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## Corporate Governance and the Global Social Void

Lee A. Tavis

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# Corporate Governance and the Global Social Void

Lee A. Tavis\*

## ABSTRACT

*This Article argues that the components of globalization—economic integration, democratization, and global governance networks—are changing the nature of corporate governance and the prospects for peace. Multinational enterprises are the instruments of economic integration. As such, multinationals as a group deserve credit for the positive productivity-related wealth effects of the process. As the implementing institutions, these enterprises are also inextricably related to the inequality—the social void—resulting from globalization that threatens peace.*

*Hyper competition in the global product markets and the demands of the financial markets determine, to a large extent, the activities of the multinational. Alternatively, there is an evolving opportunity for management to participate in a socially positive way with global governance networks that are gradually assuming the regulatory role from national governments. Within these market and governance constraints, individual firms have an opportunity to mitigate the negative pressures on their various constituencies, thus contributing to development and the prospect for peace. The Article includes a model for balancing the productive, social, and environmental role of the enterprise.*

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The dominant forces shaping both corporate governance and peace in today's world are those associated with globalization. Prospects for peace and the potential role for corporations in that milieu are a function of three components of globalization—economic integration, democratization, and global governance networks. These forces have led to major, technologically-enhanced advancements in productivity across the world and provided new opportunities for people in developing as well as developed countries. At the same time, the process has contributed to the massive global social void of inequality and insecurity.

Corporate governance is framed by the changing markets and regulatory mechanisms associated with globalization. The increasing efficiency of product and financial markets presses enterprise management against the regulatory representation of social and environmental needs. The regulatory power of the nation-state, particularly in developing countries, is eroding while a loose web of global governance networks is evolving. Multinational enterprises are involved with many of the global governance networks and, increasingly, are the target of others. The balance of globalization pressures and the activities of multinational firms will encourage more peace or greater conflict in our world.

This Article will trace the connectors in this process—the linkage among global markets, global governance, and the prospects for peace, with multinational enterprise management in the middle. Part I considers the global trends of the twenty-first century—the global integration of markets, a new wave of democracy, and the evolving transfer of regulatory control from the nation-state to global governance networks. Part II raises the issue of the global social disconnect associated with globalization. Part III analyzes how these trends are affecting corporate governance: the external constraints imposed by the global system as well as the internal direction provided by corporate boards and management, and a model for analyzing the economic, social, and environmental tradeoffs. Part IV focuses on the ultimate goal of peace, how its prospects are affected by globalization, and the role of the multinational enterprise in that process.

## I. GLOBALIZATION COMPONENTS

### A. Globalization Drivers

Globalization is a series of international integrating factors that have swept the world since the Second World War. Led by economic integration, political and cultural globalization are extensive. This integration, unparalleled in history, is driven by dramatic technological advancement in three interrelated areas: information, communications, and transportation.

#### Information

The technology of the storage, access, and transmission of information is nothing short of astounding. The power of a computer chip, the foundation of this technology, doubles every eighteen to twenty-four months, without any increase in cost.<sup>1</sup> The cost of a megabit of storage has fallen from a 1970 cost of \$5,257 to \$0.17 in 1999.<sup>2</sup>

#### Communications

Technology has been increasing the speed, quality, and reliability of communication at a decreasing cost since the introduction of the first telegraph in 1837. A doubling of communications power every six months is predicted.<sup>3</sup>

#### Transportation

Dependability, quality, and cost of material transport has fundamentally changed. "Intelligent Transportation Systems" incorporate information and communication technology with sensing devices to control the transport of components and products.<sup>4</sup> Global air transport has improved dramatically, especially in terms of speed and price.

These developments tie people and markets together across national boundaries in organic networks with interrelationships that are much tighter and deeper than those of historic trade regimes and empires. Citizens from warring countries visit with each other on Internet chat rooms. People know what is happening in the far corners of the world. Business enterprises accumulate information about product availability and quality, as well as production costs and conditions, simultaneously in many locations. In this kind of an

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1. *Human Development Report 2001: Making New Technologies Work for Human Development*, U.N. Development Programme, at 2 (2001) [hereinafter *HDR 2001*].

2. *Id.* at 2.

3. *Id.* at 30.

4. Joseph Sussman, *Transportation's Rich History and Challenging Future—Moving Goods*, TRANSP. RES. CIRCULAR: TRANSP. HIST. AND TRB'S 75<sup>TH</sup> ANNIVERSARY, Aug. 1996, at 17.

electronically enhanced, information-integrated world, national governments have found cultural, political, and economic isolation to be impossible. The most measurable results of these technologies are in economics—the integration of national financial, service, and product markets.

### B. *Economic Integration*

Financial markets across the world are tightly integrated as a result of governmental deregulation as well as technological advancement. These same factors have energized the integration of product markets at a slower but sure pace. Multinational firms—enterprises and financial institutions—are implementing this integration.

Powered by the competitive drive of financial institutions to expand worldwide, financial markets are now virtually unbounded. As Longworth puts it, “[t]he global economy is powered by global financial markets, spinning nearly \$2 trillion a day around the world in a blinding flow of electronic cash.”<sup>5</sup> Bond yields are based upon the London Inter-Bank Offer Rate. Money center banks are all international lenders. In the integration process, these markets have become remarkably efficient on an international basis.

The best measure of integration in the product markets is the relationship between national production and international trade, measuring the amount of global output traded among countries. Between 1960 and 1990, Krugman estimated that for industrial countries, trade in goods and services as a share of production—measured by Gross Domestic Product—rose from 12.5 percent to 18.6 percent—an increase of almost fifty percent.<sup>6</sup> When the data are adjusted to include services, trade’s share of output grows to about eighty percent.<sup>7</sup>

An integrating factor of economic globalization is the separation of the production process over several sites. Developments in production technology have allowed the geographic decoupling of the production process in which parts and components are produced in one location, assembled in another, and offered for sale in a third. When these parts and components cross national boundaries, they

5. R.C. Longworth, *A New World Disordered; The Seeds of Terror Thrive in Poor Ground; Tragedy’s Economic Roots*, CHI. TRIB., Sept. 30, 2001, at Perspective 1.

6. Paul Krugman, *Growing World Trade*, in BROOKINGS PAPERS ON ECON. ACTIVITY 327 (William C. Brainard & George L. Perry eds., 1995).

7. Services have grown more rapidly than the trade of goods. Scott L. Baier & Jeffrey H. Bergstrand, *The Growth of World Trade and Outsourcing* (Jan. 2001) (unpublished manuscript) (on file with author). The Krugman measure is underestimated in two respects: services are not included in the trade flow variable, but are included in the measure of Gross Domestic Product. *Id.*

enter the trade statistics. When measured as “vertical integration, the parts and components have increased to 35 percent of trade and grown by roughly 115 percent compared to the overall growth of trade estimated at 80 percent.”<sup>8</sup>

In the process of economic integration, the key enabling factor for both product and financial market integration has been the decision of national governments to open their markets for foreign competition and the privatization of state-owned enterprises as a means of competing in the global marketplace.<sup>9</sup> From economies that relied basically on markets for the allocation of resources to the implosion of the command economies of the former Soviet Union, all have turned to the market in a greater degree as the means of competing in the world economy. While the decisions to open markets are complex and unique to each country and the degree of openness covers a vast spectrum from Chile to Russia, virtually all countries are more market oriented now than a decade ago.

Economic globalization has surely not exhausted the possibilities. National borders still matter. For example, Toronto’s trade with Vancouver is ten times more than its trade with Seattle.<sup>10</sup> With the technological drivers in place, the economic globalization process will continue.

Multinational firms form the institutional structure through which most of the global economic integration takes place. Financial institutions provide the core of national and international financial services. The commercial, investment, and trust banking functions are central to the operation of the international exchange, credit, bond, and national equity markets. Multinational enterprises—transnational enterprises and multinational corporations—are production networks that spread across the developed and developing world.

The opening of markets, so important to international trade, has been matched by deregulation and laws creating a more favorable foreign direct investment climate. From 1991 through 1999, ninety-

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8. *Id.* at 8. Vertical specialization includes three dimensions: (1) “A good must be produced in multiple sequential stages, (2) Two or more countries must specialize in some, but not all, stages and, (3) At least one stage must cross an international border more than once.” *Id.* For measurement, economists would classify the first two conditions as outsourcing, while vertical specialization would include the third. *Id.* at 7.

9. Scott C. Baier and Jeffrey H. Bergstrand estimate that trade liberalization has had a far greater impact than the decrease in transportation costs, accounting for seventy-five percent of the increase in trade’s share of Gross Domestic Product (GDP) in the post-war period compared to twenty-five percent explained by decreasing transportation costs. Scott L. Baier & Jeffrey H. Bergstrand, *The Growth of World Trade: Tariffs, Transport Costs, and Income Similarity*, 53 J. INT’L ECON. 1, 21 (2001).

10. Robert O. Keohane & Joseph S. Nye, Jr., *Introduction*, in GOVERNANCE IN A GLOBALIZING WORLD 1, 15 (Joseph S. Nye & John D. Donahue eds., 2000).

four percent of the 1,035 changes in national laws were directed toward more favorable climates.<sup>11</sup> Bilateral investment treaties increased from 181 in 1980 to 1,856 by the end of 1999.<sup>12</sup>

The flow of foreign direct investment (FDI) reflects these new, more open, regulatory regimes. FDI inflows as a percentage of global gross domestic capital formation have grown from two percent in 1979 to an impressive fourteen percent in 1999.<sup>13</sup> In 1999 alone, overall FDI surged sixteen percent and—when data become available—may well have surpassed one trillion dollars in 2000.<sup>14</sup> The share of flows to developing countries has decreased, however, from thirty-eight percent in 1997 to twenty-four percent in 1999.<sup>15</sup>

Cross border mergers and acquisitions, including the acquisition of privatized government enterprises, comprise a major component of recent FDI—a more than seven-fold increase in the twelve years from 1987 to 1999.<sup>16</sup> Most of this activity is horizontal acquisitions. About half the number of cross-border mergers and acquisitions—seventy percent of the value—were horizontal.<sup>17</sup> The vast majority of this activity is acquisitions—ninety-seven percent.<sup>18</sup> In terms of production, the gross product of international production has grown from one-twentieth in 1982 to one-tenth of the gross domestic product in 1999.<sup>19</sup>

The multinational enterprise can be a marvel of production and management networks. Advances in production technology combine with communication and information technology to allow for intricate worldwide production scheduling, while the new transportation systems assure the cheap and efficient movement of parts, components, and products.<sup>20</sup> Product specifications and manufacturing processes are standardized across the networks.

The extent of multinational geographic production diversification across countries is reflected in the above data on vertical integration. Intra-firm trade within the individual multinational enterprise

11. *World Investment Report 2000: Cross-Border Mergers and Acquisitions and Development*, U.N. Conference on Trade and Development, at xv (2000) [hereinafter *WIR 2000*].

12. *Id.*

13. *Id.* at xvi.

14. *Id.*

15. *Id.*

16. *Id.* at xix (reporting an increase from \$100 billion to \$720 billion). A rich source of information on these activities can be found in the *WIR 2000*, *supra* note 11.

17. *Id.*

18. *Id.*

19. *Id.* at xvi.

20. LEE A. TAVIS, *POWER AND RESPONSIBILITY: MULTINATIONAL MANAGERS AND DEVELOPING COUNTRY CONCERNS* 50-53 (1997) (discussing the phases of industrial restructuring).



networks represents a substantial share of global merchandise trade—more than a third.<sup>21</sup>

Standardization is also the case with managerial structures. Firms emphasize the commonality of the goals, policies, and procedures across their networks. The idea of control from a central core, however, has changed. Managerial philosophies have shifted from hierarchical structures to heterarchical ones. The command and control systems typical of the post-World War II internationalization of mass production have given way to decentralized networks. Today's multinational organization consists of multiple business units—subsidiaries and affiliates—with greater authority and responsibility, tightly linked through computerized information networks. In these networks, one business unit will take leadership and responsibility for a specific aspect of the whole network, such as an individual product or the implementation of a change in procedures. Performance is no longer measured by the ability of business unit management to follow headquarter decrees, but by their managerial capability to meet performance targets.

Multinationals are also involved in ongoing coordination with other enterprises in the form of supplier contractual networks, joint ventures, or strategic alliances, thus extending the reach of the individual multinational network. Supplier relationships have become more permanent for many multinationals. In the automobile industry, for example, there has been a shift from numerous competing suppliers to single sourcing.<sup>22</sup> Quality control is so coordinated that the final quality assessment function of a component is actually conducted in the contracting assembler's plant.<sup>23</sup> Component production scheduling is also undertaken by the contracting firm in many cases.<sup>24</sup>

Joint ventures are shared undertakings between two firms or a firm and the state. Joint ownership provides a sense of permanence, although the joint venture partners remain with the venture only so long as it continues to fill their needs. Joint ventures between

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21. It has been estimated that multinational corporations account for one-third of world trade in goods and services through their intra-firm transfers, and another one-third among these multinationals. See Chakravarthi Raghavan, *TNCs Control Two-Thirds of World Economy*, THIRD WORLD NETWORK FEATURES, Jan. 29, 1996, at 1, at <http://www.hartford-hwp.com/archives/25/007.html>.

22. TAVIS, *supra* note 20, at 54.

23. *Id.* at 55.

24. John E. Brunet, *Integrating Technology into the Business Environment*, Presentation at the International Association of Jesuit Business Schools, VIII Forum, Manufacturing and Technology in the Global Economy: The Issues Confronting Jesuit Business Schools (June 26, 2001).

multinationals and indigenous enterprises are prone to conflicting purposes and management control issues.<sup>25</sup>

Strategic alliances are targeted to specific purposes, generally technology development or market penetration. Given the cost and complexity of technology and the rapidity with which it is outmoded, even the large multinationals find it difficult to commit human and material resources to such risky ventures. In marketing, product life cycles are so short that products need to be simultaneously introduced in many national markets.<sup>26</sup>

These coordinating activities are intended to enhance the competitive position of the individual firm through quality and cost control or to gain a monopolistic advantage in the product market.

### C. Spread of Liberal Democracy

"In a very real sense, the 20th Century has been the 'Democratic Century'."<sup>27</sup> In 1950, only twenty-two countries—fourteen percent—representing less than a third of the world's population were classified as democratic.<sup>28</sup> By 2000, 120 countries—nearly two in three of the population—were classified as electoral democracies.<sup>29</sup> How is this democratization associated with globalization, and is it sustainable?

#### 1. Democratization Waves

Democracy is currently in what has been identified as its third wave.<sup>30</sup> The first wave commenced with the American Revolution and lasted until after World War I, when much of Europe slipped into fascism and military dictatorship.<sup>31</sup> The second was triggered by the

25. For a discussion of joint ventures in Korea and Mexico, the relationships among the partners and with the governments, see Kwan S. Kim, *The Korean Case: Culturally Dominated Interactions*, in MULTINATIONAL MANAGERS AND HOST GOVERNMENT INTERACTIONS 173 (Lee A. Tavis ed., 1988); Kenneth P. Jameson & Juan M. Rivera, *The Mexican Case: Communication under State Capitalism*, in MULTINATIONAL MANAGERS AND HOST GOVERNMENT INTERACTIONS 204 (Lee A. Tavis ed., 1988).

26. John M. Kline, *The Inverse Relationship between Nation-States and Global Corporations*, in GLOBAL CORPORATIONS AND NATION-STATES: DO COMPANIES OR COUNTRIES COMPETE? 26 (Richard S. Belous & Kelly L. McClenahan eds., 1991).

27. Freedom House, *Democracy's Century: A Survey of Global Political Change in the 20th Century*, Dec. 7, 1999, at [www.freedomhouse.org/reports/century.htm](http://www.freedomhouse.org/reports/century.htm) at 1.

28. *Id.* at 3.

29. *Id.*

30. SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* 3 (1991). For a general explanation of the third wave, see *id.* at 34-46.

