organizations as important private actors that play an active role in shaping these processes. TNCs, however, are not yet fully recognized as

potential sources of rule-making and enforcement. Too often business firms are mainly considered addressees of national regulation rather than the authors of public rules.

In international relations the situation is quite similar. While the issue of global governance and the contribution of non-state actors are widely discussed in the political sciences, TNCs have not come into sharp focus yet (see e.g. Abbott and Snidal 2000; Risse 2002; Zürn 1998). This is also true when students of political sciences explicitly consider the process of legalization in world politics, i.e. the process of the institutionalization of international rules, and analyse its characteristics. Here the sources of the rules' obligations, the precision of rules as well as their interpretation or enforcement by third parties are discussed extensively, while business firms are still neglected (see e.g. Goldstein, Kahler, Keohane and Slaughter 2001). In fact, private business firms and their behaviour are rather seen as a problem of global regulatory policy than as part of the solution. Therefore, the potential of private business firms to contribute to the process of global legalization has not been acknowledged sufficiently in the political sciences.

The state of the art in theory stands in stark contrast to empirical observations in management practice. The initiatives of TNCs towards private rule-making are manifold and have received various labels: 'Corporate Social Responsibility' (CSR) (Smith 2003; Snider Hill and Martin 2003; Zadek 2004), 'Corporate Sustainability' (Sharma and Starik 2002), 'Corporate Citizenship' (Matten and Crane 2005), 'Corporate Philanthrophy' (Porter and Kramer 2002), or 'Business Ethics' (Cavanagh 2004). Many TNCs engage in self-regulation and set up their own 'codes of conduct'. These codes define the humanitarian and environmental standards of their business practices that are implemented within the companies. Often, they are even enforced within their entire area of influence, including contractors and subcontractors (Sethi 2002, 2003; Williams 2000). TNCs also engage in rule making activities at the industry level (see e.g. the responsible care initiative of the chemical

industries) and they cooperate with NGOs and state actors in public-private partnerships to identify and solve problems in various areas of public concern (Argenti 2004; Grimsey and Lewis 2004; Reinicke and Deng 2000; Schneider and Ronit 1999).

The United Nations even want to explicitly employ this potential of TNCs (Annan 1999; Williams 2004; www.unglobalcompact.com). At the World Economic Forum in 1999, UN secretary general Kofi Annan asked business leaders to join a 'Global Compact' with the goal of fostering nine – now ten – fundamental principles in the areas of human rights, labor and environment worldwide[2]. Annan argues that the involvement of business is necessary because in many Third World countries governments are either unable or unwilling to implement social and environmental standards. Since state sovereignty prevents supranational organizations like the UN or the ILO from intervening, TNCs in many cases remain the only actors that, due to their economic power, can effectively influence conditions. This situation has led some students to argue that business firms have an enlarged responsibility to engage in these issues (see e.g. Santoro 2000; Weissbrodt and Kruger 2003; Young 2004).

The UN Global Compact initiative has advanced as one of the most popular examples of emerging global government structures. Sahlin-Andersson (2004: 134) describes the UN Global Compact as an initiative

> in which new rules, standards and reporting systems are advocated as ways of coordinating or facilitating collaboration and coordination without challenging the sovereignity of individual actors. The Global Compact does emphasize that it is not a regulatory framework. Yet, every group that joins the Global Compact is expected to comply with and actively spread the agreed principles.

[2] In 2004, the UN Global Compact has been supplemented with a tenth principle dealing with the problem of corruption.

As these examples show, new modes of regulation are emerging at a global level. So called ‘soft’ forms of regulation and network-building have been growing over the last decades (see Mörth 2004) and they ‘tend to transcend the regulation-deregulation divide’ (Sahlin-Andersson 2004: 135).

Given these developments, how could the rule-making activities of TNCs be integrated in the new emerging theoretical framework of ‘legalization’ in legal studies and political science? In the following, in order to facilitate interdisciplinary discourse, we will consider what economics and business management contribute to these problems. We are convinced that it is of mutual benefit for the various disciplines (international relations, legal studies, economics, and business management) to learn from each other how to approach the important issues of global governance and legalization and how these problems affect or are affected by transnational business firms.

To give credit to the different theoretical perspectives of this volume, we will use a very broad definition of ‘regulation’. The definition is based on the observation that regulation is not confined to law but that there are various sources of regulatory ordering. We agree with Parker and Braithwaite (2003: 136) that ‘there exist many forms of formal and informal, legal and non-legal ordering in society and multiple motivations and normative commitments amongst targets of regulation’. On this broad view, ‘regulation’ stands for influencing the flow of events and as governments increasingly shift their energies to enabling other actors to regulate (a development that Braithwaite and Parker call the ‘new regulatory state’) this broad understanding of ‘regulation’ comes close to the meaning of ‘governance’ where not only state organizations but all kinds of actors are involved in rule making.

Transnational corporations as economic actors – insights from economics and the theory of the firm

Economic theory of free trade

Many economists do not recommend business support of the UN Global Compact or other CSR-initiatives (see e.g. Henderson 2001; Krauss 1997; Lal 2003). Irwin (2002: 214) for instance argues:

> Still, the best and most direct way to raise wages and labor standards is to enhance the productivity of the workers through economic development. Trade and investment are important components of that development, and therefore efforts to limit international trade or to shut down the sweatshops are counterproductive.

In economic theory, the dominant perception is that it is only through free trade that worldwide economic development and welfare becomes feasible (Irwin 2002). In past decades this position was very influencial on world politics and has led to a policy of liberalization and the abolition of trade barriers (Hoekman and Kostecki 1995). Economists suggest that market forces are set free so that capital can be optimally allocated and the advantages of specialization and division of labor become effective. It is assumed that only under the conditions of free trade developing countries can employ their (comparative) cost advantages through labor-intensive production.

A policy in favour of a worldwide harmonization of social and environmental standards, or tax rates, as is suggested by some students of legal studies (see e.g. Avi-Yonah 2000, 2003) is harshly convicted by economists (Irwin 2002). Economists are convinced that the definition of a global level playing field would, by contrast, diminish the cost advantages of developing countries and would be unfavourable for economic development. Standards are

regarded as ‘non-tariff trade barriers’ that only create obstacles to free trade (see e.g. Lal 1998, 2003). This is one of the main reasons why developing countries have in all multilateral meetings, like the WTO or the UNCTAD meetings, voted against the introduction of social and environmental standards or the definition of a ‘social clause’ (see critically, Lee 1997). From the same perspective, Krauss argues ‘[t]he way to help poor people abroad is to open our markets to them … not to force them to adopt human rights standards.’ (Krauss 1997: 51) According to Barro (1994, 1997) economic development has to come first, leaving aside democratization or social and environmental standards. And even economists from third world countries argue ‘a lousy job is better than no job at all’ (Martinez-Mont 1996). Therefore, from the economic point of view democratization and social development may be seen as a *result* of economic development but not as its preconditions.

Economic theory and the social responsibility of the firm

While the comments outlined above are directed towards state policy, some economists also criticize the socially responsible behaviour of private business firms (Henderson 2001; Jensen 2002; Rugman 2000; Sundaram and Inkpen 2004). This was already emphasized by Milton Friedman (1970) in his well-known statement ‘the social responsibility of business is to increase its profits’. Friedman has examined initiatives of business firms and managers that were not oriented towards profit-making but towards emphasizing the social responsibility of the company. Friedman (1970) rejects such activities and even claims that they harm the roots of the free society. While he entitles owners of business firms to behave in a socially altruistic way – they can do whatever they want with their money – he harshly criticises managers that are not focusing solely on profits because they are wasting the money of other people. Managers, as agents of the company owners, are obliged to act in the owner’s best interest and this interest is usually to increase profits. Today this position has become widely known

as the so-called shareholder-value orientation of the corporation. This critical position towards corporate social responsibility also becomes obvious in recent statements of economists. In his examinations of the stakeholder approach, Jensen (2002: 242) rejects the social responsibility of the firm:

> stakeholder theory plays into the hands of self-interested managers allowing them to pursue their own interests at the expense of society and the firm's financial claimants. It allows managers and directors to invest in their favourite projects that destroy firm-value whatever they are (the environment, art, cities, medical research) without having to justify the value destruction.

