Barricades and Boardrooms

A Contemporary History of the Corporate Accountability Movement

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Contents

Acronyms

AABA	Association of Accountancy and Business Affairs
Accountability	Institute of Social and Ethical Accountability
AFL-CIO	American Federation of Labor — Congress of Industrial Organizations
AGM	annual general meeting
AIDS	acquired immune deficiency syndrome
ATCA	Alien Tort Claim Act
ATTAC	Action pour la Taxation des Transactions Financières pour l'Aide aux Citoyens (Association for the Taxation of Financial Transactions for the Benefit of Citizens)
BP	British Petroleum
BT	British Telecommunications
CAA	Civil Aviation Authority
CBI	Confederation of British Industry
CCC	Clean Clothes Campaign
CCL	climate change levy
CDP	carbon disclosure project
CEO	Chief Executive Officer
CORE	Corporate Responsibility Coalition
CSR	corporate social responsibility
CSWG	Corporate Sunshine Working Group
CUTS	Consumer Unity and Trust Societies
ETI	Ethical Training Initiative
EU	European Union
FDI	foreign direct investment
FLA	Fair Labour Association
FLO	Fairtrade Labelling Organizations International
FOE-I	Friends of the Earth International
FOE-NL	Friends of the Earth Netherlands
FSC	Forest Stewardship Council
G-77	Group of 77
G-8	Group of 8
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GM	genetically modified
GRI	Global Reporting Initiative
HIV	human immunodeficiency virus
IBFAN	International Baby Food Action Network
IBLF	International Business Leaders Forum
ICC	International Chamber of Commerce
ICCPR	International Covenant on Civil and Political Rights
ICCR	Interfaith Committee on Corporate Responsibility
ICEM	International Federation of Chemical, Energy, Mine and General Workers Unions
ICHRP	International Council for Human Rights Policy
IFG	International Forum on Globalization
IIED	International Institute for Environment and Development
ILO	International Labour Organization
IMF	International Monetary Fund
IOE	International Organization of Employers
IPPR	Institute for Public Policy Research

IRTK	International Right to Know campaign
ISO	International Organization for Standardization
ITO	International Trade Organization
KPMG	Klynveld Peat Marwick Goerdeler
LSE	London School of Economics
MNC	multinational corporations
NAFTA	North American Free Trade Agreement
NFTC	National Foreign Trade Council
NGO	non-governmental organization
NIC	newly industrializing country
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of Petroleum Exporting Countries
PACA	Peoples' Action for Corporate Accountability
PNG	Papua New Guinea
PR	public relations
PWYP	Publish What You Pay
S&P	Standard and Poor's
SAI	Social Accountability International
SEC	Securities and Exchange Commission
SME	small and medium-sized enterprises
TGC	transgovernmental corporation
TNC	transnational corporation
ToBI	NGO Taskforce on Business and Industry
TRIPs	Trade-Related Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UNCTC	United Nations Centre for Transnational Corporations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNICE	Union of Industrial and Employers' Confederation of Europe
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNRISD	United Nations Research Institute for Social Development
UPCA	Unity Platform on Corporate Accountability
UPEB	Unión de Paises Exportadores des Banano
WBCSD	World Business Council for Sustainable Development
WEED	World Economy, Ecology and Development Association
WEF	World Economic Forum
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WRAP	Worldwide Responsible Apparel Production
WSF	World Social Forum
WSSD	World Summit for Sustainable Development
WTO	World Trade Organization
WWF-I	World Wide Fund for Nature International

Acknowledgements

Summary/Résumé/Resumen

Summary

In the context of a growing debate about the impacts of and resistance to globalization, this paper argues that world development is being undermined by corporate power, yet we are on the cusp of significant changes as societies respond to the challenge. It examines the reaction of civil society in Europe and North America to corporate power, and the emergence of a new corporate accountability movement.

The paper discusses the origin of the modern corporation, and the way that it has shaped various dimensions of modern life through influence over governments and the media. The current notion of world development is argued to have been shaped by corporate power, and thus a critique of it has major implications for development policy and research.

The paper chronicles the failure of various national and international attempts to restrict the growth of this power during the twentieth century, in order to locate a discussion of recent events. It argues that the growth of a global civil society in the last decades has created a new context, and a new opportunity to address the problem of corporate power. A range of relations between corporations and civil society groups are analysed, including the way these have created a renewed emphasis on corporate social responsibility. Bendell looks at the limitations of voluntary corporate initiatives in addressing the systemic problems in the global economy. However, he argues that the emphasis on voluntary corporate responsibility could be an opportunity if it can lead to the re-channelling of corporate power to address those systemic problems.

The various dimensions to this movement are described, including an analysis of various perspectives on corporate power, and a description of a range of corporate accountability initiatives, as well as the possibilities and paradoxes of engaging with corporations to transform the global political economy.

The paper identifies other challenges facing proponents of corporate accountability, including the problematic role of intergovernmental mechanisms and courts in delivering corporate accountability. The growing relationship between voluntary and mandatory rules is described, with one being crucial to the effectiveness of the other in delivering true corporate accountability, defined as the ability of people affected by a corporation to regulate the activities of that corporation. Other challenges include weak relationships between movement participants in the North and their intended beneficiaries in the South, as well as traditional social movements. This weakness is important to address, Bendell argues, as there is a growing backlash to the movement's initial successes.

The paper concludes with a discussion of whether accomplishing greater corporate accountability would address the systemic problems with world development. It introduces a new concept that looks beyond the corporation and to the accountability of capital itself. This concept of capital accountability provides an opportunity for common ground to be found among progressives working in the quite separate arenas of corporate accountability, corporate social responsibility and anti-globalization. To help, the development studies academy and the international community—including the United Nations—is invited to re-engage with fundamental questions about the nature of progress, economic democracy and the role of each individual and organization in transforming capitalism for the benefit of world development.

Résumé

Dans le contexte du débat qui va en s'intensifiant sur les conséquences de la mondialisation et la résistance à cette évolution, cette étude montre que le pouvoir des grandes sociétés fait obstacle au développement dans le monde mais que des changements considérables pourraient avoir lieu à mesure que les pays s'attaquent à ce problème. Elle traite de la réaction de la société

civile européenne et nord-américaine au pouvoir des grandes entreprises et de l'émergence d'un nouveau mouvement militant pour des entreprises comptables de leurs actes.

Jem Bendell traite ici des origines de l'entreprise moderne et de la façon dont elle a modelé diverses dimensions de la vie moderne au travers de son influence sur les gouvernements et les médias. Il explique que la notion actuelle de développement mondial porte elle aussi la marque des grandes sociétés et que, de ce fait, une critique de cette notion ne va pas sans répercussions majeures sur la politique du développement et les recherches dans ce domaine.

Afin de remettre en situation les événements récents, l'auteur retrace l'échec des diverses tentatives qui ont été faites, au niveau national et international, pour restreindre ce pouvoir au cours du XXème siècle. L'expansion qu'a connue la société civile dans le monde au cours des dernières décennies a changé la donne et a ouvert des possibilités nouvelles d'affronter le pouvoir des sociétés commerciales. Jem Bendell analyse tout un éventail de relations qui se sont tissées entre entreprises et groupes de la société civile, y compris l'importance nouvelle accordée de ce fait à la responsabilité sociale des entreprises. Il étudie les limites des initiatives volontaires prises par les entreprises et leur incapacité à résoudre les problèmes systémiques de l'économie mondiale. Cependant, il fait valoir que l'importance même accordée à la responsabilité sociale des entreprises peut être porteuse d'espoir si elle peut amener leur pouvoir à s'exercer désormais à résoudre ces problèmes systémiques.

Il décrit les diverses dimensions du mouvement militant pour des entreprises comptables, analyse divers regards portés sur le pouvoir des entreprises, envisage un éventail d'initiatives destinées à les responsabiliser, et passe en revue les possibilités d'un dialogue engagé avec elles pour transformer l'économie politique mondiale, ainsi que les paradoxes inhérents à cette démarche.

Jem Bendell signale d'autres défis que doivent relever les partisans de la responsabilisation des entreprises, notamment l'efficacité douteuse en la matière des mécanismes inter-gouvernementaux et des tribunaux. Il décrit l'interdépendance de plus en plus étroite des contraintes volontaires et des règles obligatoires, les unes étant cruciales à l'efficacité des autres lorsqu'il s'agit d'obtenir une vraie responsabilisation des entreprises, entendue comme la capacité des personnes concernées par une entreprise d'en réglementer les activités. Parmi les difficultés à surmonter, il mentionne la faiblesse des liens entre les militants du Nord et leurs bénéficiaires supposés du Sud, ainsi qu'entre eux et les mouvements sociaux traditionnels. Il est important, pour Jem Bendell, de corriger cette faiblesse car, après les succès initiaux du mouvement, les réactions se font de plus en plus vives.