31. *Id.* at 17.

decolonization, primarily in Africa, that followed World War II.<sup>32</sup> This second wave receded as many of these newly democratic regions were replaced by dictatorships in the 1960s.<sup>33</sup> Samuel P. Huntington traces the initiation of the current third wave to democracies in Portugal, Greece, and Spain in the 1970s.<sup>34</sup>

This third impetus for democracy has coincided with global market integration, although the cause and effect relationships can be clouded.<sup>35</sup> The technological drivers of economic integration—information, communications, and transportation—make national borders more porous to ideas and preferences as well as to trade and investment. Citizens worldwide are demanding greater participation in their government. There has also been substantial pressure from developed country democracies, the United Nations, and its intergovernmental—multilateral—institutions for greater democracy in national governance.<sup>36</sup>

This third wave of democratization was initiated by the economic success of European unification:

This new wave of democratization might be traced to Western Europe in the mid-1970s. Having developed strong domestic economies and a strongly democratic vocation, having discarded the costly last throes of straightforward colonialism, as opposed to neo-colonialism, and having found economic strength in unity, the European Community exerted a strong pull on the continent's unconverted fringes.<sup>37</sup>

Jan Knippers Black attributes democracy in Latin America to the post-Vietnam-conflict United States, and in central and eastern Europe to the implosion of the former Soviet Union.<sup>38</sup>

## 2. Islam as an Exception

An exception to the democratization trend is in Islamic countries, particularly in the Middle East. Indeed, in 1996, Bernard Lewis counted only one example of liberal democracy among the fifty-three sovereign states that belong to the Organization of Islamic

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32. *Id.* at 18.

33. *Id.* at 19.

34. *Id.* at 21.

35. Authors such as Michael Novak point out that “the natural logic of capitalism leads to democracy,” but specific empirical linkages are elusive. MICHAEL NOVAK, *THE SPIRIT OF DEMOCRATIC CAPITALISM* 15, 362 (1991).

36. See generally Joshua Muravchik, *Promoting Peace Through Democracy*, in *MANAGING GLOBAL CHAOS* 573, 580-82 (Chesler A. Crocker & Fen Osler Hampson with Pamela Aall eds., 1996) (outlining the various tactics and organizations used to promote democracy).

37. Jan Knippers Black, *What Kind of Democracy Does the “Democratic Entitlement” Entail?*, in *DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW* 517, 518 (Gregory H. Fox & Brad R. Roth eds., 2000).

38. *Id.* at 518-19.

Conference, based on Huntington's test of two consecutive peaceful changes of government through free elections.<sup>39</sup>

In the search for an explanation, one answer is the stage of development among these countries.<sup>40</sup> They are poor and have a legacy of extreme differences in income and wealth. Their quarter century of growth, which ended in 1985, was based on extensive governmental controls—protected markets, large governmental bureaucracies, and a bias against agriculture.<sup>41</sup> Globalization has forced Middle Eastern countries out of this model in much the same manner as globalization ended Latin American state capitalism.<sup>42</sup> These countries have stagnated economically—as of the mid-1990s, average earnings had not increased in real terms from 1970.<sup>43</sup> The countries have been marginalized by the economic integration of the globalization process that maintains its dependence and hold on Middle Eastern oil reserves.

A country's stage of development is clearly a factor in democratization. In assessing the potential for democracy in Islamic countries, Abdolkarim Soroush sets development as a necessary condition for democracy:

However, the primary condition for the realization of democracy is the liberation of human beings from the elementary needs and necessities of life. It is true that human beings have always opposed inequity and demanded justice (democracy being a modern manifestation of this perennial human quest), but justice can prevail only where its seekers are not weighted down by poverty and insecurity.<sup>44</sup>

A factor that sets the Islamic countries apart from the other poor, marginalized post-colonial areas in Africa and Asia is the influence of Islam on the politics of these societies. Is there a uniqueness in Islam as a religion or as a historic civilization that dampens or blocks democratization? The separation of church and state that has evolved in the West and its causal factors of technologically supported modernity and secularization pose a challenge to Islamic states. The Islamic tradition does not accept this separation nor its underlying factors. This is the core of the rejection by Islamic radicals.<sup>45</sup> “[N]o Islamic state can be legitimate in the eyes of its subjects without obeying the teachings of the *shari`a*. A

39. Bernard Lewis, *Islam and Liberal Democracy: A Historical Overview*, J. DEMOCRACY, Apr. 1996, at 53-54.

40. Steven Heydemann, *Is the Middle East Different?*, J. DEMOCRACY, Apr. 1996, at 174, 171-75.

41. Fouad Ajami, *The Arab Inheritance*, FOREIGN AFF., Oct. 1, 1997, at 142.

42. TAVIS, *supra* note 20, at 133-40.

43. Ajami, *supra* note 41, at 142.

44. ABDOLKARIM SOROUSH, REASON, FREEDOM, AND DEMOCRACY IN ISLAM 45 (Mahmoud Sadri & Ahmad Sadri trans., 2000).

45. Kenneth L. Woodward, *A Peaceful Faith, A Fanatic Few*, NEWSWEEK, Sept. 24, 2001, at 68.

secular government might coerce obedience, but Muslims will not abandon their belief that state affairs should be supervised by the just teaching of the holy law."<sup>46</sup>

The core issue is whether a religious democracy is possible. Are rules governing personal and social behavior based on divine revelation and interpreted by the state compatible with the grassroots participatory ideal of a Western democratic state? The idea of rights and their correlative responsibility are fundamentally different in Islam. Responsibility, not rights, denotes the relationship between the ruler and the ruled. "The exercise of political power is conceived and presented as a contract, creating bonds of mutual obligation between the ruler and the ruled."<sup>47</sup> In these bonds, the focus in Islam is on justice as distinct from the Western emphasis on freedom.<sup>48</sup> And, as Lewis notes, "[d]emocracy usually evolves out of a movement toward freedom."<sup>49</sup>

While there are strong caveats against arbitrary rule in the Islamic tradition, Islamic political regimes throughout history have been autocratic.<sup>50</sup> "The dominant political tradition has long been that of command and obedience, and far from weakening it, modern times have witnessed its intensification."<sup>51</sup>

Notwithstanding the historical precedence and continuing tension between the Western ideas of religion and democracy and the teachings of Islam, the teachings on the relationship between the ruler and the ruled do support grassroots participation. The tradition of mutual consent—*shura*—is central to the governing process:

The meaning of *shura* is the solidarity in society based on the principle of free consultation and genuine dialogue, reflecting equality in thinking and expression of opinion. Through public and private consultation, the governor (the leader) should seek active advice and input from his followers prior to making a decision.<sup>52</sup>

Soroush argues that religion and democracy in Islamic countries are mutually reinforcing. Soroush concludes one of his essays:

This essay originated in the question of the possibility of combining democracy and religion; but it went on to articulate their affinity and need for each other. Notions of liberty, faith, dynamism of religious

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46. Mohamed Elhachmi Hamdi, *Islam and Liberal Democracy: The Limits of the Western Model*, J. DEMOCRACY, Apr. 1996, at 84. *But see* Robin Wright, *Islam and Liberal Democracy: Two Visions of Reformation*, J. DEMOCRACY, Apr. 1996, at 64 (arguing that resistance to political change is not necessarily a function of the Muslim faith).

47. Lewis, *supra* note 39, at 55.

48. *Id.* at 57.

49. *Id.* at 63.

50. *Id.* at 54.

51. *Id.* at 55.

52. Mohammed Abu-Nimer, *A Framework for Nonviolence and Peacebuilding in Islam*, 15 J. L. & RELIGION 217, 256.

understanding, and rationality of worldly affairs were evoked to attest to the possibility, even the necessity, of such an auspicious reconciliation . . . [a] religious reign over hearts was distinguished from a legal rule over bodies.<sup>53</sup>

### 3. Democracy's Depth and Fragility

Elections are the core of democracy. It is necessary that they take place in a free environment with open, unfettered, informed interaction among the candidates and the populace. The conditions of an ideal election are not unlike those of an efficient financial market. Still, the idea of democracy goes well beyond the mechanics of an election. Liberal democracy also includes the participation of the electors in the decisions of the elected government officials. It implies access to policy discussion and review through the media and other channels.<sup>54</sup>

Extending the notion of democracy beyond election procedures embraces different conceptual, less measurable components and engenders substantial disagreement. A starting point is to define democracy in terms of existing human rights treaties. James Crawford notes:

There can be different ideals or legitimate versions of democracy . . . international law is already seeking to reach some agreement on an agreed minimum content of, or at least an agreed minimum standard for, democracy. The major human rights treaties spell out in some detail the essentials of democracy, understood as the right of all citizens to participate in the political life of their societies.<sup>55</sup>

Crawford further states: "But in the end a democratic society, as envisaged in the human rights treaties, is one which respects the basic rights of its members."<sup>56</sup>

Another approach is to define democracy in terms of freedom. Amartya Sen notes:

*Political freedoms*, broadly conceived (including what are called civil rights), refer to the opportunities that people have to determine who should govern and on what principles, and also include the possibility to scrutinize and criticize authorities, to have freedom of political expression and an uncensored press, to enjoy the freedom to choose between different political parties, and so on. They include the political entitlements associated with democracies in the broadest sense

53. SOROUGH, *supra* note 44, at 154.

54. Freedom House, for example, distinguishes between "electoral democracies" and "free" societies, which include judgments on political rights and civil liberties. In 2000, compared to the 120 electoral democracies, there were only eighty-five countries who met the requirements to be classified as "free" and fifty-seven more who were classified as "partly free." Freedom House, *supra* note 27, at *Tables*.

55. James Crawford, *Democracy and the Body of International Law*, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, *supra* note 37, at 91-92.

56. *Id.* at 93.

(encompassing opportunities of political dialogue, dissent, and critique as well as voting rights and participatory selection of legislators and executives).<sup>57</sup>

Those who equate democracy with freedom would include Sen's full set of instrumental freedoms necessary to "contribute to the general capability of a person to live more freely."<sup>58</sup> In addition to political freedoms, these include economic facilities, social opportunities, transparency guarantees, and protective security.<sup>59</sup>

A further step in plumbing the depths of democracy is to judge it by its results. Brad R. Roth imposes a strong normative requirement to the outcome of procedural democracy: "The moral authority associated with the word 'democracy' is formidable."<sup>60</sup> His democratic vision includes substantive democracy with a relatively equal distribution of power over all social decisions: "[T]he primary focus of normative inquiry must be on, not formal procedures, but social reform. Egalitarian social policies, *i.e.*, policies oriented toward greater economic equality, material security, and access to the institutions of civil society, are essential to democracy. . . ."<sup>61</sup> In this sense, deepening economic inequality, material insecurity, and social stratification are inimical to substantive democracy.<sup>62</sup>

Considering the sustainability of democracy, Huntington's use of the term "waves" indicates his cyclical view of the phenomenon.<sup>63</sup> Both of the first two waves did recede, with the first lasting 150 years and the second only twenty years.<sup>64</sup> The possibility of democracy's sustainability depends on how deeply one defines the term. To anticipate a continuation of procedural democracy is very different from Sen's full set of instrumental freedoms or Roth's substantive democracy.

Taking Latin America as an example, the third wave of democratization has witnessed but few reversals, particularly considering the experience that concluded the second wave. There are disturbing signals, however. Reporting on a recent survey undertaken by a well-respected policy organization, the *Economist* reports that for the first time since the annual surveys were initiated in 1995, the support for democracy has dropped substantially.<sup>65</sup> A

57. AMARTYA SEN, DEVELOPMENT AS FREEDOM 58 (1999).

58. *Id.* at 38.

59. *Id.*

60. Brad R. Roth, *Evaluating Democratic Progress*, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, *supra* note 37, at 493, 497.

61. *Id.* at 503.

62. *Id.* at 504.

63. HUNTINGTON, *supra* note 30, at 15-16.

64. *Id.* at 16.

65. *Latin America, The Ardour Cools: Can Democracy Flourish Amid Economic Woe?*, *ECONOMIST*, July 28, 2001, at 15. See also *The Latinobarometro Poll: An Alarm Call for Latin America's Democrats*, *ECONOMIST*, July 28, 2001, at 37-38.

recent analysis of Brazil emphasizes the shallow nature of that democracy and suggests that if it is to survive, it must remain so.<sup>66</sup> According to this argument, as a democracy becomes deeper, it will threaten the elites, who will initiate a more totalitarian regime.<sup>67</sup>

Whatever the anticipation of democracy, shallow or deep, the future of this system of governance, and a deepening of its impact, is far more fragile than the economic integration component of globalization. In the later discussion on peace, the potential relationship between democratic governance and peace will be assessed. It will be argued that the freedom and social conditions of deep democracies are a necessary component for positive peace.

#### D. National Government To Global Governance

The key factor in economic integration has been the deregulation of national financial and product markets; by shifting from government-led to market-led development, national governments abrogated a substantial amount of economic control to the marketplace.<sup>68</sup> This process, initiated by nation-states, is gradually wresting the control over a wide range of policies from the government to a web of interlocking global networks. This is the transition from "national government to international governance."<sup>69</sup>

Robert O. Keohane and Joseph S. Nye, Jr. define governance as follows:

By governance, we mean the processes and institutions, both formal and informal, that guide and restrain the collective activities of a group. Government is the subset that acts with authority and creates formal obligations. Governance need not necessarily be conducted exclusively by governments and the international organizations to which they delegate authority. Private firms, associations of firms, nongovernmental organizations (NGOs), and associations of NGOs all engage in it, often in association with governmental bodies, to create governance; sometimes without governmental authority.<sup>70</sup>

These networks take many forms: global institutions of the United Nations created by the community of nation-states; cross-border collaboration among individual national governmental groups; overlapping networks comprised of governmental, nongovernmental, and business nodes; and other private or nongovernmental networks.

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66. Kurt Weyland, *The Growing Sustainability of Brazil's Low-Quality Democracy* 1-28 (Apr. 2001) (unpublished manuscript) (on file with author).

67. *Id.* at 17.

68. See TAVIS, *supra* note 20, at 131-48.

69. *Id.*

70. Keohane & Nye, *supra* note 10, at 12.



## 1. Formal Intergovernmental Institutions

International affairs are guided by a plethora of bilateral and multilateral agreements among nation-states. Between 1946 and 1975, the number of these agreements more than doubled from 6,351 to 14,061.<sup>71</sup> These agreements, extensive as they are, do not have the characteristics of national government. The intergovernmental organization that most closely resembles the sovereign nation-state is the European Union. The United Nations and its sixteen specialized agencies have many of the attributes of government: they are created by agreement among most national governments at that time; they have decision making power; and their continuance is conditioned on acceptance by the membership. A growing force is the cross-border collaboration among the domestic judiciary, regulatory agencies, and officials.

### a. United Nations and Related Intergovernmental Multilateral Institutions

The governance role of the United Nations has been described by Raimo Väyrynen as follows:

In theory, the United Nations is the umbrella organization for global governance . . . [h]owever, judged by more demanding standards, the U.N. role in global governance has remained limited, with the exception of some peace-keeping and peace-building operations, and development programs.

In particular, in the governance of the global economy, the impact of the U.N. and its headquarters has been modest. Neither have the bodies it has directly created, such as UNCTAD and UNIDO, been able to gain global influence of any consequence. The responsibility of economic governance has been on the shoulders of international organizations, such as the IBRD and the IMF, which are only indirectly—or not at all—linked with the United Nations.<sup>72</sup>

The United Nations is taking three new directions, as identified by Väyrynen, that promise a major impact on global governance: “Under the leadership of Kofi Annan, the U.N. has taken a new tack that seems to have three distinct elements; (a) a new philosophy of globalization; (b) the search of new solutions to old global dilemmas; and (c) a new approach to transnational corporations.”<sup>73</sup>

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71. DAVID HELD ET AL., *GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS, AND CULTURE* 53 (1999).

72. Raimo Väyrynen, *Reforming the World Order: Multi- and Plurilateral Approaches* 12 (Apr. 2001) (unpublished manuscript) (on file with author).