Profit-orientation, however, is not set absolute, neither in Friedman's nor in Jensen's conception. They both stress that managers have to abide by national and local laws and by common decency. Friedman, for example, refers to 'basic rules in the society, both those embodied in law and those embodied in ethical custom' (Friedman 1970: 218). Profit-orientation is instead justified (in the tradition of Adam Smith) through the increase of public welfare that it generates and of which all members of a society should profit. In the words of Jensen: '… social welfare is maximized when all firms in an economy maximize total firm value.' (Jensen 2002: 239) This, however, only works under the precondition that the state sets the rules of the economic game and all members of the society can be forced to comply with these rules. The state produces the public goods that neither the market nor any private actor can supply. In addition, the state attempts to define the rules in a way so that the externalities of market coordination can be internalized.

Therefore, the coordination mechanism of the market only develops in the desired direction if the market is embedded in a politically designed framework of rules and this

'framework' defines the rules that are necessary to achieve the optimal allocation of resources through market processes. The framework then assures that actors can pursue their private interests without considering the desired societal outcome such as economic welfare and peace. As long as certain preconditions are in place, the 'invisible hand' (Adam Smith) of the market will help to achieve these goals.

In this model of the integration of society the design of the regulatory framework is the sole task of the state. This is still a dominant premise in the economic theory of the firm. It also becomes obvious when Sundaram and Inkpen (2004) suggest that managers of corporations should focus on profits only to satisfy the legitimate concerns of shareholders assuming that '[t]he interests of stakeholders such as employees, suppliers, bondholders, communities, and customers are protected by contract law and by regulation' (Sundaram and Inkpen 2004: 335). Thus, it is the state that has to define and to enforce the rules according to which economic processes can develop. The liberal model of society is based on a strict separation of the public sphere (state) and the private sphere (economy) (Friedman 1962). The state sets the rules of the game and the companies pursue profits within these rules. Conclusively, in the economic model, firms are considered as economic actors only. While so-called 'political' activities of firms such as lobbying or public relations (Keim 2001) as well as an instrumental understanding of corporate social responsibility are seen as part of the economic role (see e.g. McWilliams and Siegel 2001), an intrinsic political or social responsibility of the firm is rejected.

The limits of the liberal model of society[3]

It is debatable whether this model of state regulation still fits under the circumstances of globalization. Despite liberals' scepticism of a strong state, the liberal model nevertheless

[3] It is important here to note that our use of the words 'liberal' and 'republican' is drawn from the literature of political philosophy (see e.g., Habermas 1998). This may be confusing to readers from the US where bumper-sticker political language has changed the original meaning of these terms.

assigns regulatory power to the state only. This perspective is problematic in two respects: the limits of formal law and bureaucracy on the one hand and the process of globalization on the other.

First, abstract rules never perfectly fit to all kinds of situations in daily life but need to be adjusted and interpreted constantly. Therefore, in order to implement state-designed rules according to their original purpose, private actors have to consider – like state actors do – how their actions best serve public welfare (see Steinmann and Löhr 1996). Particularly, in the modern society, the state is incapable of recognizing and anticipating all possible conflicts, and by legislation and bureaucracy to coordinate problems that can arise from an increasingly interconnected and highly complex environment. Therefore, social integration cannot be sufficiently achieved by state-designed formal rules only (Stone 1975). In this context, Paine (1994) has pointed out the importance of 'organizational integrity'. She argues that corporations need a comprehensive approach that goes *beyond* legal compliance because otherwise the organization could be deprived of benefits. Therefore, deficits in regulation have to be managed in self-organizing processes among the parties involved where companies voluntarily abide by self-defined rules. This shows that business ethics is both a necessary and complementary element for regulating the market (Stone 1975; Steinmann and Löhr 1996; Steinmann and Scherer 2000). The commitment to voluntary codes that complement national regulations is, however, only credible if the commitment gets controlled regularly, if the results are transparent and can be verified by an external independent party (Weissbrodt and Kruger 2003).

With globalization regulatory gaps are increasing (Beck 2000; Giddens 1990; Habermas 2001) and the question arises whether the liberal model of society is still the appropriate foundation for explaining the current 'move to law' in international relations. Globalization processes not only increase the complexity of the environment, but also enable

economic actors to cross the territory-bound regulation of state agencies (Zürn 1998). Due to technological progress it has become possible for companies to split up their value-chain processes and distribute their production sites worldwide. As a result, companies are no longer subject to the rules defined by the nation state but can choose among alternative regulations according to economic criteria only (Ghemawat 2003; see critically, Scherer 2003, 2004). By doing so, economic actors undermine the internal sovereignty of the nation state, namely the ability of the state 'to independently set rules and limit or regulate any private activity on its territory' (Reinicke and Witte 1999: 345, translation by the authors).

Regarding the obvious limits of positive law and bureaucracy on the one hand and the consequences of globalization on the other, the liberal model of state-regulation has become questionable. International law scholars have also learnt from regional initiatives like the European integration process and they are currently rethinking their definition of sovereignity and starting to develop concepts of multilevel governance (Bernhard 2002).

Interestingly though, many economists do not regard the loss of regulatory capacity of the nation state as a problem for the liberal model of society. Rather they take the competition between locations and regulations (competition of systems) as an opportunity to limit the influence of the state, to cut back on overregulation, and to stress market forces, assuming that such a competition of systems results in an optimal level of regulation (see e.g. Marciano and Josselin 2003; Siebert 1998). However, what is neglected in these expectations is that a functioning system of competition requires 'rules of the game' that are enforceable by an arbitrator (see critically, Avi-Yonah 2000). For the competitive markets in goods and services this role has been assigned to the state. For the competition of legal institutions there does not exist a comparable institution at the global level. As a consequence, to attract foreign capital, some states do not protect human rights, rather they, for instance, suppress unions (Chan 2003), only have loose environmental regulation (Greider 1997; Scherer and Smid 2000), or

cut taxes and loosen the social safety net (Avi-Yonah 2000) thereby increasing the pressure on other states to do so as well. Obviously, we need institutions of global governance that determine which measures are regarded as ‘fair-play’ in the competition of systems.

Social responsibility of firms in the field of business management

The instrumentalization of corporate social responsibility

Many students of business management deal with these developments in an ambiguous manner. This is particularly true for the research under the labels of ‘business and society’, ‘stakeholder theory’ and ‘corporate social responsibility’ that have gained wide attention. While these theories address the problematic social and environmental consequences of business activities, virtually all these approaches have in common the explicit or at least tacit uncritical acknowledgement of the economic role of the firm. Therefore, these schools of thought are an unstable basis for an extended understanding of the responsibilities of TNCs in a world society (see critically, Margolis and Walsh 2003; Scherer and Kustermann 2004; Scherer and Palazzo 2007; Walsh *et al.* 2003; Walsh 2005).