L'étude se conclut par un débat sur le point de savoir si des entreprises responsabilisées permettraient d'affronter les problèmes systémiques liés au développement mondial. L'auteur introduit un nouveau concept qui déborde du cadre de l'entreprise et confère une responsabilité au capital lui-même. Ce concept de responsabilité du capital pourrait permettre aux progressistes qui travaillent dans les domaines bien distincts de la responsabilisation, de la responsabilité sociale des entreprises et de l'anti-mondialisation de trouver un terrain d'entente. Pour les y aider, les milieux des études du développement et la communauté internationale—y compris les Nations Unies—sont invités à s'attaquer de nouveau aux questions fondamentales telles que la nature du progrès, la démocratie économique et le rôle que peut jouer chaque individu, chaque organisation, pour mettre le capitalisme au service du développement mondial.

Jem Bendell est à la fois militant et consultant sur les questions de la mondialisation et du développement durable. Il travaille pour les secteurs privé, bénévole et intergouvernemental. Il a écrit articles et ouvrages sur la responsabilité des entreprises et les relations entre le secteur bénévole et les entreprises. Pour de plus amples informations, se rendre sur le site www.jembendell.com.

Resumen

En el contexto de un creciente debate sobre los efectos de la mundialización y la resistencia a la misma, en este documento se sostiene que el poder empresarial está socavando el desarrollo del mundo, aunque estamos en la cúspide de cambios importantes en la medida en que las sociedades responden a este desafío. Se analiza la reacción de la sociedad civil en Europa y América del Norte ante el poder empresarial, así como la aparición de un nuevo movimiento de rendición de cuentas de las empresas.

En estas páginas, Jem Bendell examina el origen de la empresa moderna, y el modo en que ésta ha forjado varias dimensiones de la vida moderna a través de su influencia en los gobiernos y medios de comunicación. Señala que el poder empresarial ha determinado la idea actual de desarrollo del mundo, por lo que una crítica de este concepto tiene consecuencias importantes para la política y las investigaciones en materia de desarrollo.

El autor describe el fracaso de diversos intentos, tanto nacionales como internacionales, para limitar el crecimiento de este poder durante el siglo XX, y propiciar un contexto en el cual se puedan examinar los eventos recientes. Sostiene que el crecimiento de una sociedad civil mundial en las últimas décadas ha creado un nuevo escenario y ha brindado una nueva oportunidad para abordar el problema del poder empresarial. Se analizan las relaciones entre empresas y grupos de la sociedad civil, incluido el renovado énfasis que éstos han puesto en la responsabilidad social de las empresas. Bendell examina las limitaciones de las iniciativas empresariales voluntarias al abordar los problemas sistémicos de la economía mundial. Sin embargo, afirma que el énfasis en la responsabilidad empresarial voluntaria puede ser una oportunidad, si puede conducir a la reorientación del poder empresarial para hacer frente a dichos problemas sistémicos.

Se describen las diversas dimensiones del movimiento de rendición de cuentas de las empresas, se analizan varias perspectivas del poder empresarial, y se examina una serie de iniciativas de rendición de cuentas de las empresas, al igual que las posibilidades y paradojas que representa el comprometerse con las empresas para transformar la economía política mundial.

Bendell identifica otros desafíos que encaran los defensores de la rendición de cuentas de las de las empresas, incluido el problemático papel que desempeñan los mecanismos inter-gubernamentales y los tribunales en el cumplimiento de la rendición de cuentas empresarial. Se describe la creciente relación entre las normas voluntarias y las obligatorias, en la que unas son fundamentales para la eficacia de las otras cuando se trata de cumplir con una verdadera rendición de cuentas de las empresas, definida como la capacidad de las personas afectadas por una empresa de regular las actividades de la misma. Otros desafíos incluyen las frágiles relaciones entre los participantes del movimiento en el Norte y sus beneficiarios objetivo en el Sur, así como en los movimientos sociales tradicionales. Bendell señala la importancia de examinar la fragilidad de estas relaciones, ya que está reaccionándose crecientemente ante los logros iniciales del movimiento.

El documento concluye con una discusión sobre la cuestión de si con el logro de una mayor rendición de cuentas de las empresas se abordarían los problemas sistémicos con el desarrollo mundial. Introduce un nuevo concepto que va más allá de la empresa y se orienta hacia la rendición de cuentas del capital en sí. Este concepto de rendición de cuentas del capital brinda una oportunidad para hallar puntos en común entre los progresistas que actúan en escenarios tan diferentes como la rendición de cuentas de la empresa, la responsabilidad social de la empresa y la antimundialización. Para contribuir a este empeño, se invita a la academia de estudios sobre el desarrollo y a la comunidad internacional—incluidas las Naciones Unidas— a comprometerse nuevamente con cuestiones fundamentales sobre la naturaleza del progreso, la democracia económica, y el papel que desempeñan cada persona y cada organización en la transformación del capitalismo, en beneficio del desarrollo del mundo.

Jem Bendell trabaja como consultor sobre cuestiones de mundialización y desarrollo sostenible para los sectores privado, voluntario e intergubernamental, y también es activista. Ha escrito mucho sobre la responsabilidad de las empresas y sobre las relaciones entre los sectores voluntario y empresarial. Si desea obtener más información, consulte el sitio web www.jembendell.com.

Introduction

The turn of the millennium saw the return of great street protests in Western cities. Seattle, Prague, Genoa: no longer were these just city names but also battle cries, signifying the mass mobilization of people concerned with the problems facing humanity. While these protests grabbed the attention of the corporate media, they were not unique, as people mobilized across the world in various ways to challenge the dominant political economics of the time (Kingsnorth 2003). Whether protesters were focusing on the actions of the International Monetary Fund (IMF), World Bank and the World Trade Organization (WTO), or issues of "third world" debt, climate change and "free" trade, the power of large corporations was never far from the debate (Starr 2000). This was not lost on those who observed the emergent social movements, then dubbed "anti-globalization" or "anti-capitalist" by different commentators. Pictures of chanting youths framed by clouds of tear-gas were used in glossy trade magazines and corporate brochures, alongside arguments that the readers should avoid becoming a target themselves by embracing corporate social responsibility, which even warranted its own acronym—CSR. From barricades to boardrooms, people were talking about the role of a corporation in society.

Did this actually mean anything for the social development of humankind? In this paper I suggest it did, and that the full implications were only beginning to be understood, and acted upon, at the time of writing. The basis of this argument is that the legal invention called "the corporation" had increasingly been shaping our economic, political and cultural lives. It was helping determine what we considered to be our personal or collective "development" and how we could pursue this. Therefore, stimulating consideration of the role of the corporation in society was essential before people could deal with the crises facing humanity. What was particularly unique at the start of the twenty-first century was that conditions existed for novel coalitions to be formed across sectors and political persuasions, arising from a common conviction that the power of corporations had to be challenged if we were to promote world development. This is the story of how those coalitions were coming together and the challenges they faced. It describes the birth of a corporate accountability movement in Europe and North America—regions that were home to most of the large corporations that had a significant effect on the global South, as well as the source of ideas and funding for much "development" work.

This paper is the product of a year's research on campaigns that called for corporate accountability, as well as eight years previous research on relations between corporations and those affected by their activities. This research drew upon a variety of social theories, and included interviews and correspondence with persons involved in the processes being analysed, as well as the study of their published materials. However, a significant dimension to this research was the participation of the author in the social movement described. Some researchers of development critiqued this approach for its subjectivity. However, this was largely due to a myth that researchers could attain objective knowledge of a single truth about the world we live in and create. Inspired by a different philosophy of the world and how we come to gain our knowledge of it, many intellectuals were helping to redefine what was understood as warranting the label "academic" (Reason and Bradbury 2001). In keeping with this alternative paradigm of social inquiry, the research for this paper was explicitly normative, seeking to drive social progress, and hence this text is strongly narrative, as I attempt to convey a meaning to the events and issues described. Writing in the past tense is one aspect of this approach (see box 1).

Box 1: What is research?

This paper extends UNRISD's (United Nations Research Institute for Social Development) philosophy of challenging orthodox thinking on development policy and research, which characterized its work over the previous 40 years. Two orthodoxies concerning the methodology and the subject matter of "development studies" are challenged.

First, particular methodologies remained dominant in development studies, and social science in general, despite the post-modern turn of the late 1980s. Positivist methods were often uncritically used and untenable assumptions of objectivity remained (Long and Long 1992; Leach and Fairhead 1997). Although alternative epistemologies underpinned a range of research from macroeconomics through to small-scale ethnographies, they remained marginal. Alternative methods that did enter the mainstream, such as participatory research, were altered in ways that undermined their potential, and if funders disagreed with their findings, they sometimes attacked the academic veracity of the methods used (Scoones and Thompson 2002). Second, the location of development studies was territorially trapped in "hot and poor countries". Development researchers looked at countries of the South to understand development challenges. On one level, this was a form of intellectual imperialism that cast a state or people as developed or developing (Escobar 1995). This bland dichotomization was overturned time and again by the social differentiation existing within so-called "developed" countries themselves. African-American men, for example, had a lower life expectancy than people living in China (Roy 2003). On another level, it downplayed the way processes in Northern countries influenced the situation of the South, as Western corporations influenced trade rules and realities, and the policies of governments and international financial institutions. This was illustrated by the World Bank's *World Development Reports*, which, over the years, had decreasingly mentioned global conditions as an explanation for poverty, but instead focused on individual countries' choices—without acknowledging that these were heavily constrained (Mawdsley and Rigg 2002, 2003).