73. *Id.* at 13. The United Nations outreach to the business community is in terms of a Global Compact. “The Global Compact is founded upon the common ground shared by the United Nations and the global business community. . . . By helping to

These three directions and the reappointment of Kofi Annan as Secretary-General hold promise for global governance. Beyond that, some proposals for modification would expand the authority of the United Nations, moving it closer to a governmental body. Recommendations to include a global central banking function, taxation on global transactions with redistribution of the proceeds, or a bicameral General Assembly would move the activities of the United Nations closer to those of a global government.<sup>74</sup>

Three UN related agencies are central to global governance: the International Monetary Fund (IMF), the World Bank (WB), and the World Trade Organization (WTO).<sup>75</sup> The governance roles of each are changing. As a result of the financial crises in the 1990s, the IMF added an economic development agenda to its chartered role of global monetary stability.<sup>76</sup> Through the imposition of economic conditions as a prerequisite for stabilization loans, the IMF forced acceptance of market discipline and fiscal responsibility on borrowing countries.<sup>77</sup> More recently, the IMF has increased its interactions with social movements. Nevertheless, Higgott, Underhill, and Bieler report: "While the increasing exchanges have led to some attention to the social dimension of structural adjustment programmes and to some democratisation of the Fund's policy in the form of greater transparency, there is still a long way to go towards a fully democratic dialogue."<sup>78</sup>

The World Bank is attempting to include ecological and poverty reducing considerations into its loan and investment efforts along with expanded contacts with social movements and greater transparency in its new information disclosure policy.<sup>79</sup> These programs are a renewal of the "basic human needs" policy of the bank under the McNamara presidency.<sup>80</sup> The emphasis is evident in the opening sentence of the *World Development Report 2000/2001*: "Poverty amid plenty is the world's greatest challenge. We at the bank have made it our mission to fight poverty with passion and

protect and promote universal values, the private sector can help the United Nations make a persuasive case for the open global market." See Global Compact website, at [www.unglobalcompact.org](http://www.unglobalcompact.org).

74. Keohane & Nye, *supra* note 10, at 13.

75. The World Bank has a specialized agency agreement with the UN, the IMF has an agreement of relationship, and the WTO has what is termed a flexible framework relationship.

76. Jan Aart Scholte, *In the Foothills: Relations Between the IMF and Civil Society*, in NON-STATE ACTORS AND AUTHORITY IN THE GLOBAL SYSTEM 258, 256-73 (Richard A. Higgott et al. eds., 2000) [hereinafter NON-STATE ACTORS].

77. *Id.* at 257.

78. NON-STATE ACTORS, *supra* note 76, at 11.

79. Marc Williams, *The World Bank, the World Trade Organisation, and the Environmental Social Movement*, in NON-STATE ACTORS AND AUTHORITY IN THE GLOBAL SYSTEM, *supra* note 76, at 241, 243-48.

80. *Id.* at 245.

professionalism, putting it at the center of all the work we do.”<sup>81</sup> This report is based on sixty thousand interviews conducted by the World Bank in the poverty areas of sixty countries.<sup>82</sup>

The WTO emerged as an institution from its General Agreement on Trade and Tariffs (GATT) predecessor with greater authority in conflicts over trade due to its stronger rules on dispute settlement.<sup>83</sup> Still, the WTO retains some of the basic problems with GATT: the developing countries do not believe they are adequately represented; negotiations take place in secret; and environmental, worker, and other social groups believe their interests are ignored.<sup>84</sup> The central issue for the WTO is whether it will provide the mechanism for globalizing social concerns or be a barrier to their enforcement.

Biosafety is testing the position. Biosafety is the effort to control the potential risk of biotechnology and its products.<sup>85</sup> A number of subsidiary agreements of the WTO presently include biosafety provisions: the Sanitary and Phytosanitary Agreement, Technical Barriers to Trade Agreement, and the Trade-Related Aspects of Intellectual Property Agreement.<sup>86</sup> The Biosafety Protocol, a recently enacted international treaty, is intended to regulate the labeling and testing of genetically modified food for international commerce.<sup>87</sup> Food crops that have been genetically modified to increase their productivity or their resistance to pests and diseases are known as Living Modified Organisms (LMOs).<sup>88</sup> The Protocol gives national governments the right to restrict imports of LMOs if they conclude that these products could endanger health or threaten the environment.<sup>89</sup> Opposition to the Protocol by the multinational producers of LMOs has been based on the argument that it restricts world trade.<sup>90</sup> Opponents are looking for intellectual property protection for biological resources.<sup>91</sup> The Protocol will become an

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81. The World Bank, *World Development Report 2000/2001: Attacking Poverty*, at v.

82. *Id.*

83. Gilbert Gagné, *International Trade Rules and States: Enhanced Authority for the WTO?*, in NON-STATE ACTORS AND AUTHORITY IN THE GLOBAL SYSTEM, *supra* note 76, at 226, 227-31.

84. Oxfam Community Aid Abroad, *Trade—WTO Institutional Reform*, Oxfam Homepage, at <http://www.caa.org.au/campaigns/election/globalisation/wto.html>.

85. UNEP News Release, *Governments Meet to Conclude Biosafety Treaty*, at 3, at <http://www.grida.no/inf/news/news00/news02.htm>.

86. *Id.* at 4.

87. Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, Annexes I-III, 39 I.L.M. 1027.

88. UNEP News Release, *supra* note 85, at 3.

89. Environment News Service, *Biosafety Protocol Agreed* (Jan. 30, 2000), at 1, at <http://ens.lycos.com/ens/jan2000/2000L-01-30-01.html>.

90. *Id.* at 2.

91. Environment at Développement Durable (Envirodev), *TRIPs, Property Rights and Biodiversity* ¼, at 3, at <http://www.envirodev.org/DPI/acteurstrat/contexteafrik.htm>.

issue for the WTO when a country blocks an import based on the Protocol.

#### b. Cross Border Governmental Relationships

The numbers and density of international relationships among domestic governmental institutions have increased in recent years. These forms of governmental collaboration are tied to democracy in that governmental institutional collaboration across borders is more common among liberal democratic market economies.<sup>92</sup> Judicially there is cross-fertilization of decisions, cooperation in dispute resolution, and judicial organizations.<sup>93</sup> Governmental agencies increasingly collaborate in the area of securities regulation, banking and insurance supervision, criminal law enforcement, environmental policy, and antitrust policy.<sup>94</sup> There is substantial give and take in these interactions. The strains of the antitrust process were recently evidenced by the different reactions of the United States Department of Justice and the European Union Competitive Commission in response to the proposed General Electric acquisition of Honeywell.<sup>95</sup>

### 2. Private Network Involvement

With globalization, private institutions have become a significant factor in global governance. There are two broad institutional components in this civil society—the business enterprise and the nongovernmental organization (NGO). These institutions differ in their treatment under the law, their purpose as assigned by society and defined by the institution, transparency, and accountability. There has been a dramatic increase in the number of NGOs. The change in the business sector has been the growth of the multinational firms.

#### a. Business Network Initiatives

The global reach of intra-firm multinational organizational linkages and inter-firm contractual combinations, such as the international subcontracting networks, joint ventures, and strategic alliances outlined above are, themselves, forms of global governance.

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92. Anne-Marie Slaughter, *Government Networks: The Heart of the Liberal Democratic Order*, in *DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW*, *supra* note 37, at 199, 220-21.

93. *Id.* at 204-14.

94. *Id.* at 214-18.

95. Deborah Hargreaves & Peter Spiegel, *Oceans Apart on Competition Policy*, *FIN. TIMES*, June 15, 2001, at 17.

These combinations are attempts to enhance a firm's competitive position by displacing market mechanisms.

Other examples of inter-firm cooperation are directed to rationalizing the market in order to assure its smooth functioning on desired corporate terms, through standards setting, rulemaking, and the organization of industrial sectors.<sup>96</sup> Given the rapidity of technological change and the associated potential for market turbulence, multinational enterprises join together in these networks, generally participating with governmental institutions and often with NGOs to gain information, decrease the cost of commercial errors, and attempt to reduce some of the market uncertainty.

A case of international regulation developing from a small core of business executives is the WTO's Trade-Related Aspects of Intellectual Property agreement (TRIPS).<sup>97</sup> The CEOs of twelve multinational enterprises formed the Intellectual Property Committee.<sup>98</sup> Enlisting support from executives in Europe and Japan, and working through governmental trade representatives, this small group orchestrated a far-reaching global regulation on intellectual property rights.<sup>99</sup> As Susan K. Sell notes: "TRIPs is not merely an incremental change in international regulation, but rather the embodiment of a new 'constitutive principle' insofar as it creates new international property rights that create or define new forms of behaviour and generate structures."<sup>100</sup>

Substantial efforts have been devoted to international standards. A powerful network is the International Organization for Standardization (ISO).<sup>101</sup> Members of the ISO come from national standards bodies.<sup>102</sup> Some of these boards are governmental, while others are private.<sup>103</sup> The U.S. representative, for example, the American National Standards Institute, is a federation of business, government, other standards groups, labor, consumers' unions, and

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96. A. Claire Cutler et al., *Private Authority and International Affairs*, in PRIVATE AUTHORITY AND INTERNATIONAL AFFAIRS 4 (A. Claire Cutler et al. eds., 1999).

97. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 365, reprinted in 33 I.L.M. 81 (1994).

98. Susan K. Sell, *Structures, Agents and Institutions: Private Corporate Power and the Globalisation of Intellectual Property Rights*, in NON-STATE ACTORS AND AUTHORITY IN THE GLOBAL SYSTEM, *supra* note 76, at 92.

99. *Id.* at 93.

100. *Id.* at 94-102.

101. Liora Salter, *The Standards Regime for Communications and Information Technologies*, in PRIVATE AUTHORITY AND INTERNATIONAL AFFAIRS, *supra* note 96, at 112.

102. JAMES R. EVANS & WILLIAM M. LINSDAY, THE MANAGEMENT AND CONTROL OF QUALITY 488 (1996).

103. Virginia Haufler, *Private Sector International Regimes*, in NON-STATE ACTORS, *supra* note 76, at 127.

academics.<sup>104</sup> The ISO 9000 quality management system standards and the ISO 14000 for environmental management systems reflect major industrial input.<sup>105</sup> This is an important example of intense business involvement with civil society and governmental groups.

Another important set of business related networks focuses on social and environmental responsibilities. The purpose of these networks is not to enhance the efficiency of markets, but to promote corporate objectives beyond productivity, efficiency, and wealth control. These networks can be motivated by an attempt to forestall external regulation, to protect and enhance the industry's reputation and the brand image of its members, or from a sense of social responsibility. Standardization of social behavior is the analogue of product and quality standards.<sup>106</sup> Objectives are articulated as aspirational statements in the form of corporate credos, statements of values, or as specific guidelines in detailed codes of ethics or conduct.<sup>107</sup> A 1995 study of U.S. firms indicated that thirty-four percent of those surveyed had a formal written credo, fifty-three percent a statement of values, and ninety-one percent a code of ethics or conduct.<sup>108</sup> Among non-U.S.-based multinationals, however, less than fifty percent have a formal written ethics statement.<sup>109</sup>

International networks are a logical extension of these individual corporate efforts.<sup>110</sup> An example of an international statement of aspirations is the Caux Round Table (CRT). The CRT was founded in 1986 by a group of senior executives from Europe, Japan, and North America.<sup>111</sup> The Caux Principles for Business were published in 1994

104. *Id.*

105. *Id.* at 128.

106. In the apparel industry, Mattell has formulated two hundred standards as part of its Global Manufacturing Principles. S. Prakash Sethi, *Moving from a Socially Responsible to a Socially Accountable Corporation*, in *IS THE GOOD CORPORATION DEAD?: SOCIAL RESPONSIBILITY IN A GLOBAL ECONOMY* 83, 91 (John W. Houck & Oliver F. Williams eds., 1996). The firm has commissioned the Mattell Independent Monitoring Council to audit these principles in developing country factories where Mattell products are produced, both those owned by Mattell and those subcontracting Mattell production.

107. Patrick E. Murphy, *Corporate Ethics Statements: Current Status and Future Prospects*, 14 *J. BUS. ETHICS* 727 (1995).

108. *Id.* at 732.

109. *EIGHTY EXEMPLARY ETHICS STATEMENTS*, at xiv (Patrick E. Murphy ed., 1998).

110. The code of conduct movement is substantial. For a collection of individual ethics statements—including credos, value statements, and codes of ethics or conduct. *Id.* For a summary of global codes, see *GLOBAL CODES OF CONDUCT: AN IDEA WHOSE TIME HAS COME* 305-390 app. (Oliver F. Williams ed., 2000). This volume includes copies of twenty-seven international codes. *Id.*

111. Gerald F. Cavanaugh, S.J., *Executives' Code of Business Conduct: Prospects for the Caux Principles*, in *GLOBAL CODES OF CONDUCT: AN IDEA WHOSE TIME HAS COME*, *supra* note 110, at 169, 172.

and have been implemented in dozens of firms.<sup>112</sup> The principles are a living document in that the CRT continues to meet on a regular basis, and they are finding increasing acceptance by non-CRT members who recognize its basis in corporate leadership.<sup>113</sup> There are two concerns with the Caux Principles: They are too general, and there is no enforcement provision.<sup>114</sup> Specific codes of conduct address both of these concerns.

An example of a code-based monitoring-enforced network consisting of multinationals, universities, and advocacy groups is the Fair Labor Association (FLA). The FLA grew out of the White House Apparel Industry Partnership (AIP), a unique combination of government, business, labor, and other NGOs convened by former President Clinton and charged to end the sweatshop conditions in the apparel industry.<sup>115</sup> The Partnership issued a Workplace Code of Conduct and Principles of Monitoring.<sup>116</sup> The Partnership also designed the Fair Labor Association as the mechanism for certifying and supervising independent monitors.<sup>117</sup> Commenting on the monitoring process, David M. Schilling notes: "The AIP had serious, often heated, discussions about independent monitoring: who will do it and how it will be administered."<sup>118</sup> As the structure moved from the AIP to the FLA, disagreements over monitoring and the payment of a sustainable living wage led the labor representatives and some of the human rights groups to drop out.<sup>119</sup> The FLA is currently the most active group monitoring conditions in apparel manufacturing plants across the world.<sup>120</sup> Membership consists of thirteen major brand marketers, five founding NGOs, plus thirty affiliates of the NGO Advisory Council, and over 170 colleges and universities.<sup>121</sup>

An example of a broader international membership network is drawn from the chemical industry. The "Responsible Care" program

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112. *Id.*

113. *Id.* at 175.

114. *Id.* at 179.

115. David M. Schilling, *Making Codes of Conduct Credible: The Role of Independent Monitoring*, in GLOBAL CODES OF CONDUCT: AN IDEA WHOSE TIME HAS COME, *supra* note 110, at 234.

116. *Id.*

117. *Id.*

118. *Id.*

119. See Press Release, Interfaith Center on Corporate Responsibility (ICCR), *Religious Investor Coalition Declines to Endorse Apparel Industry Partnership Agreement* (Nov. 5, 1998) (on file with author).

120. A smaller network, the Global Alliance for Workers and Communities, is an unusual combination of corporations such as Gap and Nike, a multilateral institution—World Bank—, universities—St. John's and Penn State—, cooperating organizations—Atma Jaya University Research Institute of Indonesia, the Center for Economic Studies and Applications in Vietnam, the Chalalongkom University Social Research Institute in Thailand—, and others to survey workers and study working conditions in the apparel industry—Global Alliance for Workers and Communities.

121. Fair Labor Association website, at [www.fairlabor.org](http://www.fairlabor.org).

developed by the Canadian Chemical Manufacturers Association sets standards for the handling of chemicals.<sup>122</sup> These standards are being broadly implemented, with much encouragement from developing country governments.<sup>123</sup> The International Council of Chemical Associations (ICCA), consisting of national chemical associations, has been instrumental in formulating its own standards beyond those set by the ISO.<sup>124</sup> Many of these restrictions were set in conjunction with Greenpeace and are reflected in the Intergovernmental Forum on Chemical Safety (IFCS), which grew out of the United Nations Conference on Environment and Development.<sup>125</sup> As Virginia Haufler notes: "This reflects a complicated inter-relationship among the members of a private sector regime (ICCA), and other non-governmental organisations (Greenpeace), and governmental institutions (IFCS and individual governments)."<sup>126</sup> Through these kinds of networks, business has a voice in the rules and guidelines of the global economy.