Carroll (1979, 1991) has come up with a four-dimensional conceptual model of corporate social performance (see also Wartick and Cochran 1985; Wood 1991). The author´s definition of CSR addresses ‘the entire range of obligations business has to society’. It considers economic, legal, ethical, and discretionary responsibilities and places the priority on the economic role of the firm. In Carroll´s model it remains unclear how these different obligations of the firm are interconnected and how tensions between, for instance, the economic and the ethical role of a firm could be resolved. In respect to legal responsibilities, Carroll (1979: 500) states, ‘society expects business to fulfil its economic mission within the

framework of legal requirements', and ignors cases of state failure as discussed in the previous chapter of our paper.

The stakeholder approach was developed by Edward Freeman in the 1980s (Freeman 1984; Freeman and McVea 2001). Freeman pointed out that when managers formulate and implement the company's strategy they not only have to satisfy the expectations of the shareholders or the clients of the company but also need to recognize various stakeholder interests. Depending on the amount of pressure a single stakeholder can exert on the company in a conflict, its interests have to be taken into consideration. This highlights that the stakeholder orientation has been instrumentalized for profit maximization (see critically, Scherer and Kustermann 2004; Scherer and Palazzo 2007; Whetten, Rands and Godfrey 2002). Some authors are now proposing that for the purposes of stakeholder identification not only the power potential, but also the legitimacy and urgency of the stakeholders' claims should be taken into account (Agle, Mitchell and Sonnenfeld 1999; Mitchell, Agle and Wood 1997). However, as long as power still dominates the other two factors, as is suggested by Frooman (1999) or Jawahar and McLaughlin (2001), only the stakes of groups will be recognized that are either instrumental for profit-making or able to harm the company economically.

In this perspective, the involvement of TNCs in processes of international legalization is determined by stakeholders. It is the stakeholders' demands and power that are shaping the TNCs' contribution to legalization processes. Since TNCs in this conception are only giving in to stakeholder demands if those can potentially harm their business, TNCs' rule making activities are solely driven by an economic rationale and not by considerations of serving the *res publica*. However, we assume that even though in most cases scandals have triggered a company's move to self-regulation, some business firms have decided without any pressure

from stakeholder groups to commit themselves to a number of principles or join initiatives of self-regulation (see e.g. Spar and La Mure 2003).

Some scholars of the business and society approach argue that corporate social performance is best monitored through the instruments of public policy and government regulatory agencies (see e.g. Preston and Post 1975; Buchholz 1992). Likewise, as we have analyzed above, scholars in favour of the shareholder value maximization theory rely on the state to design a legal framework (Sundaram and Inkpen 2004). Yet the previous chapter has shown that the effectiveness of national law to regulate economic activities has substantially decreased over time and, therefore, under the circumstances of globalization, such a reference to national law and administration has become problematic.

In sum, business and society as well as the stakeholder approach only offer an insufficient explanation for the involvement of TNCs in processes of international legalization. Both approaches suffer from two major shortcomings. First, some scholars of these approaches still refer to the state when it comes to regulate economic actions and systematically fail to acknowledge the new situation that has evolved through globalization. Second, both approaches remain tightly embedded in the liberal economic model and do not recognize the need for a normative theory to determine the role of the TNC in world society. Reasons for these problems can not only be traced back to the misleading social theory, but also to the problematic positivist research methods that business and society research engages in. Scherer and Kustermann (2004) have demonstrated that the research methodology fundamentally drives the direction of theory-building and can bias results. Therefore, the authors suggest that business and society researchers should critically revise their methods (see also, Scherer and Palazzo 2007).

In light of these problems of existing approaches, alternative conceptions are required. Those have to come up with a well-grounded re-definition of the role of the TNC in the

legalization process. In the following parts of the paper alternative models of the role of the TNC are presented.

From market economics to utopia? – critical management and the ideal discourse coordination

There is one major school of thought in business management, which is highly critical towards the mainstream approaches of business and society and corporate social responsibility. Critical management studies pick up the 1970s version of Jürgen Habermas' critical theory based on the concept of the 'ideal speech situation' (Habermas 1971). These approaches reject economic ideology and its tendency to support the concerns of powerful actors only. Therefore, critical management studies analyses the conditions of modern organizations and attempts to reveal structures of power and dependency in order to change social conditions (see e.g. Alvesson and Willmott 1992, 1995, 2003). Critical researchers want to give a voice to those whose concerns are systematically suppressed, e.g., low skilled workers, women, minorities, the poor, etc. The economic constitution of the market as well as the hierarchical structure of modern organizations is conceived of as a measure for systematic suppression and control (see e.g. Boje and Dennehy 1993). Thus, critical management has a tendency to be anti-market and anti-hierarchy. As an alternative mode of coordination the ideal discourse in the sense of Habermas is suggested. The ideal discourse conditions include freedom of access, participation with equal rights, truthfulness of the participants, and absence of coercion (cf. Habermas 1971: 136 et seq., 1993: 56). Habermas suggests a form of coordination that is oriented towards mutual understanding and agreement where the

participants in discourse coordinate their plans of action consensually. For the business firm the critical management approach

> requires that stakeholders who influence or are influenced by organizations be identified as legitimate participants in the discourse on its strategy. Ideally, organizational goals should be settled discursively, through rational argumentation under undistorted communicative conditions. (Shrivastava, 1986: 373)

This approach is now even acknowledged by stakeholder theorists. In his attempt to fill the normative gap of stakeholder theory, Phillips (2003) suggests designing stakeholder-dialogues according to the Habermasian approach:

> While difficult in practice, the implication is that managing for stakeholders would entail duplicating as far as possible the conditions of the ideal speech situation. (Phillips, 2003: 112)

However, we think that this approach is not feasible. Rather it appears to be a utopian or at least ‘too idealistic’ approach to societal coordination which is now even conceded by Habermas (1998: 244) (see also critically, Elster 1986; Scherer and Palazzo 2007; Steinmann and Scherer 2000). From our point of view private economic actors cannot be conceptualized in international legalization processes if market dynamics and hierarchies are abandoned. Rather, a theoretical framework has to be based on the realities of the economic environment. It has to capture the empirical observation that companies have themselves come up with systems of rules that are aimed at disciplining market forces in the global arena. It will require

concerted effort and political will of all participants to equip these emerging self-regulatory systems with means that allow for democratic controls (see Scherer and Palazzo 2007). The concept of politics elaborated here is very different from the power politics model underlying economic theory (see, e.g. Keim 2001). Its underpinnings require a renewed picture of the relationship between politics and economics. It has been shown in this chapter that neither the mainstream approaches to CSR with its uncritical acceptance of economic ideology, nor critical management with its insensitivity to the benefits of market coordination and hierarchical control can provide the foundations for a new role of the TNC and its contribution to the legalization of global rules (see Scherer and Palazzo 2007).

Towards a political concept of corporate social responsibility – the contribution of Steinmann* et al. *and Matten and Crane

In the search of a more suitable foundation of a new theory of the firm, European academics have drafted approaches that are able to take the social responsibility of the firm as a political actor in the world society more seriously. For instance, authors like Horst Steinmann and his colleagues as well as Peter Ulrich and just recently the corporate citizenship approach presented from Dirk Matten and Andrew Crane point into such a new direction. By political we mean activities

> in which people organize collectively to regulate or transform some aspects of their shared social conditions, along with the communicative activities in which they try to persuade one another to join such collective actions or decide what direction they wish to take. (Young 2004: 377)

The business ethics approach according to the Erlangen conception has a ‘supplementing function’ in respect to the positive law of the state (Steinmann and Löhr 1994, 1995, 1996; Steinmann and Scherer 2000). This means that ethics in the sense of a self-organizing responsible activity is required whenever there is no other general rule available or when present rules fail to resolve conflicts that result as external effects from business activities. The supplementing function exercised by the corporation results from a republican model of politics. In the republican model, the double role of the corporation as private citizen (‘bourgeois’) and as citizen of a state (‘citoyen’) is emphasized (Habermas, 1998). It is assumed that the role of the corporation resembles this double role of a citizen in a state.