These two orthodoxies were not maintained by chance, but because they helped perpetuate a way of working that supported the global political economy of the time (see Wade 1996 for a discussion of the World Bank's role in this). This paper challenges the two orthodoxies. On a methodological level, I adopted "civil action research" (Bendell 2003). Therefore I do not make any spurious claims to objectivity. The reasons for this were eloquently explained by one of the first board members of UNRISD, Gunnar Myrdal. "Valuations are always with us. Disinterested research there has never been and can never be. Prior to answers there must be questions. There can be no view except from a viewpoint. In the questions raised and the viewpoint chosen, valuations are implied. Our valuations determine our approaches to a problem, the definition of our concepts, the choice of models, the selection of observations, the presentations of our conclusions—in fact the whole pursuit of a study from beginning to end" (Myrdal 1978:778–779). Consequently validity can be claimed on the basis of my concern for human rights and social change, and my open subjectivity. In addition, I report on personal experiences as well as the results of other methods. This paper is therefore my story of reality as I saw it, not a pretension at describing an ultimate reality. This approach is extended to the writing process itself—"action writing"—which means I have tried to communicate ideas in a way which I considered might be socially progressive. Using the past tense serves a number of functions. First, it means that the arguments are specific to a time and place. Second, it is a useful technique for encouraging me not to accept the reality I was living in. Third, it allowed a strongly narrative, "instant history", account of the issues being dealt with in the paper.

On the question of where development is located, this paper expands an aspect of UNRISD's work in this field, by turning the gaze of development studies away from the South and considering processes in the North. This approach explains the use of "world development" throughout this paper, as separating a "developed" world from a "developing" world is often intellectually and ethically untenable.

Where Were We Going?

The state of the world at the beginning of the new millennium gave rise to both hope and trepidation. One's perspective depended on where one lived and one's knowledge of how others lived. There were things people could be positive about, such as the spread of electoral democracies, the fall in child mortality or the progress of technology. For example, the capacity for instantaneous communication across great distances was removing traditional national and cultural barriers, keeping people in touch and creating new opportunities.

For the majority of the world, living in the global South, the situation was more difficult. An often quoted statistic was that one billion people were struggling to survive on less than a dollar a day, something made worse because their traditional means of providing for themselves through fishing or farming were undermined as their resources were expropriated by others to

feed a global market (Madeley 1999). The homelands of the South were seen as a source of cheap products for the North, rather than a place of diverse knowledge and wisdom. Indigenous cultures were being undermined, along with their knowledge of flora and fauna and perspectives on the human condition. UNESCO found that half the world's languages were in danger of extinction (Nelson 2002a).

Meanwhile, in the world's industrialized countries, high levels of unemployment, falling real wages and the increasing use of short-term contracts were creating a climate of stress and insecurity for many. Civil and political freedoms were restricted by many governments, while the levels of violent crime and armed conflict within states increased (UNDP 2002). Insecurity was compounded by concerns about new forms of terrorism in the wake of the attacks in New York and Washington in 2001. Throughout this time, voting levels in Western countries continued to slide, and massive street protests in those countries suggested a sense of dismay.

The backdrop to these social dilemmas was a global ecosystem under stress. Half of all life on earth was at threat from extinction because of the actions of humankind (Brown 2000). Pollution was undermining human health, increasing our risk of allergy, infection, infertility and cancer (Colborn et al. 1997). Increasing numbers of people faced environmental catastrophe due to the effects of a century of industrialization, with the effects particularly damaging to poor communities across the global South (Brown 2002).

Many of those who were actively engaged in trying to improve this state of affairs, particularly for the post-colonial states, were involved in the "international development" community. What was this "development" about? The roots of the word, from Latin, suggest that it is the opposite of "envelopment". To en-velop is to enclose, to de-velop is to disclose, to free. Hence "personal development" was in common usage to refer to the process where people explore who they are, with the aim of finding greater peace, purpose and potential for living a positive life. However, when applied to societies, the term development took on other connotations.

In the post-colonial era, the term became popular in the context of the newly independent nation states, as illustrated by US President Harry Truman's "bold new programme", launched in 1949, "for making the benefits of...scientific advances and technical progress available for the improvement and growth of underdeveloped areas" (cited in Sachs 1992:6). Therefore, when applied to nation states, the concept of development soon came to mean the meeting of human needs and wants on a national scale, where the nature of those needs and wants was assumed, as well as the means of providing them. The first assumption was that human needs are largely material. Thus development became synonymous with the "modernization" and "industrialization" of post-colonial states—to lead them toward a "developed" and "modern" Western-style of industrial society. The second assumption was that the means for reaching such a state of development was economic growth, with "growth" coming to mean an increase in the amount of money changing hands in a "formal" (that is, state-regulated and –taxed) economy. There were different ideas on how to achieve such growth, key divides being between import-substitution and export-led growth policies, and between interventionist and hands-off government economic policies. Despite such debates on how to get there, the "there" did not bear much resemblance to the original meaning of development as the self-disclosure and expression of peoples and societies.

As this concept of development became popular in governmental policy, people began questioning both the destination of development and the path to follow to arrive there. They pointed out those aspects of development that actually undermined the individual and collective pursuit of greater peace, purpose and potential. The environment was a key issue in this regard. In 1972, the Prime Minister of India, Indira Gandhi, criticized the pursuit of economic affluence for its tendency "to overshadow all other human considerations" and identified this aspect of development as "the basic cause of the ecological crisis" (Stone 1973:117). Some analysts in the global North predicted ecological catastrophe as human population outstripped the Earth's carrying capacity (Ehrlich 1972). In addition to these statistical models of doom, sociologists highlighted how Western societies forced consumption with supply-led demand, creating wants and needs as well as ways of satisfying them (Hirsch

1977; Gorz 1989). The mythology that economic growth equated with quality of life was increasingly challenged (Commoner 1971; Michan 1967). This broad critique of the dominance of Western cultural forms of exchange, livelihood strategies and consumption found allies from other disciplines—notably anthropology. If development was a Western-centric idea then its projection on the rest of the world could be viewed as neoimperialism. Meanwhile, some analysts suggested that those who promoted the concept of development did not actually believe in it, but used it as a means of maintaining dominance in a post-colonial era. Theories about the exploitation of peripheral areas (Wallerstein 1974) and the creation of "underdevelopment" by industrialized countries (Frank 1966) described how "development" policies worked in this way.

The conceptual and empirical robustness of these critiques grew during the 1980s, but were sidelined in the reality of international politics and trade as the theories of neoliberal economics better suited the short-term purposes of those industrialized states that dominated the global political economy at the time. The impact of this approach was not entirely welcome. By the 1990s, the previous decade had became known as the "lost decade of development" for much of Latin America and Africa, as well as for significant parts of South Asia. Despite a few apparent success stories in Southeast and East Asia, the rhetoric of global free trade and the reality of large-scale industrial projects had not been able to reverse the widening overall gap between the financially rich and poor. Even intergovernmental commissions noted that certain forms of development were also major contributors to both socioeconomic inequality and global environmental degradation (Brandt Commission 1980). As a healthy and supportive environment is key to everyone's self-development, its degradation in the name of development was a historic tragedy (De Rivero 2001).

This was possible because development had become "a big business, preoccupied more with its own growth and imperatives than with the people it was originally created to serve" (Korten 1990:ix). Thus Gustavo Esteva suggested that development really meant "a devaluation of [people's] skills, values and experience in favour of a growing dependence on guidance and management by bureaucrats, technocrats, educators, and development experts" (1992:138). Growing awareness in the 1980s of certain sociological theories, such as post-modernism, meant that development practitioners and theorists were challenged to reconsider their assumptions of progress, which some suggested was an outdated concept altogether (Castells 1997:70). Theorists of development had reached an impasse (Schuurman 1993), which prompted attempts to redefine the concept in terms of social change, ecological justice, empowerment and community control. Therefore terms such as "participatory development" (Chambers 1997) and "sustainable development" (Adams 1993) increased in popularity during the 1990s.

As mentioned before, by the dawn of the new millennium, the success of the reinvention of the development project was mixed. People contested the reasons for social progress or regress, as experiences with development became the ammunition for a battle between those who were attacking or defending the extension of the global economy. The debate was about "globalization".