#### b. Nongovernmental Organizations

NGOs—more precisely defined as nonprofit, nongovernmental entities—have flourished in the industrialized world for a long time. They have become a force in developing countries since the 1960s, paralleling the process of globalization. Organizationally, NGOs cover a broad spectrum including development nongovernmental organizations, professional associations, producers' organizations, social movements, labor unions, religious groups—congregations, orders, or base communities—and even the mass media.<sup>127</sup> The diversity of NGOs is captured by the Commission on Global Governance:

Some are issue-oriented or task-oriented; others are driven by ideology. Some have a broad public-interest perspective; others have a more private, narrow focus. They range from small, poorly funded, grassroots entities to large, well-supported, professionally staffed

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122. Virginia Haufler, *Private Sector International Regimes*, in NON-STATE ACTORS AND AUTHORITY IN THE GLOBAL SYSTEM, *supra* note 76, at 121, 129.

123. *Id.*

124. *Id.* at 128.

125. *Id.*

126. *Id.* at 129.

127. Charles A. Reilly, *Balancing State, Market and Civil Society: NGOs for a New Development Consensus*, in POVERTY AND INEQUALITY IN LATIN AMERICA: ISSUES AND NEW CHALLENGES (Guillermo A. O'Donnell & Victor Tokman eds., 1998). For a discussion of nonprofit, nongovernmental NGOs and civil society, see Lee A. Tavis, *The Globalization Phenomenon and Multinational Corporate Developmental Responsibility*, in GLOBAL CODES OF CONDUCT: AN IDEA WHOSE TIME HAS COME, *supra* note 110, at 13, 22-26, 31 n.6.



bodies. Some operate individually; others have formed networks to share information and tasks and to enhance their impact.<sup>128</sup>

In terms of governance, there is a distinction between indigenous and international NGOs. Most indigenous groups are grassroots organizations. Firmly rooted in the local communities, these groups are organized to serve the specific interests of their members or for general community support. Julie Fisher estimates that there are over 200,000 of these indigenous NGOs in the developing world alone.<sup>129</sup> Indigenous NGOs are remarkably diverse groups. Many are very much a part of the democratization process. Through them, people are participating in local governance. Associated with the process of national deregulation and democratization, national governments are moving decision authority from national to regional and local levels—the process of devolution. This shift from typically strong central governments and relatively large staffs in developing countries to the unprepared, understaffed, and largely under-funded units of local government creates a leadership void and opportunity for local NGO participation.

Other NGOs operate on an international level. These groups generally seek legitimization through association with indigenous NGOs, and are often the source of financial, information, and strategic support for their grassroots associates. International NGOs provide more aid than the whole UN system.<sup>130</sup> The Commission on Global Governance counts 28,900 of these NGOs with operations in three or more countries.<sup>131</sup> Many of these international NGOs are human rights advocates that have been able to challenge national governments:

In effect, these human rights NGOs represent a distinctive kind of transnational social movement which in many national contexts is regarded as radical both in terms of its espousal of individual rights and in its claim to defend the autonomy of civil society against the possible dictates of the state.<sup>132</sup>

The participation of NGOs in networks with business and governments is reflected in the above examples. NGO administrations, however, are often hesitant to join in these forms of collaboration. Many are in the nonprofit sector due to a disdain for business or a fear of being compromised and used for public relations purposes. Human rights advocacy groups, in particular, have been

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128. COMMISSION ON GLOBAL GOVERNANCE, *OUR GLOBAL NEIGHBORHOOD: THE REPORT OF THE COMMISSION ON GLOBAL GOVERNANCE* 254 (1995) [hereinafter *COMMISSION ON GLOBAL GOVERNANCE*].

129. JULIE FISHER, *NON-GOVERNMENTS, NGOS, AND THE POLITICAL DEVELOPMENT OF THE THIRD WORLD* 6 (1998).

130. Keohane & Nye, *supra* note 10, at 22.

131. COMMISSION ON GLOBAL GOVERNANCE, *supra* note 128, at 32.

132. HELD, *supra* note 71, at 67.

confrontational in their interactions with the business sector through their “name and shame” strategies. The organization of the Workers Rights Consortium (WRC) is an example. This student-initiated group grew out of a distrust for the Fair Labor Association.<sup>133</sup> The WRC organizers are convinced that business interests will dominate the FLA and be more concerned with promoting corporate image than improving conditions for the worker.<sup>134</sup>

The potential contributions of both international and indigenous NGOs are substantial. Still, the rules of the game are not as well established for NGOs as they are for either governments or the private business sector. For government, there are the rights and responsibilities of the sovereign. For the private business sector, there is the acceptance of competition as the driving force within the legitimate regulatory constraints, with legally required transparency and accountability. NGOs are largely self-appointed within loose legal structures. They are essentially accountable only to their supporters. NGOs lack the status of the sovereign and are not quite sure whether confrontation, collaboration, or competition should guide their activities with their fellow NGOs or with the other two sectors.

### 3. Transparency, Accountability, Legitimacy, and Authority

Open, effective functioning of a system is based on the necessary determining causal sequence of transparency, accountability, legitimacy, and authority. Each is a necessary prerequisite for the next.

At the beginning of the sequence, transparency and accountability are in short supply across the world. As noted, NGOs do not have the legislated transparency nor the structured accountability of the business enterprise. These features are as varied as the NGOs themselves. While the business enterprise is subjected to the transparency requirements of public financial reporting and accountability to the owners, these prerequisites for legitimacy are limited by their financial purpose. Social—including environmental—audits are a growing component of accounting engagements, but they are not standardized and are made public only

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133. Martin Van Der Werf, *Sweatshop Issue Escalates With Sit-Ins and Policy Shifts*, CHRON. HIGHER EDUC., Mar. 10, 2000, at 2.

134. *Id.* at 3.

at the discretion of the enterprise.<sup>135</sup> The King Report calls for public disclosure in economic, social, and environmental areas.<sup>136</sup>

Legitimate authority can be based on an effective democratic form of government in which the governed accept the authority of the elected officials. It can be assigned to international networks by these governments. The European Union and the United Nations come the closest to meeting the requirement of assigned authority. Governmental cross-border networks are attempts to gain input into international regulation that will affect the country. These are logical extensions of national policies to international levels. Through involvement in mixed government and private networks, national governments attempt to influence the network and to gain access to information and technology that is more available in the private sector. Multinational firms and NGOs seek governmental involvement for legitimacy and authority. Beyond legitimacy anchored by national governments, global governance networks must earn legitimacy and authority based on transparency and accountability.

In a governing sense, legitimacy can exist without the procedural basis of democracy. As with democracy, however, non-elected networks are judged on their “effectiveness in producing valued outputs.”<sup>137</sup>

Cutler, Haufler, and Porter described the notion of private governance in terms of authority:

We suggested that authority consists of decision-making power over an issue area that is generally regarded as legitimate by participants. We also stipulated that authority need not be associated with government institutions, but can be associated with firms. The legitimacy of firm or corporate authority, in turn, derives from the deference of participants flowing from their shared perceptions of corporate expertise, historical practices that legitimate corporate authority, or from an explicit or implied grant of authority by states. Furthermore, we assume that such authority is somehow different from interfirm cooperation and we posited that cooperative relations can be transformed into authoritative relations when they become infused with an obligatory quality.<sup>138</sup>

Cutler, Haufler, and Porter further state: “Authority, by definition, operates through a sense of obligation rather than coercion, one of its distinctive features that makes it particularly suited to the analysis

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135. DAVID N. RICCHIUTE, *AUDITING AND ASSURANCE SERVICES* 9-10 (7th ed. 2002).

136. Institute of Directors in Southern Africa, *The King Report on Corporate Governance for South Africa* 109 (2001), available at <http://www.iodsa.co.za> (hereinafter *The King Report*).

137. Keohane & Nye, *supra* note 10, at 34.

138. A. Claire Cutler et al., *The Contours and Significance of Private Authority in International Affairs*, in *PRIVATE AUTHORITY AND INTERNATIONAL AFFAIRS*, *supra* note 96, at 333, 362.

of international affairs where enforcement capacity is weak.”<sup>139</sup> Only to the extent that these global governing institutions and networks embody legitimacy and authority can they serve as a reasonable substitute for the diminishing policy freedom of the nation-state.

## II. THE SOCIAL VOID

The technological drivers of globalization and the resulting components of the process have contributed to an increase in productivity across the world.<sup>140</sup> Kofi Annan observes: “The benefits of globalization are plain to see: faster economic growth, higher living standards, accelerated innovation and diffusion of technology, and management skills, new economic opportunities for individuals and countries alike.”<sup>141</sup>

The same technological factors that so effectively drive the positive results of globalization are also creating social fractures. The spread of technology has been uneven. As measured by the United Nations Development Program, “[m]ore than three-quarters of internet users live in high-income OECD countries, which contain 14% of the world’s people.”<sup>142</sup> Studies suggest that, for most countries, Internet users are generally located in specific urban areas, are more educated and wealthy, are young, and are male.<sup>143</sup> There are indications that some of these disparities, such as the male dominance, are decreasing, although the spread of Internet usage in developing countries will be limited by the slowing diffusion of electricity and telephone mainlines across the world.<sup>144</sup> Transportation technology is irrelevant to large segments of society, for those struggling with inadequate local infrastructure, or those without goods to transport internationally.

The fruits of the technologically enhanced productivity are also unevenly distributed and have created the sense of a faceless, amoral market that drives for productivity with no capability of concern for those participating in, or excluded by, the process. Increasingly, efficient local markets offer consumers and investors more informed choices. While human interactions provide the fabric of the market and trust is a necessary component of contracts, the overall result is

139. *Id.* at 359.

140. Technological change is a key component of growth. “Cross-country studies suggest that technological change accounts for a large portion of differences in growth rates.” *HDR 2001*, *supra* note 1, at 29.

141. Kofi A. Annan, *We the Peoples: The Role of the United Nations in the 21st Century*, New York, New York, United Nations 2000, at 9.

142. *HDR 2001*, *supra* note 1, at 29.

143. *Id.* at 40.

144. *Id.* at 40-41.

seen as an unfettered force—a market with no soul. The vast number of individual and institutional transactions in the marketplace move it beyond the control of all but the most powerful and determined governments and governance networks.

While social fractures have been associated with major technological breakthroughs throughout history—the invention of gunpowder and the industrial revolution, for example—the interconnectedness and rate of change with current technology is unprecedented. Globalization has led to a crisis mentality. The integrated information of financial markets has allowed the flight of capital and currency crises to move quickly from one country to another; organized crime thrives on communications technology; economic cycles are closely connected among countries; and the economic rate of change makes people more vulnerable. The resulting tensions have erupted in meetings of multilateral institutions and economic summits from Seattle to Genoa.<sup>145</sup> In spite of the anarchist-provoked confrontations, the size, diversity, and message of the other demonstrators reflect the social void associated with globalization. The potential for peace in today's world depends on our ability to introduce social and environmental concerns into the marketplace. As Dani Rodrik notes: "The broader challenge for the 21<sup>st</sup> century is to engineer a new balance between market and society."<sup>146</sup>

At core, the social void results from a lack of concern for human rights in the system; hence, this is the starting point in the analysis. The denial of human rights that underlies the distribution of wealth and the broader dimensions of human development will be assessed. If human rights are to be supported, it falls to the institutions that implement the market and its regulation. The possibility of institutions leaning against the market and collapsing the void are discussed in the final section.

### A. *The Human Rights Core*

The legitimate core of the social void is the lack of concern for the human rights of major segments of society. Unfortunately, genuine concerns for the violation of human rights too often get buried in the pursuit of self interest and political agendas.

Human rights begin with respect for the dignity of the person as an individual or as a member of a community.<sup>147</sup> The concept of the

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145. Editorial, *Messages for the W.T.O.*, N.Y. TIMES, Dec. 2, 1999, at A34.

146. Dani Rodrik, *Has Globalization Gone Too Far?* (Washington D.C., Institute for International Economics (1997)).

147. Lee A. Tavis, *Modern Contract Theory and the Purpose of the Firm: An Analysis within Catholic Social Thought*, in *RETHINKING THE PURPOSE OF BUSINESS*:

nature and breadth of human rights is subject to interpretation and continually evolving. Rights are often expressed in terms of generations. Following the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights was established in an effort to provide more substance for what have become known as the first generation of human rights.<sup>148</sup> These rights are often termed “negative liberties”—the rights of the individual against the state.<sup>149</sup> Although there is some cost to assuring these rights, such as ensuring a fair vote, their protection is relatively inexpensive. First generation rights do not conflict with one another.<sup>150</sup> They are widely supported in national law.<sup>151</sup> The clear definition and characteristics of first generation rights help to explain the international success of the NGO human rights advocacy networks, such as Amnesty International or Human Rights Watch.

The second generation of human rights, encoded in the International Covenant on Economic, Social, and Cultural Rights, dramatically expands the definition.<sup>152</sup> While many national regulations support these rights, particularly in welfare states, these second generation rights have received only modest recognition in the constitutions of modern Western cultures.<sup>153</sup> These rights require substantial, proactive effort on the part of the state, protection of these rights can be very expensive, and, furthermore, these rights can readily contradict one another, thus requiring tradeoffs. The rights are difficult to define, and they can easily become politicized. As Shamila Sohoni states, “[A]rguments over social and economic policy are the stuff of party politics.”<sup>154</sup> Still, some of these second generation rights, such as the right to subsistence, are unarguably “fundamental.”<sup>155</sup>

Third generation rights are termed the “rights of solidarity.”<sup>156</sup> They “confer entitlements not on individuals per se but on the

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AN INTERDISCIPLINARY APPROACH WITHIN THE CATHOLIC SOCIAL TRADITION 14-16 (Steven Cortright & Michael Naughton eds.) (forthcoming).

148. *The Politics of Human Rights*, ECONOMIST, Aug. 18, 2001, at 9; *Righting Wrongs*, ECONOMIST, Aug. 18, 2001, at 18.

149. *The Politics of Human Rights*, ECONOMIST, Aug. 18, 2001, at 9.

150. *Id.*

151. *Id.*

152. See TAVIS, *supra* note 20, at 427-28 n.4; *The Politics of Human Rights*, ECONOMIST, Aug. 18, 2001, at 9; *Righting Wrongs*, ECONOMIST, Aug. 18, 2001, at 18.

153. See TAVIS, *supra* note 20, at 427-28 n.4.

154. *The Politics of Human Rights*, ECONOMIST, Aug. 18, 2001, at 9. Amnesty International is facing these same difficulties as it considers extending its mandate to include second generation rights.

155. See HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY 13-34 (1996).

156. See TAVIS, *supra* note 20, at 427-28 n.4.

collectives to which they belong, usually identified with 'peoples'.<sup>157</sup> The most common rights addressed in this category are the rights to development and to peace. There is a good deal of debate over the collective nature of the third generation rights. Some observers argue that it is too much of an extension of the notion of rights.<sup>158</sup> Others point out that all human rights have a collective dimension and argue that codification of the third generation will reinforce the first two.<sup>159</sup>

All rights have their correlative duties. The institutions involved in the market and its regulation have the duty to avoid the deprivation of these rights through their actions, and to help protect against deprivation caused by the action of others.<sup>160</sup> Of major importance to corporate governance, multinational firms link the economic, social, and cultural rights of their constituents across the world.

### B. Associated Wealth Effects

Global economic integration has led to major wealth effects. Human rights impose a moral dimension to these effects. The positive average wealth effects during the period of globalization are clear. In the twenty-two years between 1975 and 1997, global real per capita income increased substantially.<sup>161</sup> Both developed and developing countries shared in this growth, with industrialized countries gaining fifty-three percent—from a base of \$12,589 in 1975—and developing countries gaining fifty-one percent—from a base of \$600.<sup>162</sup> Between 1965 and 1998, average incomes more than doubled in developing countries.<sup>163</sup>

The maldistribution of these wealth effects is equally clear. The absolute gaps in income among countries have increased. In terms of GDP per capita, the gap of OECD countries over even the high growth East Asian and Pacific countries has more than doubled.<sup>164</sup> Another view is to look at the extremes. In 1970, the ratio of income per capita for the world's richest ten percent compared to the poorest ten percent based on country averages was 19.4 to 1.<sup>165</sup> By 1997, this

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157. Federico Mayor, *Foreword*, in HUMAN RIGHTS IN A PLURALIST WORLD: INDIVIDUALS AND COLLECTIVITIES viii (Jan Berting et al. eds., 1990).