As ‘citoyens’, corporations, as much as individual citizens, help to design rules that are of general interest. The ‘general interest’ is not, as in the liberal model of politics, the result of the aggregation of individual interests, but the result of a communication process through which individuals form or change their preferences over time (Elster 1986). The aim of such an interactive process is to come up with a common understanding of which goals shall be pursued and what rules are required. Only within this collectively defined political order, a domain of freedom is defined where citizens as well as corporations pursue their individual interests in their role as private citizens. In the republican view the citizens define these rules collectively (Steinmann and Scherer 2000). However, the

> state’s raison d’être does not lie primarily in the protection of equal individual rights but in the guarantee of an inclusive process of opinion- and will-formation in which free and equal citizens reach an understanding on which goals and norms lie in the equal interest of all. In this way the republican citizen is credited with more than an exclusive concern with his or her private interests. (Habermas 1998: 241)

By contrast, liberal philosophy, which is part of the economic model of the integration of society, only recognizes citizens who always pursue their individual interests, in the market as well as in politics (see Elster 1986; Friedman 1962; see critically, Habermas 1998). Citizen's choices in the market and in politics are an expression of their egoistic motives and therefore politics is in the liberal conception only power politics:

> On the liberal view, politics is essentially a struggle for positions that grant access to administrative power. The political process of opinion- and will-formation in the public sphere and in parliament is shaped by the competition of strategically acting collectives trying to maintain or acquire positions of power. Success is measured by the citizens' approval of persons and programs, as quantified by votes. In their choices at the polls, voters express their preferences. Their votes have the same structure as the choices of participants in a market, in that their decisions license access to positions of power that political parties fight over with a success-oriented attitude similar to that of players in the market. (Habermas 1998: 243)

The conception of business ethics by Steinmann *et al.* follows the republican model of politics and regards the corporation as a political actor with rights and duties and by doing so is able to justify why corporations should contribute to processes of legalization. Matten and Crane (2005) go a step further and do not constrain the role of the TNC on citizen's rights and duties but argue that the corporation holds a 'catalyst function' of citizenship rights.

Then, 'corporate citizenship' refers not only to the citizen-like role of the corporation, but defines corporate citizenship as the 'role of the corporation in administering citizenship rights for individuals' (Matten and Crane 2005: 173). With this conceptualization, Matten and

Crane take account of the observation that in times of globalization companies already fulfil the function of protecting, enabling and implementing citizen rights (Matten and Crane 2005). This is particularly true when (1) the state withdraws or has to withdraw, (2) the state has not yet implemented basic rights, or when (3) the state is principally unable to do so. Matten and Crane examine the possible channels of influence for corporations within the framework of corporate citizenship, namely the assistance of corporations in the implementation of private, social, and political rights. This conception provides a major contribution to the discussion of legalization because it highlights the role of the private corporation in the process of designing global rules and implementing citizenship rights. In addition, such a conceptualization of the role of the TNCs also touches upon a realm that in liberal theory has been the sole responsibility of the state.

Regarding those two different perspectives on the political role of TNCs, the question arises of how these concepts of the republican business ethics, and Matten and Crane's corporate citizenship approach could be reconciled. We argue that those concepts have a complementary structure. We agree with Matten and Crane that the term 'citizenship' should not be used in a superficial manner when dealing with corporations (see, e.g. Moon, Crane and Matten 2005). Corporations do not have the right to vote, which is essential for the status of a citizen in a democratic state. However, we know that as corporations business firms are legal persons that bear rights and obligations: corporations can own property, can make contracts, and can be taken to court, their citizen-alike role is, however, not restrained to private rights.

Numerous countries have defined such rights and duties of corporations through their constitutions, and even before the European court of human rights, legal persons such as corporations are considered legal entities. The German constitution, for example, points out that all fundamental rights also apply to corporate actors. Due to freedom of association,

corporations own in a sense political participation rights. They exert these rights for instance through professional associations that determine the standards of their profession or through committees that determine technical norms thereby contributing to the legalization of rules. In fact, the exertion of political participatory rights of companies is already included in the corporatist model of the political sciences.

The previous section has shown that corporate citizenship and corporate social responsibility, although sometimes used synonymously, have very different connotations. Corporate citizenship stresses the reciprocal relationships between companies, states and civil society in global governance processes. Whitehouse (2003) elaborates that while CSR on the one hand emphasizes the necessity for corporations to comply with societal norms, corporate citizenship on the other hand stresses the duties and rights that tie corporations to the development, diffusion and execution of various forms of regulatory schemes. We have demonstrated that the corporate citizenship concept of Matten and Crane accounts for the state-like roles of TNCs and thus serves particularly well to theoretically capture the rule-making activities of TNCs. For a re-conceptualization of the societal role of the firm, we therefore suggest further research based on Matten and Crane's definition of corporate citizenship. By going beyond the dominating assumption of a strict division of labor between business and politics, Matten and Crane propose a fruitful theoretical framework for explaining the contributions of TNCs to processes of international legalization.

Legitimacy in question – the politically-embedded TNC in a globalized world

In a globalized world we cannot assume that legal and legitimate institutions are already properly in place anywhere in the world. Instead, many developing or emerging countries still have a long way to go towards the rule of law (e.g. see the case of China in Peerenboom 2002). Rather than waiting for governmental agencies starting institutional reform on the

national or global level the UN Global Compact asks private business firms to engage in the process of legalization as politically responsible actors.

To date approximately 2000 companies have followed this call and subscribed to the Global Compact. The motivaton of business frms to take part in this initiative may be mixed ranging from public relations, through instrumental CSR to altruistic behaviour. However, in the course of their membership, business firms get more and more involved in public discourse with civil society groups or governmental agencies on issues of public concern. And even though many business firms are initially pressured by NGOs to engage in CSR projects and react with a strategic attitude (see Spar and La Mure 2003), many of them change their behaviour during an organizational learning process from reactive, instrumental, step-by-step strategies to proactive, responsible, inclusive and open discourse (see e.g. Zadek 2004).

More recently, political scientists have emphasized the role of communication and its binding character in the world wide implementation of human rights. Risse (1999) suggests that initially oppressive political regimes often get into a situation of 'argumentative self-entrapment' when they start dealing with human rights concerns and arguing with human rights activists. Once these communications get under public scrutiny, the behaviour of governments will be critically measured against their own public statements. And they may be motivated to give in the arguments proposed by human rights activists and the world community. The same process may apply to the behaviour of business firms, which often starts as instrumental CSR and sometimes emerges into true socially responsible engagement for public concerns (see e.g. Argenti 2004; Zadek 2004).

Through the engagement of business firms in public dialogue on problematic issues they not only apply their own standards, but vis-à-vis the problems and concerns of affected citizens they also assist in interpreting and resolving human rights and social and environmental issues. This process may also help fill the legitimacy gap in global politics

(ung 2003). In addition, if business firms take part in open and public debates, their activities come under the control of a critical public. It is arguable if such discourses can reach the same degree of democratic legitimacy as democratic elections and parliamentary control but it nevertheless shows a route towards greater legitimacy in the process of legalization (see Palazzo and Scherer forthcoming; Scherer and Palazzo 2007).

In terms of the legal or legitimate 'quality' of rules, one could argue that rules designed and enforced by private actors do not have the same status as rules set by state-actors (Habermas 2004). In this debate, the differentiation between 'rule of law' and 'legal codes' is helpful (see Schachtschneider 2004). While the rule of law describes an ideal situation that has resulted from a deliberate discourse between the citizens (see Habermas 1996); legal codes, which are based on formal rules and institutions are simply an instrument for achieving this ideal. Thus, the legal code is just one element of a lawful state and citizens (including TNCs) also need to make a contribution. The quality of rules is then measured by their legitimacy, which in turn is dependent on the aforementioned public discourse and the democratic structures and processes in which public discourses are embedded (Habermas 1996, 1998).