Initially this term had merely meant the stretching of social relations across time and space, facilitated by technological advance (Giddens 1990). However, journalists often suggested that globalization was a byword for free-market capitalism (Friedman 1999), or corporate takeover (Pilger 2001), and so those campaigning on these issues were thus "anti-globalization" (See box 2). It is true that the first to take advantage of the reducing cost of communication and transport were capitalists and large corporations, who were actively globalizing Western consumer culture (Held et al. 1999). However, a counter-process of globalizing resistance, alternatives, solidarity, community, consciousness and therefore respect and appreciation of diversity, had begun (Keck and Sikkink 1998).

As this debate raged in the early years of the new millennium, there were two key sets of circumstances that affected the awareness of the development "challenge". First was the demise of authoritarian state communism. Although some communist and socialist economic systems were industrialist and materialist, capitalist systems had outlasted them. People began equating

capitalism with industrialism and materialism, with their positive and negative aspects. The demise of communism also helped a form of capitalism to institutionalize itself at a global level through trade and finance agreements, as discussed later. It also freed the remaining superpower to behave in a way that seemed to galvanize diverse cultures against it, as illustrated by massive protests around the world over the second US-led war on Iraq. Taken together, this meant that questions of economic and political power in the global political economy were increasingly debated in the context of development, if not at that stage by the development industry and its academe.

The second key set of events that influenced thinking about development were the protests at summits of world leaders and international financial institutions. The first of these protests, at the 1998 Group of Eight (G-8) meeting in Birmingham, United Kingdom, saw over 40,000 people peacefully demonstrate against the fact that financially poor countries were having to pay back huge interest on loans. These loans had been given in an era of abundant petro-dollars, and little had been done to ensure that these debts would be sustainable. For many activists in the Jubilee 2000 campaign for cancelling "third world" debt, the "poor" were regarded not as unfortunate, but as oppressed. Moreover, for many activists it was not just the oppressed who needed help but oppression itself was seen as a wrong to be righted, along with their own complicity in that oppression. The mentality of Western charity was being replaced by one of global solidarity. Various other changes, described below, meant that the locus of acting on development issues was moving. To make a difference to development, you would not necessarily work in development. If you were concerned about Soweto, you could protest in Seattle, if you cared about Guyana you could march in Genoa. If you were interested in human rights, you could even pursue this in a career in the financial sector. Development was no longer about someone over there, but about everyone anywhere.

In the following section some of the theories about why world development was going awry are discussed.

Why Were We Going There?

By the start of the twenty-first century, there were a variety of perspectives on why the world was not becoming a better place to live in for the majority of people or their future children. Traditional critiques of capitalism were still discussed and updated, often drawing upon communist analyses of profit and exploitation, such as those of Karl Marx, but integrating new insights on complex power relations in the early twenty-first century (Hardt and Negri 2001). Others drew upon anarchist philosophers, such as Michael Bakunin, to suggest that most organizations, including capitalist and communist, tended toward authoritarianism so that, as a result, they served the interests of the few (Newman 2001).

However, not all diagnoses of why things were going wrong drew on these political traditions. The Zapatistas and other indigenous movements appeared to diagnose Western ways of thinking about progress and control as a root of the problem. Meanwhile, a new school of thought emerged around ecological economics. Within this, some focused on how forms of money were at fault. The argument was that as most money in circulation was created in the form of loans from banks, nearly all of it had to be paid back plus some more, so that if the system was to work, the economy had to grow. This posed problems for a world of finite resources, and if resource-neutral growth was possible, not only would it require major state intervention but would increasingly compel the commodification of free public goods to create new markets (Rowbotham 1998).[1] Others identified property rights as a problem, suggesting that they needed to be balanced with livelihood rights, which would therefore require greater involvement of communities in determining how resources were used (Korten 2000).

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[1] Money did not always exist in this form in all societies at the time. Many Islamic institutions still upheld the idea, which was also central to early Judaism and Christianity, that usury, and thus interest, was wrong. This is discussed later in the text. Other religious and spiritual traditions also provide some insight into the problem of western models of development. Some interpretations of Buddhism, for example, suggest that materialism and consumerism reflect our futile attempts to achieve permanence for an individual self, or to provide a distraction from contemplating death and therefore, the meaning of living (Sogyal Rinpoche 2002).

These were among various perspectives existing within what can be termed a "counter-globalization" movement, described further in box 2. Others who identified with the movement were neither Marxists nor philosophical anarchists, nor embraced critiques emerging from ecological economics. Instead, they focused on the "the institutional machinery" governments had "created to dominate" capitalist economies—namely, the limited-liability private corporation (Rowe 2001:1). Concern about the increasing power of corporations was also shared by many who did not consider themselves members of a counter-globalization movement, but increasingly identified corporations as barriers to achieving their specific social or environmental goals. It seemed that corporations were of common concern for a variety of people working on world development issues, whether they identified with counter-globalization or not. Could corporations have been the real challenge to world development? In considering this, we first need to define the concept of a corporation and examine the arguments on how they were affecting societies.

Box 2: Understanding counter-globalization

The world's media awoke to what was then called anti-globalization or anti-capitalism in 1999, during the protests in Seattle against the WTO. The first global day of protest had occurred a year and a half earlier, as the G-8 summit took place in Birmingham in May 1998. My experience of that day illustrates the diverse constituencies that were coming together. A counter conference, called the People's Summit, was organized by the New Economics Foundation, and brought together alternative thinkers from around the world. The Jubilee 2000 coalition mobilized 60,000 people from churches and other groups to form a human chain around the conference area. Later in the day, an anti-roads group, Reclaim the Streets, blockaded the centre of the city and started a dance party, while handing out leaflets that criticized global capitalism, not just cars. Several of the People's Summit delegates also danced or watched—some a little bemused.

After the Seattle protests, the "movement" of people confronting or rejecting the dominant political economic model around the world became more widely reported and discussed. Much reportage and analysis equated the movement with the protests at world summits, rather than recognizing these actions as expressions of something that had many other forms. The term most often used was "anti-globalisation", which—when combined with the US spelling (anti-globalization)— produced a total of 80,000 hits on the search engine Google, compared with 15,000 hits for anti-capitalism. If globalization meant the globalization of corporate power, then anti-globalization was an accurate description of what was common to many activists. By 2002 activists began suggesting that they were for the globalization of solidarity and rights, and thus should reclaim the term. Some anglophones began dropping the "anti" and called themselves "the globalization movement", while francophones suggested they were an *alter-mondialization* movement, which translates roughly as counter-globalization. Within this, some activists were explicitly anti-capitalist, but not all.

The "old Left", in the form of Marxist political parties, was largely absent from the early protest events but became involved after Seattle. In the United Kingdom for example, members of the Socialist Workers Party set up the Globalise Resistance organization to organize activists and communicate with the corporate media as a means of generating members, something direct activists like Reclaim the Streets were against. Some objected to the old Left, suggesting it had a hierarchical we-know-what-you-really-want-and-how-to-win form of politics. As actions at world summits became less able to have an effect on the summit itself and developed into traditional marches or aimless violence, many of those who held a philosophy of direct action began focusing their attention elsewhere. The movement did just that—it moved. Of the people whom I spoke with on a panel at the People's Summit in Birmingham, one became head of ethical investment strategy at a major financial firm. Another became heavily involved in the World Social Forum. The person who organized the People's Summit became a consultant on corporate responsibility. The person who had designed Reclaim the Streets' leaflets that day left the organization and focused on using art for political communication. And I wrote this for a United Nations agency. A philosophy of taking action to deliver radical change to the dominant system was the common factor, and remained. Those who continued to participate in or commentate on protests at world summits, including academics, sometimes missed this values-basis for the movement.

Some academics had an interest and a role in the movement before the Seattle protests, such as sociologist Amory Starr (2000). She categorized activists into three types based on their perspective of the broad strategy for tackling "corporate globalization": those who aimed to use existing institutions to force regulation of corporations, those who sought alternative forms of globalization from below, and those who sought to de-link from globalization. In the first category, she included movements against structural adjustment, peace and human rights movements, land reform, explicitly anti-corporate movements and cyberpunk. In the second, she looked at the environmental, labour, socialist, and Zapatista movements. In the third category, she considered philosophical anarchism, ecological economics, small business, and sovereignty and religious-nationalist movements. A range of other typologies surfaced in the political process of defining this movement of movements. Counter-globalization is the term used in this paper, as it captures the diversity of people and groups involved.

Corporate power

Corporations were invented at the end of the sixteenth century as a means of managing colonial trade. They were created—chartered—by a number of European governments to undertake activities that the governors determined to be in the interests of the state. In the following centuries their legal form was slowly changed, so they were given more freedom to pursue economic activities of their own choosing (see box 3 for a history of the corporation in the United Kingdom).

David Korten noted that around the late 1800s, in the United States, "step-by-step, the court system put in place new precedents that made the protection of corporations and corporate property a centre-piece of constitutional law" (Korten 1995:59). A significant step came in 1886 when, in *Santa Clara County vs. Southern Pacific Railroad Company*, the Supreme Court declared

that corporations were "persons" within the terms of the 14th Amendment and thus entitled to full constitutional protection (Rowe 2001).