158. *Id.*

159. Cees Flinterman, *Three Generations of Human Rights*, in HUMAN RIGHTS IN A PLURALISTIC WORLD: INDIVIDUALS AND COLLECTIVITIES, *supra* note 157, at 75, 79.

160. THOMAS DONALDSON, *THE ETHICS OF INTERNATIONAL BUSINESS* 86 (1989).

161. United Nations Development Programme, HUMAN DEVELOPMENT REPORT 1999 154.

162. The numbers do not include Eastern Europe and the CIS countries. *Id.*

163. World Development Report 2000/2001, *Attacking Poverty* vi (2001).

164. *HDR 2001*, *supra* note 1, at 16-17.

165. *Id.* at 20.

ratio had increased to 26.9 to 1.<sup>166</sup> As measured by the Gini coefficient, a standard measure of inequality, household surveys indicate that between 1988 and 1993 dispersion has increased dramatically.<sup>167</sup> "The World Gini coefficient was 65.9 in 1993, an increase from 62.5 in 1988 (in \$PPP). The implied increase of about 0.7 Gini points per year is very high."<sup>168</sup>

The economic dislocation associated with economic globalization and reflected in the dispersion of wealth is tied to the rate of change of the process. The rapidity with which markets have opened and the intensity of the competition for a place in the market, all driven and supported by technological development, create enormous opportunities for those who have access to and can cope with the globalizing institutions, but lead to exploitation and marginalization for those who cannot. Väyrynen states: "As a rule, actors controlling specific, mobile and tradable resources benefit from globalization, while those stuck to fixed assets that are not competitive in the international market see their incomes decrease."<sup>169</sup> As noted above, the future of access to technology in developing countries as a means of gaining access to the economic system is not promising.

In statistical terms, the expected value of the distribution of income and consumption has increased as well as its standard deviation. The distribution moved to the right at the same time it broadened. Wealth—or income—poverty can be represented as a threshold at the lower tail of this distribution. With globalization, the improvement in the mean has been great enough to offset most of the increase in dispersion, thus modifying the effect of this dispersion on the poor. The World Bank notes: "As countries become richer, on average the incidence of income poverty falls."<sup>170</sup> The threshold of absolute poverty is often defined as living on less than one dollar a day.<sup>171</sup> By this measure, the share of global population living in poverty has decreased from 28.3 percent in 1987 to twenty-four percent in 1998.<sup>172</sup> The absolute number has increased only slightly

166. *Id.* at 17.

167. *Id.* at 20.

168. Branko Milanovic, *How Great is World Inequality?*, in WIDER ANGLE 40 (2000). The Gini coefficient is the mean difference of income in the population. A Gini coefficient of one would indicate the maximum possible degree of inequality where one household had all of the income. A Gini of zero would indicate that there is no inequality, that incomes were equally distributed.

169. Raimo Väyrynen, *Sovereignty, Globalization, and Transnational Social Movements*, in INTERNATIONAL RELATIONS OF THE ASIA-PACIFIC 227, 235 (2001).

170. See World Development Report, *supra* note 163, at 45.

171. *Id.* at 3.

172. *Id.* at 23.



from 1,183,200,000 to 1,198,900,000.<sup>173</sup> Nevertheless, a fifth of the world's population presently lives on less than one dollar a day.<sup>174</sup>

Clearly, poverty is a violation of human rights—of the right to subsistence. Only the most ardent supporters of unfettered markets would disagree with this right, although they might want to defer it until the growth benefits of globalization trickle down.

The morality of the increasing global dispersion of income and wealth is more controversial. The observed dispersion is not itself immoral. Much of it is a function of effort and skills. The moral consideration enters in terms of a second generation right of usable access to the resources necessary to enhance one's economic position. This includes access to the economic system and to the education necessary to take advantage of that access. It is the discrimination, exploitation, marginalization, and denial of opportunity that contribute to the dispersion that is immoral.

### C. *Associated Human Development*

Human development is broader than income and wealth. It involves health, education, food and nutrition, the inclusion of women and children, the environment, and security. As with productivity and wealth, there has been dramatic progress in these dimensions of human development, but a huge gap remains. The dramatic progress and the enormity of the remaining gap are presented in Table 1 in Appendix A.

Advances in human development can be measured by the United Nations Development Program's human development index.<sup>175</sup> A comparison of people in index categories between 1975 and 1999 shows overall improvement and large numbers of people moving to a higher index status.<sup>176</sup>

Human development is inextricably tied to human rights. The UN *Human Development Report* notes: "In short, human development is essential for realizing human rights, and human rights are essential for full human development."<sup>177</sup> Both can be expressed in

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173. *Id.*

174. *Id.* at 46.

175. The HDI measures the overall achievements in a country in three basic dimensions of human development—longevity, knowledge, and a decent standard of living. It is measured by life expectancy, educational attainment—adult literacy and combined primary, secondary, and tertiary enrollment—and adjusted income per capita in purchasing power parity (PPP) US dollars. The HDI is a summary, not a comprehensive measure of human development.

*HDR 2001*, *supra* note 1, at 14.

176. *Id.* at 11.

177. *HDR 2001*, *supra* note 1, at 2.

terms of freedom: "Human freedom is the common purpose and common motivation of human rights and human development."<sup>178</sup>

The United Nation's Development Program (UNDP) follows Sen in outlining the goals of human development and human rights in terms of freedoms. Sen poses five instrumental freedoms including the political freedom necessary for democracy.<sup>179</sup> These freedoms, listed below, will lead to capabilities of persons to lead the kind of lives they value—and have reason to value:

[1] *Political freedoms*, broadly conceived (including what are called civil rights), refer to the opportunities that people have to determine who should govern and on what principles ... They include the political entitlements associated with democracies in the broadest sense (encompassing opportunities of political dialogue, dissent and critique as well as voting rights and participatory selection of legislators and executives.

[2] *Economic facilities* refer to the opportunities that individuals respectively enjoy to utilize economic resources for the purpose of consumption, or production, or exchange . . . .

[3] *Social opportunities* refer to the arrangements that society makes for education, health care and so on, which influence the *individual's* substantive freedom to live better. These facilities are important not only for the conduct of private lives (such as living a healthy life and avoiding preventable morbidity and premature mortality), but also for more effective participation in economic and political activities . . . .

....

[4] *Transparency guarantees* deal with the need for openness that people can expect: the freedom to deal with one another under guarantees of disclosure and lucidity....[t]hese guarantees have a clear instrumental role in preventing corruption, financial irresponsibility and underhand dealings . . . .

....

[5] Protective *security* is needed to provide a social safety net for preventing the affected population from being reduced to abject misery, and in some cases even starvation and death.<sup>180</sup>

Two common characteristics of these freedoms are economic accomplishment and participation—the denial of which are central to the social disconnect and factors with which the multinational firms are closely associated.

It is the denial of these freedoms and the limited inclusion of the voices that would represent them that expands the social void and threatens the prospects for peace. Democratization is, clearly, a positive development. The representation of NGOs and multinational firms in global governance networks has expanded the scope of participation, but with powerful, nondemocratic institutions. The

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178. *Id.*

179. SEN, *supra* note 57, at 18.

180. *Id.* at 38-40.

tension over the void is due to the exclusion of the less powerful voices in the globalization process: developing countries, labor, environmental groups, the under- and unemployed, the marginalized, and the many who are frightened by the dizzying rate of change in the globalizing economy.

#### D. Possibility of Narrowing the Void

The period of globalization has been associated with great overall advancement in human development, but has seen increasing maldistribution of globalization's progress and has bypassed major pockets of poverty. The maldistribution of human development existed before globalization. The real failure of globalization is that it has not lived up to its potential. Clearly, unfettered markets are uninterested and incapable of enhancing human rights and human development beyond the mechanics of productivity and wealth. Protection of human rights and advances in human development will depend on national governments, global governance networks, and the activities of the multinational firms themselves.

##### 1. National Sovereignty, the Market, and Global Governance

In the process of stimulating economic globalization, national governments passed much of the control over the allocation of resources in their countries from the control of regulators to the uncontrolled marketplace—from governmental to market-led development, as noted earlier. The result is that as economic globalization progresses, the policy freedom of the nation-state declines.

Often referred to as a "loss of sovereignty" this shift in power has been an issue of extensive debate. Kenichi Ohmae and Jean-Marie Guéhenno, for example, declare the "end of the nation state."<sup>181</sup> Others claim that globalization has actually led to enhanced activities on the part of national governments, at least among the developed countries.<sup>182</sup> "Indeed, in all the domains surveyed, it is evident that in key respects many states, but most especially SIACS [states in advanced capitalistic societies] have become more active, although the form and modalities of this activism differ from those of previous eras."<sup>183</sup> Held, McGrew, Goldblatt, and Perraton's conclusion is partially based on global governance networks:

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181. KENICHI OHMAE, *THE END OF THE NATION STATE: THE RISE OF REGIONAL ECONOMICS* (1995); JEAN-MARIE GUÉHENNO, *THE END OF THE NATION-STATE* (1995).

182. See HELD, *supra* note 71, at 436.

183. *Id.*

Contemporary globalization is also a highly contested process since the infrastructures and institutionalization of global politics generate new arenas and mechanisms through which conflicts over the terms of global interaction are played out—from the corridors of the European Commission and dispute panels of the WTO to the alternative G7 summits of NGOs and annual meetings of the ILO. In this respect, contemporary globalization does not, as many hyperglobalizers argue, necessarily narrow the scope for political actions and state initiatives but, on the contrary, may dramatically expand it, as the discussion in earlier chapters of the politicization and regulation of economic, cultural and ecological globalization suggests.<sup>184</sup>

In the shift from national government to the intergovernmental networks, Anne-Marie Slaughter claims that the state is disaggregating, not disappearing:

From this perspective, the State is not disappearing; it is disaggregating. Government officials and institutions participating in transnational government networks represent the interests of their respective nations, but as distinct judicial, regulatory, executive, and legislative interests. They respond to and interact with the growing host of non-State actors; they can link up with their sub-State and supranational counterparts. This disaggregation provides flexibility and networking capacity, while preserving the fundamental attributes of Statehood—links to a defined territory and population and a monopoly on the legitimate use of force. That is the core of State power, power that remains indispensable for effective government at any level.<sup>185</sup>

In this sense, transgovernmental networks themselves and state agencies participating in mixed government and nongovernmental networks will strengthen the state in the international system, although in a new, less homogenous, and probably less coordinated manner.

Väyrynen sees the relationship between globalization and sovereignty in the international structure:

Globalization is not an alternative to sovereignty, but it rather provides a new context in which it is embedded. . . . In the future, a state will be less of a corporate actor and more of a decisional arena in which various forces meet to resolve national and transnational problems. Sovereignty remains the dominant organizing principle of international relations, but politics and decision making become more diverse and complex. Networks, coalitions, and transactions between states become new units of analysis.<sup>186</sup>

He addresses the loss of policy freedoms in terms of agenda setting power:

Sovereignty is not disappearing, but its nature is changing. The globalization process has lowered national barriers and transaction costs, leading to a closer integration of national and international

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184. *Id.* at 437.

185. *See* Slaughter, *supra* note 92, at 200.

186. *See* Väyrynen, *supra* note 169, at 234.

societies. As a result of this development, the agentive power of the state has declined, or has become more strongly conditioned by the State's relationship with domestic and transnational social and economic forces.<sup>187</sup>

As with Slaughter and Held, Väyrynen stresses the importance of the international governance networks, particularly those he identifies as the "Transnational Social Movements" of civil society.<sup>188</sup>

This loss of agenda setting power applies to developed as well as developing countries, although it has long been a characteristic of the less powerful developing country governments.<sup>189</sup> Global economic integration, as institutionalized in the WTO, can severely limit the economic policy freedom of these countries. If economic growth is to be stimulated, market deregulation must be accompanied by policies that work toward market efficiency through competitive structures and information flowing to all market participants. An effective banking system, private property rights, the enforcement of contracts, and anticorruption policies, all based on an efficient judiciary, are critical if openness is to contribute to economic development. In this sense, countries with institutions that have not historically relied on open market policies—former Soviet Union, Latin American state capitalism, and Asian government-led development—or were never particularly effective—a definition of underdevelopment—experienced the greatest constraints on development policies.<sup>190</sup>

The conditionalities of the WB and IMF limit funds for social investment. The cost of meeting WTO requirements can be large.<sup>191</sup> In these respects, global economic integration limits national economic freedom and, through resource limitations, social policy freedom.<sup>192</sup>

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187. *Id.* at 243.

188. *Id.* at 239.

189. The loss of policy freedom exacerbates the problem for national regulation of an international institution. The control of the state is limited to the local operation of a multinational enterprise—the local business unit. The local unit can readily bypass governmental controls through its extensive connections with the multinational enterprise. In strategic alliances, for example, the fluid horizontal relationships among competing firms changes the nature of competition making the antitrust dimension of regulation even more complex.

190. Dani Rodrik, *Trading in Illusions*, FOREIGN POL'Y, Mar./Apr. 2001, at 1.

191. It is estimated to cost developing countries \$140 million to implement just three of the WTO agreements—customs valuation, sanitary and phytosanitary measures, and intellectual property rights. *Id.* at 5. Beyond these flows, resources must be held in reserve to support open-market policies. In Peru, for example, the foreign hard currency reserves held by the Central Bank are equal to about one percent of its annual gross domestic product. *Id.* at 6.

192. Of course, in a world free of internal and external conflict, military budgets would, for most countries, be vast sources of funds for social programs. Diverting just ten percent of sub-Saharan Africa's military spending in 1999 would have raised \$700 million. See *HDR 2001*, *supra* note 1, at 6.

In addition to these more stringent economic constraints on the economic and social policies of developing countries, developing countries do not carry loud voices in international networks. They are excluded from many groups such as the G7, and their lack of input into the WTO has been a source of great friction.

## 2. Market Power and Multinational Firms

Clearly, there has been a shift in power from the nation-state to the global financial and economic markets. The limitations imposed on individual governmental policies by the international markets also apply to multinational corporations. Here, the power shift is to the marketplace, not directly to the institutions of economic globalization, the multinational firms. In a major way, multinationals are subject to, not determinants of, market conditions. Enabled by the nation-state and implemented by multinational firms, markets now constrain the policy freedom for both groups.

## 3. The Promise of Global Governance Networks

To what extent can global governance assume the regulatory function from the declining policy freedom of national governments? Based on the earlier discussion of governance networks, although improving in organization and power, these networks cannot be expected to provide the coherent regulation desired of a nation-state or its enforcement. Väyrynen describes the rules of global governance in terms of "soft law":

In general, one can predict an increase in flexible and diverse, but less binding international rules (as manifested by the growing role of 'soft law'). Actors often resort to soft law in the absence of well-defined institutions and precedents, or because of the sheer complexity of the issues. . . . Compliance with transnational norms is achieved more by monitoring, persuasion, and capacity-building than by formal enforcement mechanisms.<sup>193</sup>

Beyond the network constraints of soft law, the influence of multinationals is evident in these networks. Following an extensive analysis of private authority, Cutler, Haufler, and Porter conclude: "We started out this volume by asking, 'Do corporations rule the world?' We end by returning to that theme. We argue that yes, corporations increasingly do establish institutions that 'govern' in the absence of or in coordination with governance arrangements involving states at the international level."<sup>194</sup> In their focus on

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193. See Väyrynen, *supra* note 169, at 234-35.

194. See A. Claire Cutler et al., *The Contours and Significance of Private Authority in International Affairs*, in *PRIVATE AUTHORITY AND INTERNATIONAL AFFAIRS*, *supra* note 96, at 333, 370.

governance networks, these analysts do not fully recognize the power of the market and its limitations on corporate as well as national governmental and international governance networks.

In summary, embedded in the current capitalistic system is a serious social void. The drive of the faceless market is limiting policy freedom for both multinational and national governments alike. Global governance networks, although improving in reach and sophistication, are not yet to the point of imposing social considerations or economic constraints on the market and its implementing institutions. Unencumbered, the current market pressures and the associated social void endanger the prospects for peace.