In that context, a debate about 'soft laws' has emerged. Soft laws can be broadly defined as 'rules of conduct which, in principle, have no legally binding force, but which nevertheless may have some practical consequences' (Snyder 1993: 198). In political science, it is mainly discussed whether compliance levels of soft laws are different from compliance levels with hard laws (legal codes). Opinions are mixed but scholars with a narrow legal perspective argue that since soft law lacks the possibility for legal sanctions, compliance levels are lower. For TNCs that are operating in a global arena, however, most rules are 'soft' as neither an individual nation state nor an international organization can in most cases sanction the wrongdoing of companies abroad. Further research should identify the conditions

which need to be in place so that companies comply with soft rules. We assume that external as well as internal provisions have to be made (see, e.g. Weissbrodt and Kruger 2003). Internally, systems and incentives have to be created so that voluntary codes become part of all business decisions and are implemented throughout the company (see e.g. Leisinger 2003; Parker 2002). Externally, the commitment to a code has to be made public and policies have to be made transparent. That enables civil society groups to actively control the activities of TNCs and interact with the company in cases of conflict. Such transparency provisions are thus crucial because in the end, the level of engagement with stakeholders determines whether corporate behaviour is perceived as legitimate or not. Many companies nowadays invite their stakeholders to discuss their corporate policies (e.g. Novartis, Puma, The Gap etc.). Regular dialogue consequently serves the company as well as the stakeholders. Through institutionalized dialogue *fori*, companies can pick up societal opinions and moods, anticipate risks and adjust their policies accordingly. Stakeholders gain a channel through which they can negotiate their positions and hold the company accountable.

Problems and unsolved questions of corporate social responsibility

Globalization has consequences for the process of legalization that can no longer be explained through the regulatory power of the nation state alone. On a global scale, rules developed on various levels and were mainly driven by private actors such as International Organizations, NGOs or Transnational Corporations (Günther and Randeria 2001; Teubner 1997). Many TNCs commit themselves to their own ‘codes of conduct’ that encompass basic standards in the areas of environmental, social, and labor rights. Through the implementation of these standards, TNCs became authentic sources for global rules (Scherer and Baumann 2004).

The rather pragmatic reaction of TNCs to the dynamics of globalization took place long before the theoretical discourse was able to integrate these voluntary initiatives into its analytical framework. Now, as rule-setting activities of private actors are becoming more and more visible in the global arena, a rethinking of the traditional doctrine of sources of law has started and a discourse about the emerging legal pluralism on a global scale is underway.

The argument that TNCs should participate in rule making mechanisms on the global level provokes several questions and issues. We will concentrate on two major ones: (1) the question of how the problem of a growing democratic deficit of private actor's rule making can be solved; (2) the problem of how the internal organization of TNCs must be changed so that structures and process allow for engagement in public deliberation to contribute to the legalization of global rules.

(1) Even though the deliberate process advanced in the preceeding chapter may lead to higher legitimacy of private engagement in global rule making, the issue is not completely resolved. In a democratic state, citizens collectively form their will. Through elections they decide directly or indirectly under what government and under what rules they want to live together. The political order is therefore based on the agreement of the people and is thus legitimized (Habermas, 1998). In the role model of the TNC that we have sketched out in this paper, however, corporations decide on the further development of a global framework and influence its general conditions without having in advance been elected, authorized or controlled democratically (see Palazzo 2002; Scherer and Palazzo 2007). Although political scientists are currently exploring new, pluralistic forms of accountability in global politics (e.g. Benner *et al.* 2004), one could critically argue that for instance the Global Compact of the United Nations is based on paternalism that blindly trusts on the 'good' corporation, without providing sufficient control mechanisms.

Is corporate citizenship in the end not the solution but the problem itself when corporations exert their power to define global rules in a way that serves their economic interest best (see Shell 2004; Siedel 2002 as recommendations for political lobbying)? How can the democratic deficit in global governance be balanced (Edwards and Zadek 2003; Orts 1995)? Doesn't the new role of the corporation have consequences for the internal constitution of the corporation, the corporate governance? We suggest that to the extent corporations act politically they also have to open up their internal structures and processes for public control, thereby enabling democratic legitimacy. However, the consequences for the corporate governance have to be elaborated in further research (see, e.g. Driver and Thompson 2002; Parker 2002). Generally though, it has been shown that whether the involvement of private actors in public rule making is seen as a threat or an asset to democracy also heavily depends on the definition and conceptualization of democracy. Frykman and Mörth (2004) discuss three notions of democracy (liberal, republican and deliberative) and conclude that unless democracy is defined merely in terms of representative democracy, there is room for the integration of private actor's rule making activities.

(2) The detailed organizational implementation of a political concept of CSR that is advanced here is beyond the scope of this paper (see, e.g. Fung 2003; Steinmann and Scherer 2000; Scherer and Palazzo 2007). It will create a number of further questions, including the problem of how the process of strategy development and implementation can be designed concretely in terms of structures, procedures, and personnel in order to take into account the demands for economic success and social responsibility. Considerations already voiced point to a similar structure in the economic and ethical governance process (see, e.g. Quinn 1996; Simons 1995; Steinmann and Kustermann 1998). This leaves open, however, how the practical limitations of the firm's engagement in public dialogue can be overcome in the context of strategy formulation. To develop answers to this and other questions is the topic of

future scholarly effort, at least when it is a question of a socially responsible strategic management that is not only substantiated in theory but can also be implemented practically.

As the previous parts have indicated, in the process of justifying a new role of the TNC many questions remain open. The paper, however, has made clear that the traditional mode of governance with the state as the sole source of rule making is no longer adequate in light of emerging global governance structures. TNCs as well as other private actors already actively contribute to the protection of human, environmental, and labor rights and thus fulfil state-like functions on a global level. We have shown the different levels to which private actors can be integrated in the theoretical frameworks of economics, business management, and corporate social responsibility. And it has become obvious that social sciences need to cooperate in order to develop an interdisciplinary theoretical framework that is able to explain the role of the TNC in the process of legalization.

References

Abbott, K.W. and Snidal, D. (2000) 'Hard and Soft Law in International Governance', in J. Goldstein, M. Kahler, R. O. Keohane and A.-M. Slaughter (eds) *Legalization and World Politics*, Cambridge MA: MIT Press: 37–72.

Agle, B.R., Mitchell, R.K. and Sonnenfeld, J.A. (1999) 'Who Matters to CEOs? An Investigation of Stakeholder Attributes and Salience, Corporate Performance, and CEO Values', *Academy of Management Journal*, 42: 507–25.

Alvesson, M. and Willmott, H. (eds) (1992) *Critical Management Studies*, London: Sage.

_____ (1995) 'Strategic Management as Domination and Emancipation: From Planning and Process to Communication and Praxis', in P. Shrivastava and C. Stubbart (eds) *Advances in Strategic Management* 12A, Greenwich, Conn.: JAI Press: 85–112.

_____ (eds) (2003) *Studying Management Critically*, London: Sage.

Annan, K. (1999): 'A Compact for the New Century' [Rede von UN-Generalsekretär Kofi Annan vor dem World Economic Forum in Davos, 31. Januar 1999], Available HTTP:

http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html (accessed 8 July 2006)

Argenti, P.A. (2004) 'Collaborating with Activists: How Starbucks works with NGOs', *California Management Review,* 47, 1: 91–116.

Avi-Yonah, R.S. (2000) 'Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State', *Harvard Law Review,* 113: 1575–676.