By the end of the twentieth century, in most countries, to create a corporation (a process called "incorporation") meant the establishment of a legal identity, distinct from the people who ran it. It became a "legal person" (as opposed to a natural person). There were a variety of advantages to those involved. First, unlike natural persons, it was not certain that the corporation would die, so inheritance tax was avoided. Second, the corporation had some civil and legal rights, and so could go to court. Third, by being a legal person, it could limit liability or, in other words, shield those who ran the business from some of the responsibilities of their actions.

Problems were identified with the latter of these two privileges. First, as legal persons they could claim rights such as free speech, allowing them to influence political processes and sometimes even overturn restrictions on their advertising. Second, limited liability was problematic as corporations could create subsidiaries with a separate legal personality, where risky and dangerous operations could be conducted, such as the transporting of crude oil or nuclear fuels. The parent corporation, being only a shareholder in the subsidiaries, could not easily be held responsible for the actions of the subsidiary. These two aspects of corporations meant that they could acquire significant power, which they could exercise with limited accountability.

Box 3: Understanding the corporation

The development of commercial corporations in the United Kingdom over a period of 400 years indicates the type of legal developments that occurred in most other countries. The development of the British corporation can be seen as occurring in three waves.

The first wave was when the financial demands of colonial expansion grew, so not-for-profit corporations were created to assist in carrying out trade with the colonies. Royal Charters were awarded in the 1600s and early 1700s to carry out the business in colonies. These were "chartered corporations", some of which started, illegally, trading for a profit, the first being the East India Company. At this time, shares in some corporations began to be traded on a black stock-market. Over time, the Crown awarded charters explicitly for making profits, and corporations grew to such an extent that the East India Company was said to rule India. By 1720 the government became concerned with this situation as well as the levels of fraudulent activity. In response, it nationalized many of the chartered corporations and passed an act banning speculative buying and selling of shares, so that they could only be sold to persons genuinely taking over a role in running the corporation or partnership.

A second wave of development came with the creation of corporations by Acts of Parliament to build canals, waterworks and later railways from the end of the 1700s onward. An Act of Parliament would authorize the creation of a corporation for a specific and narrow purpose and allow it to bring and defend legal actions in its own name (so protecting the financiers from personal responsibility should the corporation fail). The general view at the time was that corporations should only be created for very specific purposes and all other business activity remain in non-corporate forms where liability was not limited. Adam Smith commented in 1776 that the only trades that justified incorporation were banking, insurance, canal building and waterworks. He believed it was contrary to the public interest for any other businesses or trades to be incorporated and that all should be run as partnerships.

The third wave of development occurred in the mid-1800s after the Bubble Act (which prohibited the development of joint-stock companies without a royal charter or act of Parliament) was repealed, allowing shares to be traded freely, and the Joint Stock Companies Act of 1844 was passed, allowing corporations to be created by a simple act of registration, so that they could conduct any business activity they decided on. This "registered corporation" became the modern form, whose limited liability status was increased by government in subsequent years. The aim was widescale liberalization of the market—often called *laissez-faire* capitalism. This was part of a wider battle between the new merchant class and traditional landowners. In the 100 years that followed, they increasingly ignored the controls imposed upon them by the courts, particularly judgements on whether the corporation was conducting business in keeping with its charter. Eventually, in 1966, the court abandoned any attempt at control of what business commercial corporations could do. In 1989, the Companies Act enshrined the principle that a corporation could decide what business to conduct.

It could be argued that in the 1990s a fourth wave of development began, with the enshrining of corporate property rights over national governments at the global level, through the emergence of bilateral and multilateral trade agreements such as the General Agreement on Trade in Services (GATS).

Source: Bennett 1999.

What was this "power"? The concept of power had been researched and theorized for hundreds of years, and was never far from debates about personal agency and social change (Clegg 1989). Mobilizing the various sociological theorizations of power is beyond the scope of this paper, and I have dealt with this elsewhere (Bendell forthcoming). Simply put, power can be understood as that which makes us, or helps us, to do or not do, to say or not say, to think or not think, to feel or not feel. Corporate power is the power that arises due to the organizational form called a corporation. Those post-structuralist critiques that question whether there are indeed any structures in society do not negate the validity of using such a term as "corporate power" but encourage us to consider this as a description of a complex set of power relations and capabilities that arise due to the existence of corporations. Many critics of corporate power wrote about this complexity, especially when attempting to describe how the corporation influenced discourse and meanings in society. For example, Jonathon Rowe suggested that the "American corporation" had become "more than just a mode of business" but also "an agenda, the organizing principle for an entire society—the embedding in the institutional matrix of the single-minded quest for monetary gain" (Rowe 2001:1). Corporate power was seen as so extensive that David Korten argued that "the corporate interest rather than the human interest defines the policy agendas of states and international bodies" (1995:54).

One means of corporations doing this was through lobbying. Leslie Sklair (1998:286) documented that corporations "work, quite deliberately and often rather covertly, as political actors, and often have direct access to those at the highest levels of formal political and administrative power with considerable success". John Braithwaite and Peter Drahaus (2000) demonstrated how corporations and their lobbying groups were able to manoeuvre on the international scene in order to generate the rules they wanted, and undermine those they perceived as problematic. Others identified how the cultural similarities between corporate staff and their government and intergovernmental counterparts led to a level of solidarity that facilitated agreement and consensus (Dreiling 2000). A wide range of research illustrated how corporate power had become key to defining the rules of the global economy.

Campaign financing was also a key means of influence, which varied in different countries (Palast 2002). If certain corporations did not attain the policies they wanted, then they could often locate their operations elsewhere. By the early 1990s academics were describing "the stateless corporation in which people, assets, and transactions move freely across international borders" (Snow et al. 1992:8). As decision making was often controlled in Northern branches of these companies, with financial benefits accruing in those countries, terms such as multinational or global corporation could give the wrong impression of diffused resources and authority (Gill and Law 1988). Transnational corporation (TNC) was the usual term for these companies, and is used in this paper, though it is also somewhat misleading as the majority of TNC shareholders were of certain nationalities, from the United States, Europe or Japan. Instead, the TNCs were transgovernmental, being able to pick and chose between different governments, in terms of their productive, financial and political activities. The term transgovernmental corporation (TGC) was not used at the time.

Increasingly governments were shaping their domestic policies for the overriding imperative of appearing attractive to these TNCs and thus the financial markets (Strange 1996). The global economy was shaping state monetary and fiscal policy (Andrews and Willett 1997) and imposing a logic on governments to cut corporate taxes and weaken, or not enforce, social or environmental laws. This situation meant that the sacred cow of international relations theory—national sovereignty—was being slaughtered by a range of commentators. Within a few years mainstream non-fiction was speaking of life in a *Captive State* (Monbiot 2001) after *The Silent Takeover* (Hertz 2001) of society by corporations. The state was not in retreat: it was on the march in support of corporations.

While politicians talked of "free trade", their liberalizing and privatizing policies produced a situation where one third of world trade occurred between factories and offices of TNCs; in consumer durables, the top five controlled 70 per cent of the world market (Simms et al. 2000). These were massive centrally-planned economies, Soviet-style corporate states that dictated what would be "needed" and how, by whom and for how much. Although people's socioeconomic lives were governed by these TNCs, most still assumed they lived in democracies.

Beyond the direct corporate influence on governments, via lobbying, campaign financing and capital flight, corporate power influenced political culture in other ways. Forty percent of all the world's media were controlled by five TNCs (Simms et al. 2000). These were managed to generate advertising revenue, which created a pressure to quickly boost ratings and air advertisements to the highest bidders. Thus people experienced increasingly simple and inconsequential audio, print and televisual media with constant messages to consume more products and services. This was particularly important in non-Western countries, where television beamed images of a consumer utopia into millions of homes, helping create demand for products that provided a symbolic connection to that unreal utopia (Saddar 2000).

Despite the endeavours of committed journalists, the corporate media generally filtered the news agenda in five ways (Chomsky and Hernan 1994). First, the business interests of the owner companies influenced reporting. Second, media managers needed to please (and certainly not upset) current and potential advertisers. Third, journalists often relied on press releases from organizations with a commercial interest in influencing the media. This reliance

was increased as profit objectives regulated the amount of time most journalists had for research. Consequently many media outlets peddled the views of organizations which falsely claimed expertise in order to promote a political agenda. Fourth, journalists that rocked the boat would be liable to professional criticism and sometimes litigation. A fifth filter was a blind acceptance of neoliberal economic ideology, so that many journalists were bemused at, and uninterested in, fundamental critiques of the economic system. As a BBC producer covering riots in Genoa explained, "talking about the structural violence of capitalism doesn't really work on TV. The riots do".