### III. CORPORATE GOVERNANCE AND MANAGERIAL DISCRETION

Corporate governance has to do with who controls the activities of the firm and for what purpose. Governance has two components. One component is the limits on corporate behavior imposed by the globalizing system.<sup>195</sup> As implemented in different countries, market pressures are supported and constrained in different ways—a uniqueness defined as different kinds of capitalism. The second component of corporate governance is the direction of the firm's activities provided by corporate governing boards and management within the confines of global markets and regulatory systems. There is intense debate as to the appropriate objectives to be pursued by these groups responsible for corporate behavior.

For the individual enterprise, systemic pressures impose limits that will be defined as a Managerial Area of Discretion. Within these external boundaries, judgment as to the appropriate managerial behavior is based on the alternative theories of the firm.

#### *A. External Systemic Determinants of Corporate Activities*

##### 1. Governance Regimes

The governance of the firm that obtains in any national environment is dependent upon cultural attitudes, the role of the markets, and the regulatory regimes that evolve. Every market

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195. In terms of systemic corporate governance, there is a functional distinction between the business enterprise and financial institutions. The economic role of the enterprise is to maximize productivity with minimum risk. The role of the financial institution is to channel resources to those enterprises with acceptable risk and return combinations. In this context, corporate governance applies to the productive enterprise operating within the financial markets as a component of its governance system.

economy has its own distinct form of capitalism. These forms have changed with the shift from government-led to market-led development.

A unique form of government-led development was created in Latin America. These systems were typified by large public sectors and governmental bureaucracies, extensive regulation, state ownership of productive resources, and collaboration between state-owned and private enterprises.<sup>196</sup> Governmental intervention was on a case-by-case basis.<sup>197</sup> Similar systems developed in Asia, although there was a stronger sense of ensuring that regulation followed the market.<sup>198</sup> With globalization and the shift to market-led development, the control dimension of these regimes has disappeared.

Two forms of capitalism are currently most evidenced in national market regimes—with the notable exception of China: Anglo-American capitalism is named for conditions in the United States and the United Kingdom, and Social Market capitalism has evolved in continental Europe with Germany as its prototype.<sup>199</sup>

In Anglo-American capitalism, economic interactions are competitive and adversarial, a great deal of regulatory effort is directed toward market efficiency, and labor legislation is relatively nonprotective. In the financial markets, there is a long history of institutional separation between bank commercial lending and equity investing.<sup>200</sup> While institutional investors are an increasing factor in the marketplace, the ownership of shares is broadly spread in highly liquid markets.<sup>201</sup>

The aggressiveness of Anglo-American capitalism is closely tied to the legal emphasis on the fiduciary responsibility to shareholders and the relatively weak labor protection. The financial markets reinforce this emphasis. The market for corporate control is stronger in the United States than anywhere else in the world. Dissidents from outside the company have ready access to shareholder proxy contests. Unfriendly takeovers financed with low-grade debt are a common feature, particularly in the 1980s.<sup>202</sup>

In Social Market capitalism, economic transactions are collaborative and relational. Labor and communities are involved in

196. See Jameson & Rivera, *supra* note 25, at 205-14.

197. *Id.*

198. *Id.* at 25.

199. TAVIS, *supra* note 20, at 108-23.

200. *Id.* at 109.

201. *Id.* at 110-14.

202. MARINA V. N. WHITMAN, *NEW WORLD, NEW RULES: THE CHANGING ROLE OF THE AMERICAN CORPORATION* (1999). Whitman argues that the competitive pressures of the product markets and the increasing power of investors are increasingly driving the action of the business enterprises. She describes it as a corporate shift from the socially oriented institutions of "managerial capitalism" to shareholder maximizing organizations of "investor capitalism."



corporate decisions. Regulation is extensive. Cross ownership between banks and corporations is typical.<sup>203</sup> In this economic, political, and social regime, "social" actions are required.<sup>204</sup> Corporate governance in Germany is codetermined. The supervisory board is equally divided between representatives elected by employees and those appointed by owners.<sup>205</sup> A management board is appointed by the supervisory board to implement the decisions of the board.<sup>206</sup> Elected works' councils have extensive input into decisions that effect the workers.<sup>207</sup> Thus, participation of German workers is embedded in the law.

In the global market, there is tension between Anglo-American and Social Market capitalism. England, for example, refused to sign the Social Chapter of the European Union.<sup>208</sup> The competitive aggressiveness, particularly of the United States, is forcing change in Germany. Cost pressures are impinging on the German worker-oriented social market. Shortened work weeks and sharing pay pressures as a means of dealing with redundancy, implemented with the support of the works' councils, can only go so far.<sup>209</sup> In finance, difficulties in raising equity capital are drawing German firms to the vibrant U.S. markets.<sup>210</sup> This requires adherence to U.S. accounting and financial transparency requirements and exposes the social market firms to the demands of large U.S. institutional investors.

Foreign investors are also creating a market for corporate control in Germany. An unfriendly takeover bid would not be expected to penetrate the cross equity holding, the structure of the boards, and the works' councils. When Britain's Vodaphone successfully made an unfriendly bid for Germany's Mannesman, the German government was unhappy but did not intervene.<sup>211</sup> The fallout from this takeover continues.<sup>212</sup>

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203. Shareholder control is dominated by banks. The cross ownership is typical between banks and specific industrial corporate clusters. The bank votes the share they own plus large numbers of bearer shares held in trust.

204. For a nuanced comparison of the "contractarian" corporate governance models of the United States and the United Kingdom compared to the "communitarian" models of Germany and Japan, see Timothy L. Fort & Cindy A. Schipani, *Corporate Governance in a Global Environment: The Search for the Best of All Worlds*, 33 VAND. J. TRANSNAT'L L. 829 (2000). See generally TAVIS, *supra* note 20; ROBERT A.G. MONKS & NELL MINOW, *CORPORATE GOVERNANCE* (2000).

205. MONKS & MINOW, *supra* note 204, at 287.

206. *Id.* at 288.

207. *Id.* at 288, 292.

208. TAVIS, *supra* note 20, at 123.

209. Bertrand Benoit & Hugh Williamson, *Works Councils Help Ease the Pain of Economic Downturn*, FIN. TIMES (London), Aug. 14, 2001, at 2.

210. *See id.*

211. Bertrand Benoit, *Mannesmann's Legacy*, FIN. TIMES, Aug. 22, 2001, at 12.

212. *Id.*

Convergence on the Anglo-American side has been in the legal requirement for shareholder primacy and in investor behavior. In the United States, "other constituency statutes," passed by various states to thwart unfriendly takeovers in the late 1980s, made it legally permissible for directors to include the interest of nonshareholder constituencies in their decisions.<sup>213</sup> These state statutes have broken the legal exclusivity of corporate shareholders.<sup>214</sup> In the financial markets, pressures have shifted from takeovers in the market for corporate control to institutional investors as the dominant force.<sup>215</sup> These investors are not as myopically focused on maximizing shareholder wealth as many financial theorists would desire.

The growing global dominance of Anglo-American capitalism is part of the loss of national governmental agenda power discussed above. The resulting national and emerging global capitalistic system imposes systemic constraints on the activities of the business enterprises.

## 2. Estimating Managerial Freedom

In a corporate governance model, these external systemic boundaries can be conceptualized as forming a Managerial Area of Discretion (MAD)—the area of decision flexibility available to enterprise management.<sup>216</sup> In lineal programming terms, this would be the feasible region.

Determination of the MAD is largely an empirical issue. As noted, there are a host of factors associated with globalization that direct the action of the firm: hyper competition in the global product markets increases price and quality demands on the firm, limiting the margins and free cash flows of the enterprise; increased integration and information in the global financial markets imposes stringent performance requirements; and as an entity created by national law, a legal fiction, national legal statutes and governmental agencies define the corporation's rights and regulate its responsibilities. At the same time, these national economic, social, and environmental boundaries have decreased, particularly in developing countries competing for investment and jobs. Advancements in global governance networks, although substantial in some social and environmental arenas, are uneven.<sup>217</sup>

213. TAVIS, *supra* note 20, at 109-11.

214. *See id.* at 110-11.

215. *Id.* at 112-14.

216. *See id.* at 105.

217. In this view, the drive of competition in the product markets would force management to take advantage of weakened regulation. Any managerial freedom that happens to survive hyper competition and regulation is collapsed by the drive to maximize shareholder wealth.

Facing this environment, many corporate managers would argue that they are completely subjected to market pressures and have little policy freedom. In fully efficient markets, as in the case of many financial markets but few product markets, this is the case. An exchange trader's actions are, for example, very much determined by the market. In the product markets, a bulk chemical plant that cannot differentiate its product is severely constrained. Alternatively, a pharmaceutical firm, with a number of patented products, or a widely recognized brand marketer have fewer product market constraints.

Alternatively, activists would claim that multinational managers have far greater policy freedom. Their typical assumption is that managerial limitations on social or environmental action are self-imposed and that it is a matter of changing managerial behavior, not the external market pressures.

The degree of market constraints—both product and financial markets—and the limits they impose on managerial decision freedom are critical considerations in the external determinants of corporate governance. In reality, there remains substantial decision freedom—a substantial MAD—for the multinational enterprise—a freedom that can be used by management to increase or to diminish the social void. Neither product nor financial markets are perfect. Across these extended enterprise networks, multinationals are dealing with a range of product market failures—some grossly inefficient. Moreover, national governments can regulate only a part of a multinational's activities. Hence, there is still ample room for technological or product innovation—for positive net present value projects. Multinational firms have a unique cross border access to information, as well as highly sophisticated and organizational ways to process that information and use it to their advantage. Given the uniqueness of each multinational enterprise, the managerial area of discretion will vary among enterprises and, indeed, can be unique for decisions within each firm.

In addition to these externally imposed pressures on managerial decisions, corporate governance has to do with how enterprise boards and management use this discretion. What are the appropriate objectives they should pursue?

### *B. Internal Determination of Corporate Activities*

Because the MAD is a reflection of the constraints imposed by external sources, the moral responsibility lies with the external sources imposing the constraints. The management of the firm has an ethical responsibility only to the extent that it is free to act.<sup>218</sup>

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218. Kant's ought assures can.

There is a major normative disagreement over the appropriate objectives worthy of managerial pursuit. These objectives can be expressed in terms of the financial shareholder theory of the firm versus the stakeholder theory of the firm.

### 1. The Financial Shareholder Theory

Financial theory views the corporation not as a definable entity but as a nexus of contracts. The corporation, as with all other institutions, is simply a collection of contracts. Ronald Coase introduced the concept of the firm as a nexus of contracts in 1937.<sup>219</sup> As the financial theory developed and a separation between management and ownership evolved, the focus moved from the entrepreneur as the contracting party to the contracts themselves. M.C. Jensen and W.H. Meckling envision all organizations as simply a collection, a nexus, of contracts:

It is important to recognize that most organizations are simply *legal fictions which serve as a nexus for a set of contracting relationships among individuals*. This includes firms, non-profit institutions such as universities, hospitals, and foundations, mutual organizations such as mutual savings banks and insurance companies and cooperatives, some private clubs, and even governmental bodies such as cities, states, and the Federal government, government enterprises such as TVA, the Post Office, transit systems, etc.

The private corporation or firm is simply one form of *legal fiction which serves as a nexus for contracting relationships and which is also characterized by the existence of divisible residual claims on the assets and cash flows of the organizations which can generally be sold without permission of the other contracting individuals*.<sup>220</sup>

In financial theory, the implicit contract with the shareholder has primacy. This argument is based on residual risk. Among the parties contracting with the firm, the owners are the group who bear the residual operating and financial risk of the corporation in that they do not have a specific contract with the corporation that gives them priority of access to its cash flows. The owner's contract with management cannot possibly enumerate all contingencies. In the end, owners must rely on the best efforts of management. Because owners bear the residual risk with an implicit contract, they should receive the residual return.<sup>221</sup>

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219. Ronald M. Coase, *The Nature of the Firm*, 4 *ECONOMICA* N.S., 386-405 (1937).

220. M.C. Jensen & W.H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 *J. FIN. ECON.* 305, 310-311 (1976).

221. For an extended analysis of these arguments, see JOHN R. BOATRIGHT, *ETHICS IN FINANCE* 177-86 (1999).

## 2. The Stakeholder Model

Stakeholder theory is more of a description of who has a stake in the activities of the firm than a normative theory. In his seminal work, R. Edward Freeman defines stakeholders: "A stakeholder in an organization is (by definition) any group or individual who can affect or is affected by the achievement of the organization's objectives."<sup>222</sup> Stakeholders are generally associated with some institution that can represent their interests to the corporation—and to the broader society. These can be formal organizations with well-established sets of rules and procedures that define the individual rights and responsibilities or informal groupings. Figure 1 in Appendix B diagrams the traditional stakeholders and their representing institutions. The first concentric circle is the stakeholders. The second circle is the representing institutions. The third concentric circle represents the national, state, or local governments as overarching stakeholders. These governmental agencies establish the rules that control the representing institutions as well as the enterprise itself, and are a major factor in the power relationships among the representing institutions. The final circle represents the global governance networks discussed earlier.

The South African King Report leaves the definition of "relevant" stakeholders to the individual Board of Directors.<sup>223</sup> The stakeholder classifications in the report are usefully categorized as follows:

1.1 *Shareowners* as providers of capital.

1.2 *Parties who contract with the enterprise* either as providers of input to its various business processes and activities, or as purchasers of their output. This would include, for example, customers, employees, suppliers, sub-contractors, and business partners.

1.3 *Parties who have a non-contractual nexus with the enterprise* but who provide it with its license to operate and thereby exercise an influence on its ability to achieve its objectives. This class could include, for example, civic society in general, local communities, non-government organisations "NGOs" and other special interest groups whose concerns may be with issues such as market stability, social equity and the environment.

1.4 *The State* as policy maker, legislator and regulator of the economy generally and specific sectors of it. The State's power, as opposed to mere influence, over the activities of companies sets it apart from other parties with a non-contractual nexus.<sup>224</sup>

In summary, stakeholders can be described as "those whose relations to the enterprise cannot be completely contracted for, but

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222. R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH 46 (1984).

223. The King Report, *supra* note 136, at 8.

224. *Id.* at 113.

upon whose cooperation and creativity it depends for its survival and prosperity.”<sup>225</sup> This classification of stakeholders is one of the few classifications that includes nontraditional groups—Section 1.3—and the state as a stakeholder—Section 1.4.

The stakeholder definition becomes a normative theory when tradeoffs among stakeholders are addressed. Prioritization among stakeholder needs and interests is one of the most difficult aspects of management theory. Previously, this Author approached stakeholder tradeoffs in terms of boundaries.<sup>226</sup> The minimum boundary is the threshold of stakeholder rights.<sup>227</sup> The core requirement for allocating corporate cash flows is to ensure that no stakeholder rights are violated.<sup>228</sup> The upper boundary is a limit on stakeholder demands determined by a process of fair negotiations.<sup>229</sup> Stakeholder interest, beyond the threshold of their rights, should not be settled on the basis of power. A process of fair negotiations will mitigate these power outcomes. Once the threshold rights and negotiated limits are established, the shareholders would then be entitled to the residual return as in the financial model.<sup>230</sup> When values-based stakeholder tradeoffs are included, the stakeholder model becomes a moral management model.

At core, the stakeholder theory is a model of contracts, with the same contractual basis as the financial theory. The difference is that the values-based tradeoffs among the implicit and explicit contracting parties leads to more of a nesting of contracts than to a nexus of contracts, and a concentration on the interrelationships of the entity.

In recent work, the emphasis on individual contracts phases into a communitarian model of the firm. Domènec Melé applies the term nexus to the relationship among participants in a community:

The company involves unity among its members: They share in a common effort, are ruled by a common authority, and work in cooperation. In the firm, of course, there are ‘stakes’ but not only stakes. Its members are also joined in nexuses. These nexuses may be for the sake of interests (economic or otherwise), psychological benefits (pleasant peers, work climate, culture, and so on) or moral values (loyalty, solidarity with a company mission, etc.). All these nexuses contribute to company unity and, obviously, may be more or less

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225. *Id.*

226. Lee A. Tavis, *Economic Advantage and Moral Issues in Corporate Governance*, in *DIE ZUKUNFT DES WISSENS* 418-20 (1999).