_____ (2003) 'National Regulation of Multinational Enterprises: An Essay on Comity, Extraterritoriality, and Harmonization', *Columbia Journal of Transnational Law,* 42: 5–34.

Barro, R.J. (1994) 'Democracy: A Receipt for Growth?', *Wall Street Journal,* Dec. 1, 1994.

_____ (1997) 'The Interplay Between Economic and Political Development', in R. J. Barro *Determinants of Economic Growth,* Cambridge MA: Cambridge University Press: 49–87.

Beck, U. (2000) *What is Globalization?* Cambridge UK: Polity Press.

Bernhard, N. (2002) *Multilevel Governance in the European Union*, The Hague: Kluwer International.

Benner, T., Reinicke, W.H. and Witte, J.-M. (2004) *Multisectoral Networks in Global Governance. Towards a Pluralistic System of Accountability*. Available HTTP: www.globalreporting.org/upload/bennerreinickewitte2004.pdf (accessed 15 September 2005)

Berman, S.L., Wicks, A.C., Kotha, S. and Jones, T.M. (1999) 'Does Stakeholder Orientation Matter? The Relationship Between Stakeholder Management Models and Firm Financial Performance', *Academy of Management Journal*, 42: 488–506.

Boje, D.M. and Dennehy, R.F. (1993) *Managing in the Postmodern World: America's Revolution against Exploitation,* Dubuque, IO: Kendall/Hunt.

Braithwaite, J. and Drahos, P. (2000) *Global Business Regulation,* Cambridge: Cambridge University Press.

Breining-Kaufmann, C. (2004) 'The Legal Matrix of Human Rights/Trade Law: State Obligations versus Private Rights/Obligations', Discussion Paper prepared for the *Third Conference of the ASIL Project on* '*International Trade and Human Rights*', Washington D.C., 5-6 April 2004.

Brozus, L., Take, I. and Wolf, K.D. (2003) *Vergesellschaftung des Regierens? Der Wandel nationaler und internationaler politischer Steuerung unter dem Leitbild der nachhaltigen Entwicklung,* Opladen: Leske und Budrich.

Brütsch, C. and Lehmkuhl, D. (2007) 'Legalization and the Many Moves to Law: The Increase, Variation and Differentiation of Legal Arrangements', introduction to the present volume.

Buchholz, R.A. (1992) *Business Environment and Public Policy: Implications for Management and Strategy*, 4th ed., Englewood Cliffs, NJ: Prentice-Hall.

Campbell, T. and Miller, S. (2004) *Human Rights and the Moral Responsibilities of Corporate and Public Sector Organizations*, Dordrecht, Boston and London: Kluwer.

Carroll, A.B. (1979) 'A Three-Dimensional Conceptual Model of Corporate Social Performance', *Academy of Management Review*, 4: 497–505.

_____ (1991) 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders', *Business Horizons*, 34: 39–48.

Cavanagh, G.F. (2004) 'Global Business Ethics: Regulation, Codes or Self-Restraint', *Business Ethics Quarterly*, 14: 625–42.

Chan, A. (2003) 'A "Race to the Bottom". Globalisation and China's labor standards', *China Perspective*, 46 (March-April): 41–49.

Christmann, P. (2004) 'Multinational Companies and the National Environment: Determinants of Global Environmental Policy Standardization', *Academy of Management Journal*, 47: 747–60.

Cochran P. and Wood, R. (1984) 'Corporate Social Responsibility and Financial Performance', *Academy of Management Journal*, 27: 42–56.

Cragg, W. (2005) 'Ethics, Law, Globalization and the Modern Shareholder Owned Multinational Corporation', in W. Cragg *Ethics Codes, Corporations and the Challenge of Globalization*, Cheltenham UK: Edward Elgar: 23–50.

Driver, C. and Thompson, G. (2002) 'Corporate Governance and Democracy: The Stakeholder Debate Revisited', *Journal of Management and* Governance, 6: 111–30.

Edwards, M. and Zadek, S. (2003) 'Governing the Provision of Global Goods: The Role and Legitimacy of Nonstate Actors', in I. Kaul, P. Conceicao, K. L. Goulven and R.U. Mendoza (eds) *Providing Global Public Goods. Managing Globalization*, Oxford: Oxford University Press: 200–24.

Elster, J. (1986) 'The Market and the Forum: Three Varieties of Political Theory', in J. Elster and A. Hylland (eds) *Foundations of Social Choice Theory*, Cambridge: Cambridge University Press: 103–32.

Fort, T.L. and Schipani, C.A. (2002) 'The Role of the Corporation in Fostering Sustainable Peace', *Vanderbilt Journal of Transnational Law*, 35: 389–439.

Freeman, R.E. (1984) *Strategic Management: A Stakeholder Approach*, New York.

_____ and McVea, J. (2001) 'A Stakeholder Approach to Strategic Management', in: Hill, M. A., E. Freeman and J. S. Harrison (eds): *The Blackwell Handbook of Strategic Management*, Oxford: Blackwell: 189–207.

Friedman, M. (1962) *Capitalism and Freedom*, Chicago: University of Chicago Press.

_____ (1970) 'The Social Responsibility of Business is to Increase Its Profits', *New York Times Magazine*, September 13, 1970; reprint in T. Donaldson and P.H. Werhane (eds) *Ethical Issues in Business. A Philosophical Approach*, Englewood Cliffs, N.J.: Prentice Hall: 217–23.

Frooman, J. (1999) 'Stakeholder Influence Strategies', *Academy of Management Review*, 24: 191-205.

Frykman, H. and Mörth, U. (2004) 'Soft Law and Three Notions of Democracy: The Case of the EU', in U. Mörth (ed) (2004) *Soft law in governance and regulation: A interdisciplinary analysis*, Cheltenham UK: Edward Elgar: 155–70.

Fung, A. (2003) 'Deliberative Democracy and International Labor Standards', *Governance*, 16 (January): 51–71.

Ghemawat, P. (2003) 'The Forgotten Strategy', *Harvard Business Review*, 81 (November): 76–84.

Giddens, A. (1990) *Consequences of Modernity*, Cambridge UK: Polity Press.

_____ (1998) *The Third Way: The Renewal of Social Democracy*, Cambridge UK: Polity Press.

Goldstein, J., Kahler, M., Keohane, R.O. and Slaughter A.-M. (eds) (2000) *Legalization and World Politics*, Cambridge MA: MIT Press.

Greider, W. (1997) *One World, Ready or Not. The Manic Logic of Global Capitalism*, New York: Simon & Schuster.

Grimsey, D. and Lewis, M.K. (2004) *Public private partnerships: The worldwide revolution in infrastructure provision and project finance*, Chaltenham UK: Edward Elgar.

Günther, K. (2001) 'Rechtspluralismus und universaler Code der Legalität: Globalisierung als rechtstheoretisches Problem', in L. Wingert and K. Günther (eds): *Die öffentliche Vernunft und die Vernunft der Öffentlichkeit: Festschrift für Jürgen Habermas*, Frankfurt a. M.: Suhrkamp: 539–68.

_____ and Randeria, S. (2001) 'Recht, Kultur und Gesellschaft im Prozess der Globalisierung', Schriftenreihe „Suchprozesse für innovative Fragestellungen in der Wissenschaft", Werner Reimers Konferenzen, Heft Nr. 4, Bad Homburg.

Habermas, J. (1971) 'Vorbereitende Bemerkungen zu einer Theorie der kommunikativen Kompetenz', in J. Habermas and N. Luhmann (eds): *Theorie der Gesellschaft oder Sozialtechnologie,* Frankfurt a.M.: Suhrkamp: 101–41.