Corporations affected discourse beyond their influence on, and as, the media. Financial and professional pressures on different types of agencies, working on all manner of issues, influenced the way people decided between different ideas and actions. Research on the monitoring of codes of conduct demonstrated how commercial auditing companies were influencing the professionalization of such practices in ways that inhibited social change while promoting their own financial interests (Bendell 2001). There were many other in-depth studies of the influence of corporate interests over the shaping of discourse around social issues such as the environment or ethical trade (Welford 1997; Bendell forthcoming). Many suggested that the dominant idea of "development" had been promoted by corporate power, and that alternative ideas of progress and the means of pursuing them were continually undermined by corporate power (Korten 1995). To many, "development" was itself a discourse created by the logic of globalizing capitalism (Bello and Rosenfeld 1990). This was becoming increasingly apparent as companies became more explicitly involved in initiatives that were suggested to have development aims (Nelson 2002b).

One aspect of the discourse of business that is particularly relevant to this discussion was the idea that business is apolitical. Before the early 1990s, most managers expressed this perspective, and an opinion that their duty as professionals was not to be swayed by subjective and emotional concerns about what, they thought, were non-financial matters. This meant most managers considered that social and environmental issues were not their responsibility but that of government (Bendell 2000). This was despite the fact that the modern corporation and globalizing capitalism were political creations, and that the private sector had significant power over the political agenda, as described above. This discourse of professionalism was a major obstacle to social change, which had to be challenged.

Corporate power over societies and governments was referred to widely by participants in counter-globalization activities and, as I will describe below, increasingly by those working on corporate accountability. But before looking more closely at these views, it is important to contextualize this within the history of people's struggles with corporate power.

What Had Been Done About Corporate Power?

In the United States, from the mid-1800s onward, concern about and resistance to the extension of corporate power was evident (Rowe 2001). President Abraham Lincoln was particularly concerned about the implications of corporate power for democracy. In 1864 he lamented that "corporations have been enthroned," and suggested that "an era of corruption in high places will follow...until wealth is aggregated in a few hands...and the Republic is destroyed". Subsequent Presidents Theodore Roosevelt, William H. Taft, and Woodrow Wilson all called for the federal chartering of large corporations, as James Madison had urged at the original Constitutional Convention. Roosevelt even created a Federal Bureau of Corporations because of these concerns (Rowe 2001). Anti-trust laws were passed in 1890 and 1914 with the aim of preventing corporations from becoming so large that they operated monopolies. However, these efforts only provided a limited check on the increasing rights of corporations.

In many other countries during the 1900s, dramatic changes in political and economic systems reconfigured the nature and role of corporations. Marxist-inspired revolutions in Eastern Europe, Asia, the Middle East and Latin America abolished some of the early corporations in these countries, which were often the instruments of colonial powers. After the Second World

War, political changes in Western Europe led to the nationalization of many private corporations involved in energy, health and transport, among other sectors. This removal of private corporations did not last in most countries, as Western pressure undermined socialist governments across the global South, while the privatization of government-owned operations in Western Europe increased in the 1980s, and then in post-Communist and Southern countries, from the 1990s.

At the international level, in 1948 a new United Nations institution was founded to help guide world trade. The founding *Havana Charter* of this International Trade Organization (ITO) "rejected the idea that it was possible to maintain a firewall between trade, development, employment standards and domestic policy. Its most distinctive feature was the integration of an ambitious and successful program to reduce traditional trade barriers, with a wide-angled agreement that addressed investment, employment standards, development, business monopolies and the like" (Drache 1998). Although it initially supported the *Havana Charter*, the United States withdrew support in 1950. Instead it supported the drafting of a General Agreement on Tariffs and Trade (GATT), an agreement which appeared to separate trade and social development issues—something returned to below.

By the mid-1960s, as private corporations expanded their operations internationally, and many new post-colonial governments began to seek greater economic independence, there was added impetus for controlling corporate power. One aspect to this were efforts between post-colonial governments to agree production quotas so they might stabilize and increase the prices for their exports and generate tax revenues. These were encouraged by the establishment of the Organization of Petroleum Exporting Countries (OPEC) in Baghdad in 1960. One example was the creation of the Unión de Paises Exportadores de Banano (UPEB) by banana exporting governments, which was established with the intention of harmonizing taxes and controlling supply.

Another aspect of this emphasis on a new economic order for post-colonial states led to the UN passing a *Charter of Economic Rights and Duties of States* in 1974. The charter effectively permitted governmental efforts to restrict and control foreign investment throughout the global South including expropriation, contract abrogation and the use of municipal courts to settle disputes. One hundred and twenty states voted for it; 10 abstained, and the United States, United Kingdom, West Germany, Denmark, Belgium and Luxembourg voted against it.

The following year, the UN established a Centre on Transnational Corporations (UNCTC), which by 1977 was co-ordinating the negotiation of a voluntary *Draft Code of Conduct on Transnational Corporations*. Over subsequent years the negotiators managed to agree that TNCs should respect host countries' developmental goals, observe their domestic laws, respect fundamental human rights, adhere to sociocultural objectives and values, abstain from corrupt practices, and observe consumer and environmental protection objectives (Fitzgerald 2001; Jenkins 2000).

In the United States, the *Foreign Corrupt Practices Act* was passed the same year, which required that US corporations not pay bribes when conducting business around the world. A number of multilateral agreements emerged in the 1970s including the *Guidelines for Multinational Enterprises* of the Organisation for Economic Co-operation and Development (OECD), which were adopted in 1976 (and revised in 2000). The guidelines included standards related to disclosure of information, workers' rights, industrial relations, environmental protection, combating bribery, consumer interests, science and technology, ensuring competition and taxation, respect for human rights, and elimination of child labour and forced labour (ICHRP 2002). The International Labour Organization's (ILO) *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, adopted in 1977, covered employment issues such as non-discrimination, security of employment, training, wages, benefits and working conditions, health and safety, freedom of association and the right to organize. It also called on companies to respect specific international human rights agreements. Other multilateral agreements focused on specific issues, such as the World Health Organization's (WHO) *International Code of Marketing of Breast Milk Substitutes*, which was launched in 1981.

By the 1980s it was becoming clear that these multilateral initiatives and agreements were doing little or nothing to address corporate power. To begin with, most agreements to regulate production fell apart under corporate lobbying and political changes in post-colonial states. For example, UPEB abdicated from its original task and focused instead on providing information on trade. During the 1980s and 1990s banana TNCs largely maintained their control of the trade, and banana prices often fell dramatically. The multilateral statements also had little effect. As the countries with most jurisdiction over TNCs did not support the *Charter of Economic Rights and Duties of States*, it had little influence in the following years, except as a reference point for subsequent resolutions of various UN commissions. The efforts to agree on the *Draft Code of Conduct on Transnational Corporations* stalled in the 1980s, and UNCTC, which was overseeing the process, was disbanded in the early 1990s, under pressure from key Northern governments, backed by corporate lobbying (Fitzgerald 2001; Jenkins 2000). Both the *OECD Guidelines* and *ILO Tripartite Declaration* were non-binding on both states and corporations, and proved to be weak instruments (ICHRP 2002).

Therefore, by the 1990s, corporate lobbying had effectively undermined multilateral attempts at addressing their power. Instead the 1990s witnessed corporations extending their power both logistically and legally. Logistically, as cheap air transportation, flags of convenience and telecommunications allowed them to operate globally. Legally, as various controls on their operations were removed, and new international laws agreed that enshrined their rights on a global scale (Gill 1995). The removal of controls included the liberalizing of their capital and product flows, as well as the opening of new sectors of operation through privatization. The multilateral legal framework that both encouraged this liberalization and enshrined, internationally, corporate rights over governmental sovereignty, included the development of the North American Free Trade Agreement (NAFTA), GATS, and TRIPs.[2]

Despite some successes, by the turn of the millennium, action on checking corporate power had largely failed. Instead, the 1990s had witnessed a new wave in the historical development of the corporation, where its legal and realized rights were enshrined internationally (see box 3 for the previous waves of development).

Civil Society Faces Corporate Power

People have come together, voluntarily, to work toward progressive change in their local and extra-local communities throughout history. At various times in the history of Western political thought, the term "civil society" has been used to describe the realm of networks and associations that result. A full discussion of the various interpretations of the term civil society is beyond the scope of this paper, and I deal with this elsewhere (Bendell forthcoming). The view that civil society is composed of people associating neither for profit making or for governmental power but for some public purpose is assumed here, and the term "civil groups" is used to describe their organizations. A common theme of much commentary on civil society as the twentieth century drew to a close was that it was increasing. Take these statistics on some subsets of civil society: membership of seven major environmental groups in the United States grew from 5.3 million to 9.5 million between 1980 and 1990 (Cairncross 1995), while in 1999 the nonprofit sector in 22 countries employed 19 million full-time paid workers, together turning over $1.1 trillion annually, and over 100,000 full-time paid employees and 1.2 million full-time volunteers were working for international non-governmental organizations (NGOs) in France, Germany, Japan, Netherlands, Spain and United Kingdom (Salamon et al. 1999). The 1990s

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[2] In effect this meant that corporations could raise disputes directly with states (or indirectly via their governments) and receive payments if successful. For example, under NAFTA, Mexico was ordered to pay $16.7 million to California-based Metalclad Corporation after it reneged on an agreement to allow the company to build a hazardous waste treatment and disposal plant because of concern about environmental impact. This refusal was deemed an unnecessary barrier to trade. "The company argued that Mexico had in effect expropriated future profits" (ICHRP 2002:91). Into the twenty-first century, many governments continued being active in establishing theoretical rights for corporations and ensuring they could realize those rights. For example, the European Convention on Human Rights stated that corporations had some rights as "legal persons" (ICHRP 2002:56), while both the European Union and United States created official procedures to investigate complaints by their companies about competitors in other states and to pursue them through the WTO if the cases had potential (ICHRP 2002).

witnessed a continuing boom in the number of these groups, with around one quarter of the 13,000 international NGOs in existence in 2000 having been created after 1990 (Anheier 2001). To some, this suggested that a "global associational revolution" (Salamon et al. 1999) was underway, creating a "globalization from below" (Giddens 1999:8).