227. *Id.* at 418.

228. *Id.*

229. *Id.* at 419-20.

230. *Id.* at 415.

intense. For all these reasons, we may call the company a community of people, opened to more extensive communities.<sup>231</sup>

The stakeholder model has received substantial support in the academic community and in corporate credos or statements of value. For example, Fort and Schipani include equity in their definition of corporate governance:

Corporate governance can be described as the top management process that manages and mediates value creation for, and value transference among, various corporate claimants in a context that assures accountability toward these claimants. . . . At the heart of good governance, therefore, are methods for dealing with both efficiency and equity.<sup>232</sup>

The first statement of the Caux Principles is "The Responsibility of Corporations is Beyond Shareholders toward Stakeholders."<sup>233</sup> The Johnson and Johnson Credo lists stockholders as its fifth priority.<sup>234</sup> "Our final responsibility is to our stockholders."<sup>235</sup> Social or environmental values consistently rank above shareholders in corporate credos and value statements.<sup>236</sup>

### C. *Potential for Corporate Contributions*

It has been argued that, within the intensity of the globalizing market and regulatory systems, the multinational enterprise has a substantial area of decision freedom. And, as demonstrated in the description of global governance networks, multinationals now have a voice in global governance. How these firms use their flexibility and

231. Domènec Melé, *Beyond Shareholders and Stakeholders: Concentric Responsibilities*, in *RETHINKING THE PURPOSE OF BUSINESS: AN INTERDISCIPLINARY APPROACH WITHIN THE CATHOLIC SOCIAL TRADITION*, *supra* note 147.

232. Fort & Schipani, *supra* note 204, at 832-33.

233. GLOBAL CODES OF CONDUCT: AN IDEA WHOSE TIME HAS COME, *supra* note 110, app. at 385.

234. TAVIS, *supra* note 20, at 392.

235. *Id.*

236. Murphy, *supra* note 107, at 227. Boatright is dismissive of these efforts:

The 'Moral Manager Model' rests, I believe, on the assumption that the business *organization* is the fundamental unit of analysis for business ethics and that a business organization is directed by its top executives. As a result, the central task of business ethics becomes how to introduce ethics into corporate decision making, which is to say the thought process of managers.

John R. Boatright, *Does Business Ethics Rest on a Mistake?*, 9 *BUS. ETHICS Q.* 583, 585 (1999). Boatright notes that since this model applies to top managers who seldom explicitly incorporate ethical considerations into their decisions, it has not been a success. Boatright proposed instead a "Moral Market Model" where the ethical responsibility lies with all of the people in the business and governmental organizations and, beyond that, to all those involved in the marketplace.

their new voice in global governance influences our global prospects for peace.

#### IV. GLOBALIZATION AND PEACE: THE ULTIMATE TEST

The ultimate goal is peace. There are many linkages between the components of globalization and positive or negative peace. The multinational enterprise stands in the middle of these connections. Three questions are to be addressed. Does orderly interaction among individuals, economies, and political groups enhance the prospects for peace? Is there a connection between democracy and peace? How does the multinational enterprise fit into these relationships?

##### A. *Global Integration and Peace*

Logic suggests that isolation creates conflict. When individuals and groups are in close communications with each other, and have mechanisms through which differences can be resolved, there is a decreased likelihood that these differences will erupt into armed conflict.<sup>237</sup> The globalization drivers and the resulting economic and political integration, along with the growth of global governance networks, should lead to more peaceful settlements of disagreements. The decline in national policy freedom should also make wars among states less likely.

As noted, however, a major social disconnect remains. We observe fragmentation along with integration—the persistence and expansion of the social void. Mary Kaldor posits this disconnect as a key cause of what she terms “new wars”:

I argue that the new wars have to be understood in the context of the process known as globalization. . . . This process of intensifying interconnectedness is a contradictory process involving both integration and fragmentation, homogenization and diversification, globalization and localization. . . . Indeed, the wars epitomize a new kind of global/local divide between those members of a global class who can speak English, have access to faxes, e-mail and satellite television, who use dollars or deutschmarks or credit cards, and who can travel freely, and those who are excluded from global processes, who live off what they can sell or barter or what they receive in humanitarian aid, whose

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237. This logic is generally, although not uniformly, empirically supported relative to trade and economic interdependence among countries. See BRUCE RUSSETT & JOHN ONEAL, *TRIANGULATING PEACE: DEMOCRACY, INTERDEPENDENCE, AND INTERNATIONAL ORGANIZATIONS* (2001); Stergios Skaperdas & Constantinos Syropoulos, *Guns, Butter, and Openness: On the Relationship Between Security and Trade*, *AM. ECON. REV.*, May 2001, at 353 (supporting the argument that trade and economic interdependence can help mitigate conflict but are not a sufficient force).



movement is restricted by roadblocks, visas and the cost of travel, and who are prey to sieges, forced famines, landmines, etc.<sup>238</sup>

New wars are tied to what Kaldor describes as “identity politics”:

The goals of the new ideological wars are about identity politics in contrast to the geo-political or ideological goals of earlier wars. . . . By identity politics, I mean the claim to power on the basis of a particular identity—be it national, clan, religious, or linguistic. . . . The new identity politics is about the claim to power on the basis of labels—in so far as there are ideas about political or social change, they tend to relate to an idealized nostalgic representation of the past.<sup>239</sup>

The military tactics in these new wars are attempts to create fear and uncertainty in a climate of insecurity and suspicion.<sup>240</sup> These tactics add to the insecurity of the social void.

Kaldor describes the privatization of violence as one characteristic of “new” wars.<sup>241</sup> As a result of this privatization, “[T]he distinctions between external barbarity and domestic civility, between the combatant as the legitimate bearer of arms and the non-combatant, between the soldier or policeman and the criminal, are breaking down.”<sup>242</sup> The use of security forces—Shell in Nigeria or British Petroleum in Colombia—is destined to violate human rights even when, or particularly when, they are tied to governmental military forces in an attempt to gain legitimacy. Protection of worker stakeholder security is offset against the violation of nonstakeholder human rights. The protection of private property does not trump the violation of human rights.

### B. *Democracy and Peace*

The connection between democracy and peace would seem to be straightforward. In fact, this relationship is as intricate as the connection between globalization and democracy. On a national basis, there is a strong argument that democracies do not go to war with one another. There is also a positive connection between democracy and the conditions for peace. Finally, the focus of our concern is whether there is a role for the multinational.

#### 1. Conflict Among and Within Nations

Democracies do not go to war with one another. This idea can be traced to Kant. His “republican” state corresponds to what we would

238. MARY KALDOR, *NEW & OLD WARS: ORGANIZED VIOLENCE IN A GLOBAL ERA* 3-4 (1999).

239. *Id.* at 6-7.

240. *Id.* at 9.

241. *Id.* at 5.

242. *Id.*

today call a liberal-democratic state.<sup>243</sup> Kant extended these ideas to favor a league of sovereign republics.<sup>244</sup>

Joshua Muravchik expands on Kant's reasoning:

Kant reasoned that "citizens...will have a great hesitation in ...calling down on themselves all miseries of war."... But this insight, though valid, is incomplete: It suggests a deeper reason for democratic pacificness. Democracy is not just a mechanism; it entails a spirit of compromise and self restraint. At bottom, democracy is the willingness to resolve civil disputes without recourse to violence. Nations that embrace this ethos in the conduct of their domestic affairs are naturally more predisposed to embrace it in their dealing with other nations.<sup>245</sup>

This relationship between democracy and peace was empirically tested by Michael Doyle. Summarizing Doyle's work, Marks notes that

a separate "zone of peace" does indeed exist among liberal States. This zone has steadily expanded as the number of liberal States has increased. Doyle has reported that throughout this period liberal States, while they have engaged in wars with non-liberal States, have remained at peace with one another. From this he has drawn the inference that liberal States are likely to be more pacific than non-

243. Susan Marks, *International Law, Democracy and the End of History*, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, *supra* note 37, at 532, 551.

244. John M. Owen IV, *International Law and the "Liberal Peace,"* in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, *supra* note 37, at 343, 385. This is the state of nature envisioned by Rodrik over the next century. He sees the development of a "global federalism" that grows out of current governance networks. "Under global federalism, politics need not, and would not, shrink: it would relocate to the global level." Dani Rodrik, *How Far Will International Economic Integration Go?*, 14 J. ECON. PERSP. 177, 183 (Winter 2000). This pattern of Rodrik's necessary conditions for federalism can be envisioned within the structure of the current global governance networks:

The alliance will be underpinned by the mutual realization that both sets of interests are best served by the *supranational* promulgation of rules, regulations, and standards. Labor advocates and environmentalists will get a shot at international labor and environmental rules. Multinational enterprises will be able to operate under global accounting standards. Investors will benefit from common disclosure, bankruptcy, and fiscal regulations.

*Id.* at 185. Other necessary conditions imposed by Rodrik are a further reach:

A global fiscal authority will provide public goods and a global lender-of-last resort will stabilize the financial system. Part of the bargain will be to make international policymakers accountable through democratic elections, with due regard to the preeminence of the economically more powerful countries. National bureaucrats and politicians, the only remaining beneficiaries of the nation state, will either refashion themselves as global officials or they will be shouldered aside.

*Id.*

245. Muravchik, *supra* note 36, at 575-76.

liberal States, not in general, but at least in their relations with other liberal States.<sup>246</sup>

In addition to a reasoned observation of democracy as a mechanism for avoiding conflict among states, it is increasingly recognized as a means of preventing internal armed conflict. As Thomas M. Franck states:

Democracy does not provide a guarantee against civil war. It merely provides the only known process by which a genuine social discourse can proceed among persons by legitimately representing the spectrum of opinion and interests in a community or in *polis*. Without it, there can be decisions. There can even be negotiation and discourse. But there can never be a genuine social convergence.<sup>247</sup>

Muravchik finds anecdotal empirical support through an analysis of some ten internal conflicts of recent years.<sup>248</sup>

## 2. Democracy and Development

The relationships among democracy, economic development, and peace are generally supported. There are two steps in the sequence: democracy and development and development and peace.

As for democracy and development, the common counter-argument that a totalitarian government is necessary to achieve economic development—commonly argued in relation to Singapore and Chile—is not supported by the evidence. “In fact, there is rather little general evidence that authoritarian governance and the suppression of political and civil rights are really beneficial in encouraging economic development.”<sup>249</sup> Sen reasons that democracy will contribute to a major component of development—poverty alleviation. As quoted earlier, he argues:

Political and civil rights give people the opportunity to draw attention forcefully to general needs, and to demand appropriate public action. Governmental response to the acute suffering of people often depends on the pressure that is put on the government, and this is where the exercise of political rights (voting, criticizing, protesting, and so on) can make a real difference. This is part of the “instrumental” role of democracy and political freedoms.<sup>250</sup>

Rodrik finds an empirical connection between democracy and the stability of economic growth, but not of economic growth itself.

246. Marks, *supra* note 243, at 551.

247. Thomas M. Franck, *Legitimacy and the Democratic Entitlement*, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, *supra* note 37, at 25.

248. Muravchik, *supra* note 36, at 577-84.

249. SEN, *supra* note 57, at 150. Rodrik makes this same empirical observation. Dani Rodrik, *Participatory Politics, Social Cooperation, and Economic Stability*, AM. ECON. REV., May 2000, at 140 [hereinafter Rodrik, *Participatory Politics*].

250. SEN, *supra* note 57, at 150-51.

“[P]articipatory political regimes are associated with significantly lower levels of aggregate economic instability.”<sup>251</sup> He reasons that this is the result of democracy creating dialogue in which participants can see one another’s views; that liberal democracies entail constitutional rules that curtail the power of the majority to expropriate the minority; and that democratic regimes produce compromise even when there are no explicit constitutional rules to moderate behavior.<sup>252</sup>

In another study, Rodrik finds that wages improve as democracy deepens.<sup>253</sup> He notes, for example, that in Mexico wages would increase ten to forty percent if Mexico were to achieve a level of democracy comparable to the United States.<sup>254</sup>

### 3. Development and Peace

The connection between human development and peace seems to be obvious. Equitable development that minimizes the exploitation and marginalization of major social groups surely contributes to conditions for peace. This relationship is based on the concept of “positive peace.”<sup>255</sup> “It is important to be against war. But it is not enough. We also need to be in favor of something—something positive and affirming: namely peace . . . positive visions of peace as being greater than the absence of war.”<sup>256</sup> Positive peace depends on the conditions that lead to a just society based on the elements of human development, “aspirations for human rights, economic fairness and opportunity, democratization, and environmental well being and sustainability.”<sup>257</sup> The denial of these rights leads to “structural violence”:

Structural violence has the effect of denying people important rights such as economic opportunity, social and political equality, a sense of fulfillment and self worth, and access to a healthy natural environment. When people starve to death or even go hungry, a kind of violence is taking place. Similarly, when human beings suffer from diseases that are preventable, when they are denied a decent education, housing, and opportunity to play, to grow, to work, to raise a family, to express themselves freely, to organize peacefully, or to participate in their own governance, a kind of violence is occurring, even if bullets or clubs are not being used. Society visits violence on human rights and dignity

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251. Rodrik, *Participatory Politics*, *supra* note 249, at 140.

252. *Id.* at 141-44.

253. Dani Rodrik, *Democracies Pay Higher Wages*, 64 Q. J. ECON. 707 (Aug. 1999).

254. *Id.* As noted earlier, Soroush argues that development must precede democracy in Islamic societies. SORUSH, *supra* note 44, at 45.

255. DAVID P. BARASH, *APPROACHES TO PEACE: A READER IN PEACE STUDIES* 129 (2000).

256. *Id.*

257. *Id.*

when it forcibly stunts the optimum development of each human being, whether because of race, religion, sex, sexual preference, age, ideology, and so on. In short, structural violence is another way of identifying oppression, and positive peace would be a situation in which structural violence and oppression are minimized.<sup>258</sup>

Empirically, however, we can observe that democracy and the social void have both increased with globalization. Where is the disconnect? Part of it has to do with the over-expectations associated with economic development. Most of it is a function of the inequality associated with global economic integration, not mitigated sufficiently by advances in shallow democracies or the present loose web of global governance networks.

### *C. Potential Multinational Role*

A persistent social void is a threat to positive peace. As the instruments of market integration and the institutions that link social groups across the world together through their products and organizational networks, multinational enterprises are inextricably involved in the conditions for positive peace. They are the guarantors or the violators of stakeholder second generation economic, social, and cultural rights. Multinational enterprises are increasingly involved in global governance networks and the potential contribution of these networks to positive peace. In these activities, multinationals are negotiating the constraints on their managerial areas of discretion. Within the negotiated systemic constraints, individual firms have substantial operating flexibility in allocating the resources of the enterprise. Through an ethos of participation and empowerment, multinationals can also contribute to democratization.

#### 1. Negotiating the Environment

Multinational corporations can use their newfound voice in global governance networks for enhancing market mechanisms—ISO 9000—, to pursue self interest—Trade-Related Aspects of Intellectual Property—, or to impose international social or environmental requirements—International Council of Chemical Associations. The advantage of these broad global networks for dealing with environmental and social issues is that the issues themselves are global and are influenced by global integration. Global regulation is critically important to mitigate market pressures and to put all firms on an equal footing in which no single enterprise will be exposed to a competitive disadvantage.

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258. *Id.* at 129-30.

To have an effect, these networks must meet the standards of transparency, accountability, legitimacy, and authority of global governance outlined earlier. Three examples from that discussion follow below.

#### ISO and the International Council of Chemical Associations

These networks come the closest to meeting the sequential standards of transparency to authority through the interactions in the network. Beyond that, they derive legitimacy and authority from the active participation of governmental bodies.

#### Fair Labor Associations

This network could evolve to legitimacy and the authority associated with obligation. In the interim, however, even disclosure is an issue. The current plan is to disclose monitoring results only in summary form.<sup>259</sup> An argument can be made that public disclosure of factory conditions would inhibit the remediation purpose of the exercise—to correct the code violations without eliminating the worker's job. In the longer term, transparency must evolve as the basis for accountability.