Habermas, J. (1993) 'Remarks on Discourse Ethics', in J. Habermas *Justification and Application. Remarks on Discourse Ethics,* Cambridge MA: MIT Press: 19–111.

_____ (1996) '*Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*', Cambridge, MA: MIT Press.

_____ (1998) 'Three Normative Models of Democracy', in J. Habermas *The Inclusion of the Other. Studies in Political Theory,* Cambridge MA: MIT Press: 239–52.

_____ (2001) 'The Postnational Constellation and the Future of Democracy', in J. Habermas *The Postnational Constellation*, Cambridge: Polity Press: 58–112.

_____ (2004) 'Hat die Konstitutionalisierung des Völkerrechts noch eine Chance? ', in J. Habermas *Der gespaltene Westen,* Frankfurt a. M.: Suhrkamp.

Hayek, F. v. (1945) 'The Use of Knowledge in Society', *American Economic Review*, 35: 519–30.

Henderson, P. D. (2001) *Misguided Virtue. False Notions of Corporate Social Responsibility,* London: Institute of Economic Affairs.

Hoeckmann, B. and Kostecki, M. (1995) *The Political Economy of the World Trading System. From GATT to WTO*, Oxford UK: Oxford University Press.

Irwin, D.A. (2002) *Free Trade Under Fire,* Princeton: Princeton University Press.

Jawahar, I.M. and McLaughlin, G.L. (2001) 'Toward a Descriptive Stakeholder Theory: An Organizational Life Cycle Approach', *Academy of Management Review*, 26: 397–414.

Jensen, M. . (2002) 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function', *Business Ethics Quarterly*, 12: 235–56.

Jones, T.. (1995) 'Instrumental Stakeholder Theory: A Synthesis of Ethics and Economics', *Academy of Management Review*, 20: 404–37.

Keim, G. . (2001) 'Business and Public Policy. Competing in the Political Market Place', in M. Hitt, R. Freeman and J. Harrison (eds), *Handbook of Strategic Management,* Oxford: Blackwell: 583–601.

Kingsbury, B. (2003) 'The International Legal Order', in P. Cane and M. Tushnet (eds) *The Oxford Handbook of Legal Studies*, Oxford: Oxford University Press: 271–97.

Kinley, D. and Tadaki, J. (2004): 'From Talk to Walk. The Emergence of Human Rights Responsibilities for Corporations at International Law', *Virginia Journal of International Law* 44 (4): 932–1022.

Krauss, M. (1997) *How Nations Grow Rich. The Case For Free Trade*, New York: Oxford University Press.

Lal, D. (1998) 'Social Standards and Social Dumping', in H. Giersch (ed) *Merits and Limits of Markets*, Heidelberg: Springer: 255–74.

_____ (2003) 'Private Morality and Capitalism: Learning from the Past', in J. Dunning (ed) *Making Globalization Good*, Oxford: Oxford University Press: 41–60.

Lee, E. (1997) 'Globalization and Labor Standards: A Review of Issues', *International Labor Review* 136 (2), Available HTTP: <http://www.ilo.org/public/english/180revue/articles/lee97-2.htm> (accessed 6 January 2004)

Leisinger, K. M. (2003) 'Opportunities and Risks of the United Nations Global Compact', *The Journal of Corporate Citizenship*, 11: 113–31.

Marciano, A. and Josselin, J.-M. (eds) (2003) *From Economic to Legal Competition. New Perspectives on Law and Institutions in Europe*, Cheltenham UK: Edward Elgar.

Margolis, J.D. and Walsh, J.P. (2003) 'Misery Loves Companies: Rethinking Social Initiations by Business', *Administrative Science Quarterly*, 48: 268–305.

Marshall, T.H. (1965) *Class, Citizenship and Social Development*, New York: Anchor Books.

Martinez-Mont, L. (1996) 'Sweatshops are Better Than no Shops', *Wall Street Journal*, June 25, 1996.

Matten, D. and Crane, A. (2005) 'Corporate Citizenship: Toward an Extended Theoretical Conceptualization', *Academy of Management Review*, 29: 166–79.

McWilliams, A. and Siegel, D. (2001) 'Corporate Social Responsibility: A Theory of the Firm Perspective', *Academy of Management Review*, 26: 117–27.

Mitchell, R.K., Agle, B.R. and Wood, D.J. (1997) 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts', *Academy of Management Review*, 22: 853–86.

Mörth, U. (ed) (2004) *Soft law in governance and regulation: A interdisciplinary analysis*, Cheltenham UK: Edward Elgar.

Nozick, R. (1975) *Anarchy, State, and Utopia*, New York.

Orts, E.W. (1995) 'The Legitimacy of Multinational Corporations', in L. E. Mitchell (ed) *Progressive Corporate Law*, Boulder COL: Westview Press: 247–79.

Paine, L.S. (1994) 'Managing for Organizational Integrity', *Harvard Business Review* (March-April): 106–117.

Palazzo, G. (2002) *Die Mitte der Demokratie. Über die Theorie deliberativer Demokratie von Jürgen Habermas*, Baden-Baden: Nomos.

_____ and Scherer, A.G. (forthcoming) 'Corporate Legitimacy as Deliberation: A Communicative Framework', *Journal of Business Ethics*, forthcoming.

Parker, C. (2002) *The Open Corporation*, Cambridge: Cambridge University Press.

_____ and Braithwaite, J. (2003) 'Regulation', in P. Cane and Tushnet, M. (eds) *The Oxford Handbook of Legal Studies*, Oxford: Oxford University Press: 119–45.

Peerenboom, R. (2002) *China's Long March Toward Rule of Law*, Cambridge: Cambridge University Press.

Phillips, R. (2003) *Stakeholder Theory and Organizational Ethics*, San Francisco: Berrett-Koehler.

Porter, M.E. and Kramer, M.R. (2002) 'The Competitive Advantage of Corporate Philanthropy', in: *Harvard Business Review* 80 (December): 57–68.

Preston, L.E. and Prost, J.E. (1975) *Private Management and Public Policy: The Principle of Public Responsibility*. Englewood Cliffs NJ: Prentice Hall.

Quinn, J.J. (1996) 'The Role of "Good Conversation" in Strategic Control', *Journal of Management Studies*, 33: 381–94.

Reinicke, W.H. and Deng, F. with Witte, J.M., Benner, T., Whitaker, B. and Gershman, J. (2000): *Critical Choices. The United Nations, Networks, and the Future of Global Governance*, Ottawa: Int. Development Research Center.

Reinicke, W.H. and Witte, J.M. (1999) 'Globalisierung, Souveränität und internationale Ordnungspolitik', in A. Busch and T. Plümper (eds) *Nationaler Staat und internationale Wirtschaft. Anmerkungen zum Thema Globalisierung*, Baden-Baden: Nomos: 339–66.

Risse, T. (2002) 'Transnational Actors and World Politics', in W. von Carlsnaes, T. Risse and B. Simmons (eds) *Handbook of International Relations*, London: Sage: 255–74.

Rugman, A. (2000) *The End of Globalization. A New and Radical Analysis of Globalization and What it Means for Business*, London: Random House.

Sahlin-Andersson, K. (2005) 'Emergent Cross-sectional Soft regulations: Dynamics at Play in the Global Compact Initiative', in U. Mörth (ed) (2004) *Soft law in governance and regulation: A interdisciplinary analysis*, Cheltenham UK: Edward Elgar: 129–53.

Santoro, M.A. (2000) *Profits and Principles. Global Capitalism and Human Rights in China.* Ithaca NY: Cornell University Press.

Schachtschneider, K.A. (2004) 'Demokratische und soziale Defizite der Globalisierung', in H. Neuhaus (ed) *Der Mensch in der Globalisierten Welt*, Atzelsberger Gespräche 2004: 9–40.