This associational revolution was occurring at the same time that the membership of political parties and trade unions, and electoral voting, fell in most Western democracies (Patterson 2002). The civil groups or NGOs, focused on the simple messages, such as the ozone hole, torture or famine, saying they were not "political"—something that had at that time become a tired word. Despite the problems arising from this marketization of moral messages, this was a movement of people and resources in the West that I believed would have a major effect on the rest of the world.[3] I worked for such groups, and like my colleagues in the mid-1990s, was not inclined to continue what appeared to be the increasingly futile lobbying of governments. We considered that intergovernmental commitments on social and environmental issues could take years to negotiate, and even then often they were not enforced in any meaningful sense (Murphy and Bendell 1997). Therefore many of us directed our attentions to the corporations themselves.

As a consequence, the 1990s witnessed an explosion in activist and civil group engagement with corporations. Many early forms of engagement were confrontational. Some groups focused on single issues or single companies. Although a number of anti-corporate campaigns such as the International Baby Food Action Network (IBFAN) and the Coalition Against Bayer-Dangers[4] had been running since the late 1970s, the growth of the Internet in the 1990s heralded a new era in such activism. The Internet became a weapon of mass dissemination. The launch in 1992 of McSpotlight,[5] a Web site dedicated to providing information on problems with the McDonald's fast food business, was indicative of things to come (O'Neill 1999).

Besides such Web sites, the confrontational tactics were varied. Organizing consumer boycotts was one, often in conjunction with media-friendly stunts that would put executives in the awkward position of having to answer questions from journalists about their company's activities. Demonstrations at corporate offices, retail outlets or annual general meetings were another tactic used against companies. Some campaigners bought shares in order to table controversial motions at their annual general meetings (AGMs). Some high-profile campaigns included Shell and the North Sea oil platform Brent Spar (and then the Ogoni's campaign in Nigeria); then brand retailers such as Nike and Gap and the conditions in their supplier factories; then Monsanto and genetically modified foods; and then pharmaceutical companies and the cost of AIDS-related drugs. A number of books popularized these types of activism, which tended to focus on single issues, or single companies with high-profile brands (Klein 2000; Lubbers 2002).

These campaigns can be classified as "forcing change" tactics in a typology of civil society engagement with business (Bendell 2000). They were often successful in provoking a response from companies as they targeted corporate reputations, which had become increasingly important to many TNCs. A large percentage of most companies' total market value was comprised of intangible assets, such as reputation, brand, strategic positioning, alliances and knowledge, perhaps even accounting for a quarter of the world's financial wealth in 1999 (Clifton and Maughan 1999).

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[3] I use the term "civil groups" in this work to refer to formal or informal organizations and networks that were both not-for-profit and non-governmental. With the term "not-for-profit" I not only mean that the organization itself did not repatriate profits to owners, but also that the organization did not aim to represent the interests of for-profit organizations. "Civil" is a reference to civil society. I define civil society as the realm of participation for the collective pursuit of individual preferences; in other words, rights-based and rights-focused participation in society. Therefore "civil group" is an "ideal type" of organization, where in reality many groups might fall short. A detailed discussion of the various theories on civil society, and this particular conception of it, is provided in Bendell (2004).

[4] www.cbgnetwork.org, accessed in March 2004.

[5] www.mcspotlight.com, accessed in March 2004.

Such forcing change tactics often led to different approaches when corporations began responding positively. This was because once an issue was put on the corporate agenda, the subsequent responses were key in determining how the problem might be improved.[6] Over time, new forms of engagement emerged. Some civil groups and companies formed partnerships to develop new products, techniques or management practices. Civil groups began advising companies on best practices, and endorsing or promoting such practice. Codes of conduct and certification schemes, often as part of multistakeholder initiatives, grew significantly during the 1990s.[7] One pioneering multistakeholder initiative was the Forest Stewardship Council (FSC), which aimed to provide a credible guarantee to consumers that wood products came from well-managed forests (Murphy and Bendell 1997). Another was the Global Reporting Initiative (GRI), which aimed at developing a widely endorsed reporting framework for social and environmental issues.[8] Also the international federations of trade unions were signing framework agreements with the TNCs, so they could liase at a global level about local labour disputes while also promoting the implementation of labour rights throughout the TNC. One such agreement was signed between the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) and the Nordic oil company Statoil (Bendell 2001).

Institutionalizing voluntary responsibility

Both civil group and business participants in these initiatives, as well as commentators, academics and a growing array of consultants began extolling the commercial rationality of such action. The "business case" for acting—beyond mere reputational fire-fighting—was argued to stem from improvements to sales and marketing; employee recruitment, retention and motivation; operational regularity; product, service, process or brand innovation; risk management; and reputation management (Weiser and Zadek 2000). These ideas were championed by a new industry of "corporate social responsibility" (CSR) service providers, including freelancers and start-ups, as well as big accountancy firms like PricewaterhouseCoopers and KPMG, and public relations (PR) companies such as Burson-Marsteller and Edelman. Many civil group staffers previously employed in partnerships or even in brand-bashing campaigns began working in this new industry. Informal networks of professionals such as CSR Chicks grew to hundreds of members in a couple of years. Specialist institutes and civil groups were created to play a role in the emerging terrain, such as Business for Social Responsibility (1992), New Academy of Business (1995), the Institute for Social and Ethical Accountability (1996), CSR Europe (1996), Social Accountability International, or SAI (1997), the Ethical Trading Initiative, or ETI (1997), GRI (1997) and Fair Labor Association, or FLA (1999).

This new industry took added impetus from developments of November 1999 onward, as the world's corporate media woke up to the counter-globalization movement by covering riots in the streets of Seattle. The cover of a brochure from a newly-launched consulting company Global-Responsibility.com carried a picture of a Seattle protestor, while the cover of the first issue of *Ethical Corporation* magazine carried a similar picture with the caption, "Do you want this to happen outside your head office?" The CSR industry was suggesting it could protect companies from protest.

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[6]   Bendell 2000; Murphy and Bendell 2001; Murphy and Bendell 1999; Murphy and Bendell 1997.

[7]   Bendell 2000; Zadek 2001; Utting 2002.

[8]   Another type of activism I describe in the typology was aimed at providing alternative production and trading systems based on a different value system to mainstream business practice. Civil groups launched a variety of "fairtrade" organizations to try and offer a way of linking disadvantaged producers with responsible consumers. In 1997 they joined up with similar organizations in other countries, to form Fairtrade Labelling Organizations International (FLO). By 2001 this group had 17 member organizations. They issued fairtrade labels to manufacturers or importers whose production or supply of a particular product met specified standards, including the payment of a guaranteed price that included a "social premium" to fund development activities. By 2001, you could buy fairtrade coffee, tea, bananas, sugar, orange juice and cocoa. The market for fairtrade products grew rapidly at the turn of the millennium. Between 2001 and 2002, fairtrade-labelled sales across the world grew by 21.2 per cent (www.fairtrade.net/sites/impact/facts.htm, accessed in September 2003). Fairtrade ground coffee accounted for 14 per cent of the British ground coffee market (www.fairtrade.org.uk/factsfig.htm, accessed in September 2003).

At the beginning of the new millennium's first decade, think-tanks such as the Institute for Public Policy Research (IPPR), Demos and the Foreign Policy Centre started producing pamphlets on CSR, and research institutes such as the International Institute for Environment and Development (IIED) and Overseas Development Institute (ODI) appointed specialists to work in this field. Nottingham University joined Warwick by establishing a new specialist research centre. A new literature had grown around the idea of multistakeholder partnerships, CSR and sustainable business. The *Journal of Corporate Citizenship* was launched in 2001, as was *Ethical Corporation* magazine, the backers of which also industrialized the conferencing circuit of CSR. The publishers Greenleaf, Zed Books, Earthscan and FT Pitman, among others, increasingly offered titles in this area.