#### Biosafety Protocol

This protocol will test the potential social role of the WTO. These negotiations will become public and push the WTO to greater transparency and accountability. With the declining social policy freedom of the nation-state, it increasingly becomes the role of global governance networks to regulate the marketplace. The porous, often interrelated international networks, each dealing with separate dimensions of international activities, form a loose web of rules. They are not the coherent set of requirements ideally emulating from national governmental bodies. Even though they are often related to governmental bodies, governance networks do not draw on the sovereign power of the nation-state in the same way as national regulation. Still, many of these overlapping networks are moving toward the transparency and accountability base of international legitimacy and a power of authority well beyond that of the individual nongovernmental organization or business enterprise participant.

## 2. Operational Responsibility

To the extent that the constraints on multinational activities imposed by the international system contribute to workable integration, democracy, and filling the social void, they enhance the prospects for global peace. Within this external environment, each multinational enterprise is itself a microcosm of global networks,

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259. Charter Document, Section VII. "The Monitoring Process," part E, at 17-19, Fair Labor Association Amended Agreement (Oct. 2001), at [www.fairlabor.org/html/amendctr.htm](http://www.fairlabor.org/html/amendctr.htm).

with its reach extended through joint ventures, subcontracting networks, and strategic alliances. Given the number and size of these multinational enterprises, they represent a huge potential. The communications, coordination, and control within these multinational networks would be the envy of any global governance network.

Structurally, these multinationals link an increasingly diverse cross section of international societies with each other. They individualize the global system. They link the job loss of the unskilled U.S. worker with the new opportunity for a Mexican worker. They connect the plastic shrink-wrapped yacht in Florida to the unborn grandchild of the Brazilian chemical worker. They give the U.S. consumer unprecedented access to good quality, low-cost apparel at the expense of working conditions in China. These are the tradeoffs of the multinational manager.

In stakeholder terms, the power of the strong stakeholders—those with the power to influence the activities of the corporation—is translated to pressure on the weaker stakeholders who are influenced by the activities of the firm through the enterprise linkages. A good definition of weak stakeholders is those stakeholders whose rights are in danger of violation, the majority of whom live in developing countries. They are weak because of the inadequacy of their representing institutions.<sup>260</sup> In a developed country, these institutions—labor unions, the courts, regulatory agencies—would represent all segments of society, including stakeholders of the enterprise. These institutions have the primary responsibility to guarantee the rights of their members or those for whom they are legally responsible. The role of government is to develop institutions and to counterbalance the shortfall when they are inadequate. When the local institution and government fail, the responsibility is foisted upon the multinational. Multinationals become responsible for the second generation economic and social rights of their stakeholders within the negotiated managerial area of discretion. The multinational is the institution with the linkages to these stakeholders and the resources to assure their rights.

Within their MAD, managers are free to choose a shareholder or a stakeholder model. A neutral management will allow the power of the strong stakeholders to collapse the MAD and impose their interests on the weaker stakeholders. In this case, the financial shareholder model would dominate.

Based on published credos and value statements, however, management does not subscribe to this neutral, shareholder position as noted earlier.<sup>261</sup> In fact, shareholders are seldom even mentioned. To the extent that these published statements represent reality,

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260. TAVIS, *supra* note 20, at 104.

261. Murphy, *supra* note 107.

management would choose a stakeholder model, and an environmentally or socially responsive one representing the weak stakeholders.

Numerous cases document the acceptance of this responsibility toward weak shareholders. Some of these cases are broadly publicized, such as Aaron Feuerstein's decision to rebuild Malden Mills after a fire.<sup>262</sup> The major impact, however, is from the day-to-day operating decisions of these corporations. In these decisions, many managers are keenly aware of the importance of empowering weak stakeholders as a means of ensuring the long-term protection of their rights. A starting point is to build an ethos of participation and empowerment and to support the development of local democratic representing institutions. Operating examples of these include the six cases reported in Part III of this Author's 1997 work.<sup>263</sup>

There are two caveats. First, representing weak stakeholders through proactive social or environmental programs is only the first step in eliminating exploitation. The goal is to empower the weak stakeholder to represent herself.<sup>264</sup> Second, individual multinational firms cannot be expected to contribute much to the marginalized groups in the world, the areas where absolute poverty is the most prevalent. Multinational operational social proaction is exerted through the firm's operating linkages. Beyond the extension of stakeholder boundaries in developing countries in which background representing institutions are weak, there is no operative link between the individual firm and the large numbers of marginalized peoples. Marginalization is a systemic issue; contributions from multinationals are best exerted by way of global governance networks.

### 3. Managing the Tradeoffs

In allocating resources within their area of discretion, there is a tension between the good of the overall enterprise and the importance of representing the rights of weak stakeholders. On the one hand, wealth remains a central goal of the business enterprise. The wealth of the firm becomes the wealth of the shareholder in efficient markets, and the wealth of the enterprise is what supports stakeholder enhancement. The social contract with the firm is for the firm to enhance productivity—the underpinning of wealth. On the

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262. DON COHEN & LAURENCE PRUSAK, IN GOOD COMPANY: HOW SOCIAL CAPITAL MAKES ORGANIZATIONS WORK 24-25 (2001).

263. TAVIS, *supra* note 20, at 169-338. The emphasis here is on the operational impact of the enterprise. While philanthropic contributions are important, their effect on stakeholders is far less than the direct, secondary, and even tertiary impact of operating decisions.

264. *Id.* at 362-68.



other hand, the threshold of stakeholder rights, once determined, is immutable.

These are not mutually exclusive alternatives. Almost all socially motivated activities have some wealth effect. Georges Enderle and Lee A. Tavis provide examples:

Feeding workers in poor areas who come to work hungry will improve their productivity, thus serving objectives that reflect responsibility in the economic realm. Empowerment of workers on the shop floor will have the same wealth-enhancing effect as does the fair treatment of suppliers or meeting the employee responsibilities. Extending a plantation's water system into the local squatter community or investing in a hospital improves workers' health and motivation with a resulting productivity and positive cash-flow impact. In the environmental realm, programs to reduce energy consumption can enhance wealth.<sup>265</sup>

At some point, however, the long-term cost of these rights-supporting activities is greater than the long-term wealth enhancement:

Breakfast for workers can incrementally be extended to families as workers bring their wives and children to share their nourishment. Shop floor participation can be extended to the level of increasingly satisfied but not increasingly productive workers. Community services can be improved from water spigots, or minimum health facilities to an extensive investment in modern social infrastructure. Concerted energy reduction requires new, expensive technology.<sup>266</sup>

This convergence of goals and tradeoff is conceptualized in Figure 2 in Appendix C. A way of viewing a positive interaction between the local multinational business unit and indigenous NGOs is to collaborate in moving the wealth apex up and to the right. In feeding workers and their extended families, for example, the local NGOs can help in organizing the breakfasts and publicizing the activity locally, thus adding the wealth effects of good community relations to the wealth effect of more productive workers—and bringing pressure on other local businesses. Local NGOs are rooted in the local communities and can complement the efforts of the multinationals.

The real cost of social action is the shaded area to the right of the apex.<sup>267</sup> This cost is an important component of the managerial decision concerning how much to invest in protecting the rights of their stakeholders within the managerial area of discretion.

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265. Georges Enderle & Lee A. Tavis, *A Balanced Concept of the Firm and the Measurement of Its Long-Term Planning and Performance*, 17 J. BUS. ETHICS 1129, 1141 (1998).

266. *Id.*

267. For an extended discussion of the measurement of the wealth in Figure 2, see TAVIS, *supra* note 20, at 400-09; Enderle & Tavis, *supra* note 265.

#### D. *The Peaceful Promise*

There is hope for peace in the negative sense of the national power to wage war and in the positive sense of the human rights empowerment of democracy and human development. These will not be the natural outcomes of global economic integration or of the social policies of the state. Peace will depend on a deepening of national democracies; the transparency, accountability, legitimacy, and authority of global governance networks; and on the action of the multinational enterprise.

#### V. CONCLUDING NOTE

If the social void is to be narrowed, and the prospect for peace enhanced, proaction on the part of the multinational enterprise is a necessary condition. While other governmental, multilateral, and institutions of civil society must participate as a sufficient condition, multinational enterprises must be positively involved.

The argument of this Article has been that technologically driven economic integration will continue with its positive and negative impacts; the associate democratization trend, although fragile, will probably endure; and the capability of global governance networks to assume a major regulatory role from national governments is moving slowly. This leaves us with few powerful institutions to deal with globalization's social fractionalization. The globalizing markets of which multinational firms are an integral part, while a marvel of productivity, contribute more to the social void than to its healing. In short, the pressures on corporate governance imposed by the global system are effective in pressing economic efficiency with the social void as an unintended consequence.

During the gradual shift from national government to global governance networks, or even to a federation of national governments as foreseen by Kant and Rodrik, multinational managers must take a positive, proactive social stance if we are to have peace. Even as an organized minority, multinationals can block the weak regulatory efforts of the present global governance efforts, an event less likely if multinationals are included in defining the anticipated regulation. These firms have information, a point of view, and positive support to offer. Multinational managers have substantial freedom of action in allocating the resources of their enterprises within the systemic constraints.

The demonstrated positive social and environmental contributions of many firms must be continued, consolidated, and expanded across industrial sectors. Codes of social and environmental conduct, monitored and enforced, need to be extended

from individual companies, to national industrial sectors, and further to global governance networks. Peace requires the full moral imagination of today's managers. Peace within our capitalistic system cannot obtain without the positive social participation of multinational managers.

## APPENDIX A

## TABLE 1

A BALANCE SHEET OF HUMAN DEVELOPMENT,  
1990-97

## GLOBAL PROGRESS

## GLOBAL DEPRIVATION

**HEALTH**

In 1997, 84 countries enjoyed a life expectancy at birth of more than 70 years, up from 55 countries in 1990. The number of developing countries in the group has more than doubled, from 22 to 49. Between 1990 and 1997 the share of the population with access to safe water nearly doubled, from 40% to 72%.

During 1990-97 the number of people infected with HIV/AIDS more than doubled, from less than 15 million to more than 33 million. Around 1.5 billion people are not expected to survive to age 60. More than 880 million people lack access to health services, and 2.6 billion access to basic sanitation.

**EDUCATION**

Between 1990 and 1997 the adult literacy rate rose from 64% to 76%. During 1990-97 the gross primary and secondary enrollment ratio increased from 74% to 81%.

In 1997 more than 850 million adults were illiterate. In industrial countries more than 100 million people were functionally illiterate. More than 260 million children are out of school at the primary and secondary levels.

**FOOD AND NUTRITION**

Despite rapid population growth, food production per capita increased by nearly 25% during 1990-97. The per capita daily supply of calories rose from less than 2,500 to 2,750, and that of protein from 71 grams to 76.

About 840 million people are malnourished. The overall consumption of the richest fifth of the world's people is 16 times that of the poorest fifth.

**INCOME AND POVERTY**

During 1990-97 real per capita GDP increased at an average annual rate of more than 1%. Real per capita consumption increased at an average annual rate of 2.4% during the same period.

Nearly 1.3 billion people live on less than a dollar a day, and close to 1 billion cannot meet their basic consumption requirements. The share in global income of the richest fifth of the world's people is 74 times that of the poorest fifth.

**WOMEN**

During 1990-97 the net secondary enrollment ratio for girls increased from 36% to 61%. Between 1990 and 1997 women's economic activity rate rose from 34% to nearly 40%.

Nearly 340 million women are not expected to survive to age 40. A quarter to a half of all women have suffered physical abuse by an intimate partner.

**CHILDREN**

Between 1990 and 1997 the infant mortality rate was reduced from 76 per 1,000 live births to 58. The proportion of one-year-olds immunized increased from 70% to 89% during 1990-97.

Nearly 160 million children are malnourished. More than 250 million children are working as child labourers.

**ENVIRONMENT**

Between 1990 and 1997 the share of heavily polluting traditional fuels in the energy used was reduced by more than two-fifths.

Every year nearly 3 million people die from air pollution—more than 80% of them from indoor air pollution—and more than 5 million die from diarrhoeal diseases caused by water contamination.

**HUMAN SECURITY**

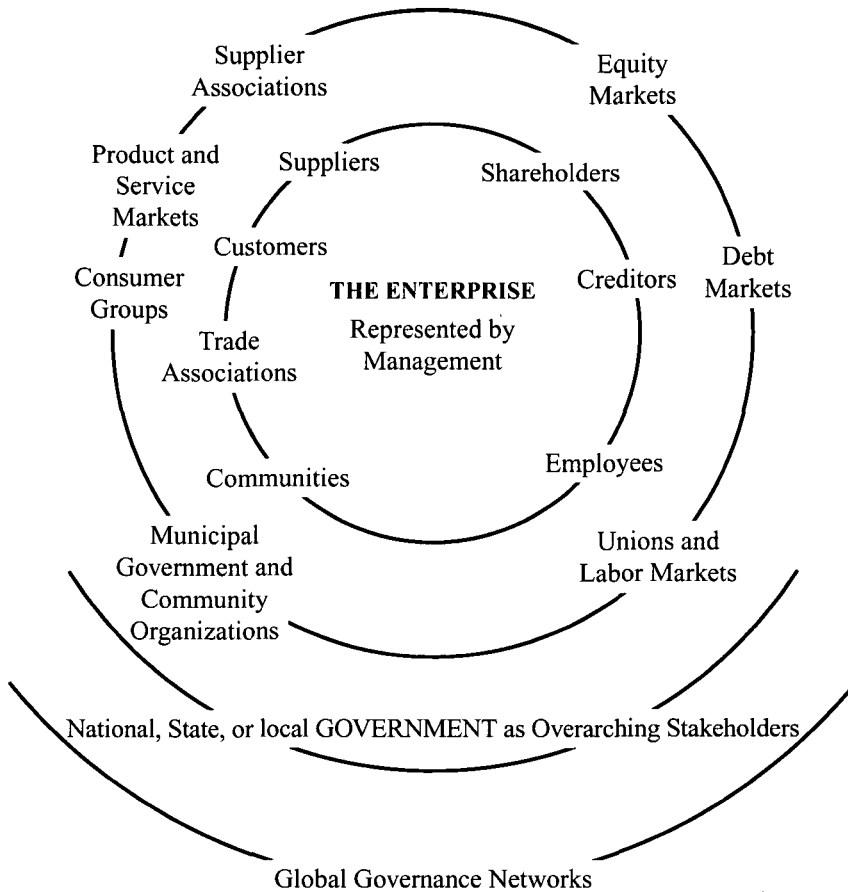
Between two-thirds and three-quarters of the people in developing countries live under relatively pluralist and democratic regimes.

At the end of 1997 there were nearly 12 million refugees.

Source: [HDR 1999](#), p. 22

## APPENDIX B

## FIGURE 1

**ENTERPRISE NETWORK STAKEHOLDERS**

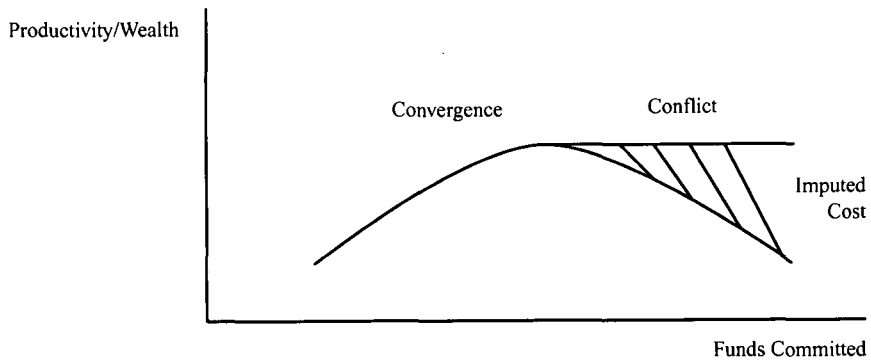
Source: Lee A. Tavis, Power and Responsibility: Multinational Managers and Developing Country Concerns (Notre Dame, Indiana: University of Notre Dame Press 1997) p. 104.

APPENDIX C

**FIGURE 2**

**PRODUCTIVITY/WEALTH APEX**

Productivity versus Stakeholder Representation



Source: Tavis 1997, p. 427

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