Scherer, A.G. (2003) *Multinationale Unternehmen und Globalisierung*, Heidelberg: Physica.

_____ (2004) 'Schwindende Grenzen zwischen Wirtschaft und Politik. Die neue Verantwortung der multinationalen Unternehmung und der Beitrag Karl Homanns zu ihrer Bestimmung', *Zeitschrift für Evangelische Ethik*, 48: 107–18.

_____ and Baumann, D. (2004) 'Corporate Citizenship bei der PUMA AG. Der Beitrag der Sportartikelbranche zum institutionellen Wandel in der Weltwirtschaft', in H. Ruh and K.M. Leisinger (eds) *Ethik im Management. Ethik und Erfolg verbinden sich*. Zürich: Orell Füssli: 285–98.

_____ and Kustermann, B. (2004) 'Business & Society-Forschung versus Kritische Strategieforschung – Kritik zweier Ansätze zur Integration von sozialer Verantwortung und strategischer Unternehmensführung', *Managementforschung*, 14: 47–77.

_____ and Palazzo, G. (2007) 'Toward a Political Conception of Corporate Responsibility. Business and Society Seen from a Habermasian Perspective', *Academy of Management Review*, 32: 1096–120.

_____ Palazzo, G., and Baumann, D. (2006) 'Global Rules and Private Actors. Toward a New Role of the Transnational Corporation in Global Governance', *Business Ethics Quarterly*, 16: 505–32.

_____ and Smid, M. (2000) 'The Downward Spiral and the U.S. Model Business Principles. Why MNEs Should Take Responsibility for the Improvement of World-wide Social and Environmental Conditions', *Management International Review*, 40: 351–71.

Schneider, V. and Ronit, C. (1999) 'Global Governance Through Private Organizations', *Governance*, 12: 243–66.

Sethi, P.S. (2002) 'Standards for Corporate Conduct in the International Arena: Challenges and Opportunities for Multinational Corporations', *Business and Society Review*, 107 (1): 20–40.

_____ (2003) *Setting Global Standards. Guidelines for Creating Codes of Conduct in Multinational Corporations*, Hoboken: John Wiley & Sons.

Sharma, S. and Starik, M. (eds) (2002) *Research in Corporate Sustainability. The Evolving Theory and Practice of Organizations in the Natural Environment*. Cheltenham UK: Edgar Elgar.

Shell, G.R. (2004) *Make the Rules or Your Rivals Will*. New York: Crown Business.

Shelton, D. (2000) 'Law, Non-Law and the Problem of "Soft Law"', in: Shelton, D. (ed): *Commitment and Compliance. The Role of Non-Binding Norms in the International Legal System*, Oxford: Oxford University Press: 1–18.

Shrivastava, P. (1986) 'Is Strategic Management Ideological?', *Journal of Management* 12: 363–77.

Siebert, H. (1998) ‚Disziplinierung der nationalen Wirtschaftspolitik durch die internationale Kapitalmobilität', in D. Duwendag (eds) *Finanzmärkte im Spannungsfeld von Globalisierung, Regulierung und Geldpolitik*, Berlin: Duncker & Humblot: 41–67.

Siedel, G.J. (2002): *Using the Law for Competitive Advantage*. San Francisco, Calif.: Jossey-Bass.

Simon, H.A. (1991) 'Organizations and Markets', *Journal of Economic Perspecives* 5: 25-44.

Simons, R. (1995) *Levers of Control. How Managers Use Innovative Control Systems to Drive Strategic Renewal*. Boston MA: Harvard Business School Press.

Smith, N. C. (2003) 'Corporate Social Responsibility. Whether or How?', *California Management Review* 54 (4): 52–76.

Snider, J., Hill, R.P. and Martin, D. (2004) 'Corporate Social Responsibility in the 21st Century: A View from the World's Most Successful Firms', *Journal of Business Ethics*, 48: 175–87.

Snyder, F. (1993) 'Soft law and Institutional Practice in the European Community', in S. Martin (ed) *The Construction of Europe – Essays in honour of Emile Noel*, Kluwer Academic Publishers: 197–225.

Spar, D.L. and La Mure, L.T. (2003) 'The Power of Activism: Assessing the Impact of NGOs on Global Business', *California Management Review*, 45 (3): 78–101.

Steinmann, H. and Kustermann, B. (1998) 'Management Theory on the Way to a New Paradigm? Critical Reflections on the Concept of Robert Simons', in S. Urban (ed) *From Alliance Practices to Alliance Capitalism*, Wiesbaden: Gabler: 241–74.

_____ and Löhr, A. (1994) *Grundlagen der Unternehmensethik*, 2nd ed., Stuttgart: Poeschel.

_____ and Löhr, A. (1995) 'Unternehmensethik als Ordnungselement in der Marktwirtschaft', *Zeitschrift für betriebswirtschaftliche Forschung*, 47: 143–74.

_____ and Löhr, A. (1996) 'A Republican Concept of Corporate Ethics', in S. Urban, (ed) *Europe's Challenges. Economic Efficiency and Social Solidarity*, Wiesbaden: Gabler: 21–60.

_____and Scherer, A.G. (2000) 'Corporate Ethics and Management Theory', in P. Koslowski (ed) *Contemporary Economic Ethics and Business Ethics. Studies in*

Economic Ethics and Philosophy, Berlin and Heidelberg and New York: Springer: 148–92.

Stone, C.D. (1975) *Where the Law Ends: The Social Control of Corporate Behavior*, New York: Harper & Row.

Sundaram, A.K. and Inkpen, A.C. (2004) 'The Corporate Objective Revisited', *Organization Science* 15: 350–63.

Teubner, G. (1997) '"Global Bukowina": Legal Pluralism in the World Society', in G. Teubner (ed) *Global Law Without A State*, Brookfield: Dartmouth Publishing: 3–30.

Walsh, J.P. (2005) 'Book Review Essay: Taking Stock of Stakeholder Management', *Academy of Management Review*, 30: 426–38.

_____, Weber, K. and Margolis, J.D. (2003) 'Social Issues and Management: Our Lost Cause Found', *Journal of Management*, 29: 859–81.

Wartick, S.L. and Cochran, P.L. (1985) 'The Evolution of the Corporate Social Performance Model', *Academy of Management Review*, 4: 758–69.

Weissbrodt, D. and Kruger, M. (2003) 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights', *The American Journal of International Law*, 97: 901–22.

Whitehouse, L. (2003) 'Corporate Social Responsibility as Citizenship and Compliance: Initiatives on the Domestic, European and Global Level', *Journal of Corporate Citizenship*, 11: 85–98.

Whetten, D.A., Rands, G. and Godfrey, P.O. (2002) 'What are the Responsibilities of Business to Society?', in A. Pettigrew, H. Thomas and R. Whittington (eds) *Handbook of Strategy and Management*, London: Sage: 373–408.

Williams, O.F. (2000) *Global Codes of Conduct. An Idea Whose Time Has Come*, Notre Dame: Notre Dame Press.

_____ (2004) 'The UN Global Compact: The Challenge and the Premise', *Business Ethics Quarterly*, 14: 755–74.

Wood, D.J. (1991) 'Corporate Social Performance Revisited', *Academy of Management Review*, 16: 691–718.

Young, I.M. (2004) 'Responsibility and Global Labor Justice', *Journal of Political Philosophy*, 12: 365–88.

Zadek, S. (2004) 'The Path to Corporate Responsibility', *Harvard Business Review* 82 (December): 125–32.

Zürn, M. (1998) *Regieren jenseits des Nationalstaates. Globalisierung und Denationalisierung als Chance*, Frankfurt a. M.: Suhrkamp.