One of the key impacts of the CSR industry and literature was that the discourse of business shifted. Academic debates were still had between those who supported the shareholder model versus those who supported the stakeholder model of business, but in some societies there was a conceptual shift: the question of people's values at work became a valid one. No longer was it assumed in mainstream (Western) business that to be professional meant not to consider the social and environmental impacts of your work. No longer was the idea of purposively being ethical only a matter for party politics, government, charities and religion. Increasing numbers of people hoped or believed they could do well in business by having a positive impact on society. Many professionals working in this field began to speak of "a corporate responsibility movement".[9]

Governments increasingly took notice, and were helping to fund partnerships, such as the ETI in the United Kingdom, SAI and FLA in the United States. A European Union (EU) white paper was prepared on the topic and published in 2002. Intergovernmental agencies, such as the United Nations Children's Fund (UNICEF), United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP) became involved in partnerships themselves. Staff of the United Nations Secretary-General's office were inspired by what was happening and invited companies to work with them on a UN Global Compact in 1999, and a new fund was also established for UN partnerships with the private sector.

In 2002 the World Summit on Sustainable Development (WSSD) in Johannesburg marked the crowning of multistakeholder partnerships and CSR on the global policy scene. New partnerships were devised and old ones re-branded so that over 200 of them were announced as an official ("Type II") outcome of the intergovernmental conference—the first time agreements between non-state actors had been endorsed in this way. Was this a sign of things to come? Undoubtedly yes, but it also marked a turning point for a number of civil groups who were set to drive a new corporate accountability movement, as explained below.

Other reactions to corporate power

Clearly, not everyone who was concerned with the state of the world and considered that corporations were powerful actors decided to engage them directly. Instead, some focused on developing their critique, raising awareness of corporate power, and emphasized working toward governmental intervention and personal lifestyle changes to reduce corporate power.

To illustrate, during the 1990s, a number of small activist think-tanks emerged in the United States with the sole purpose of critiquing corporate power. The Program on Corporations, Law and Democracy was founded in 1995, "to instigate democratic conversations and actions that contest the authority of corporations to govern".[10] The Transnational Resource and Action Center (subsequently renamed CorpWatch) was established in 1996, to help "foster democratic control over corporations".[11] The NGO Taskforce on Business and Industry (ToBI) was

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9   The search terms "corporate responsibility movement" and "corporate social responsibility movement" produced a combined 800 results on the Google search engine in June 2003. Whether the people and groups involved warranted the term "movement" as understood by researchers and theoreticians of social movements, as described in box 6, is open to question, and I return to this later (Agnew 1994).

10   www.poclad.org, accessed in March 2004.

11   www.corpwatch.org, accessed in March 2004.

launched the same year, as "an international coalition of…civil society organizations working to promote the concept and implementation of corporate accountability", with a key aim of influencing intergovernmental processes. Another group, Reclaim Democracy, was founded in 1999 with the aim of "restoring democratic authority over corporations, reviving grassroots democracy, and revoking the power of money and corporations to control government and civic society".[12]

In Europe, Corporate Watch (UK) was founded in 1996, as a publisher of information on corporate malpractices.[13] The following year in the Netherlands, the Corporate Europe Observatory was founded as "a research and campaign group targeting the threats to democracy, equity, social justice and the environment posed by the economic and political power of corporations and their lobby groups".[14] In Germany, the World Economy, Ecology and Development Association (WEED) launched a Corporate Accountability initiative in 2000 with the intention of networking civil groups and social movements in the North and South, who wanted governments, private sector and civil society "to make greater efforts to ensure the accountability of business and industry, especially Transnational Corporations, to society".[15]

Most of these organizations criticized the trend where civil groups were collaborating with corporations, suggesting that it was a distraction from the fundamental problem of corporate power. They were joined by those activists who engaged in some of the corporate campaigns mentioned above but who refused to begin working with the companies they critiqued. Their reasons were varied, but related to three key criticisms of the potential of voluntary corporate responsibility initiatives.

First, such initiatives were said to be of "defective scope". For example, the writer Naomi Klein argued that even if civil groups were helping to change corporate practice, this would be limited only to those with high-profile brands, or suppliers to high-profile brands. Civil group campaigning was "powerless in the face of corporations that opt out of the branding game", she said (2000:424). Noting that there were over 60,000 TNCs in the world, some commentators questioned whether corporate responsibility initiatives would only ever be patchy and partial, driven by the whims of Western activists, media, consumers and investors (Utting 2002).

Second, voluntary action was seen as maintaining a "democratic deficit". Some pointed out that the agenda of voluntary action was driven by certain groups in the West and not the (supposed) intended beneficiaries in the global South (Utting 2002; Bendell 2001). Peter Newell argued that those civil groups engaging with business had "neither the mandate nor the legitimacy to represent broader publics" and thus civil regulation was no replacement for state or international regulation (Newell 2000:913). Others pointed out that voluntary action was limited to those decisions that would not adversely affect a corporation's share value, and that this was not the right way for society to determine what was right or wrong. An UNRISD report stated "international business cannot be expected to author their own regulation: this is the job of good governance" (UNRISD 1995:19), while UNDP concluded that "multinational corporations are too important and too dominant a part of the global economy for voluntary codes to be enough. Globally agreed principles and policies are needed" (UNDP 1999). The message was that relying on the good will of the powerful was not enough: what was required were new forms of democratic governance so that people could determine their own futures in a sustainable environment and safe society.[16]

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[12] www.reclaimdemocracy.org, accessed in March 2004.

[13] www.corporatewatch.org, accessed in March 2004.

[14] www.xs4all.nl/~ceo, accessed in March 2004.

[15] www.corporate-accountability.org, accessed in March 2004.

[16] The reason why I had developed the concept of "civil regulation" as the regulation business by civil society was (in the absence of governmental action) to uphold the idea that society should be, and to some instances was, determining how businesses should perform on social and environmental issues. Therefore I stressed that civil regulation did not assume that there was always a win-win relationship between business and society, unlike the assumptions of voluntarism and self-regulation. Civil regulation could put a company, even an industry, out of business. Nevertheless, civil regulation still only went part of the way in addressing problems with the defective scope, democratic deficit, and distraction effect of voluntary CSR and partnerships (Bendell 2000). Concepts about the democratic governance of corporations are discussed later in this work.

A third criticism concerned the "distraction effect" of voluntary initiatives. This criticism was not about what voluntary initiatives could achieve or not achieve, and the power relations involved, but what they might stop from being achieved. This was because some companies were pointing to voluntary action as evidence that they did not need state regulation, assuming that the development of corporate responsibility added weight to the neoliberal policy paradigm. Voluntary action was being used to espouse a market-fundamentalism where everything could be left to the workings of the market (Bendell 2001). As increasing numbers of people from civil groups, governments and academia were involved in corporate responsibility, some suggested this would distract them from the main tasks at hand.

Corporate Responsibility or Corporate Accountability?

As voluntary initiatives grew to a point where they were a centrepiece of the 2002 UN summit in Johannesburg, so criticisms of them increased, and it became more apparent than ever that the various people and groups working on corporations and world development issues did not share the same diagnosis of the problem to be addressed.

At this time, commentators increasingly identified a key divide between those who regarded corporate power as a problem, and those who either accepted it or considered it as an opportunity, if engaged appropriately. The latter were said to be involved in "corporate responsibility", and the former involved in "corporate accountability" (Hamann et al. 2003; Richter 2001). To work with corporations to make them more responsible was regarded by some as not challenging their power and, possibly, increasing it. To work on making corporations more accountable was regarded by some as giving society more power in determining what constituted responsible corporate actions. Friends of the Earth put it this way: "accountability requires going beyond voluntary approaches and establishing mechanisms which provide adequate legal and financial incentives for compliance. It must also empower stakeholders to challenge corporations" (FoE-I 2002b). The NGO Task Force on Business and Industry therefore defined corporate accountability as "the legal obligation of a company to do the right thing. The aim of corporate accountability is to be sure a company's products and operations are in the interests of society and not harmful" (ToBI 1997:1).

Despite this, the term corporate accountability was often used interchangeably with other terms such as corporate responsibility and corporate citizenship. The meaning of the word "accountability" aided this inconsistency in understandings of corporate accountability. For example, the Merriam-Webster dictionary allowed for both views of accountability, defining it as "the quality or state of being accountable; especially: an obligation or willingness to accept responsibility or to account for one's actions". Meanwhile, the 1989 edition of the Oxford English Dictionary focused more on obligation, defining accountability as "the quality of being accountable; liability to give account of, and answer for, discharge of duties or conduct". Peter Newell (2002:92) argued that "the term implies both a measure of answerability (providing an account for actions undertaken) and enforceability (punishment or sanctions for poor performance or illegal conduct)".

For some people and organizations engaged in corporate responsibility issues, accountability did not mean "being held to account" (enforceability) but "giving an account" (answerability). For example, the Institute of Social and Ethical Accountability (Accountability), focused on voluntary standards for companies to aspire to in their relations with stakeholders. In their extensive documentation on the standard for organizational accountability, AA1000, the only definition offered was as follows: "The AA1000 definition of accountability is an accountability of organizations to their stakeholders. The nature of this accountability is defined by the organization's engagement with its stakeholders" (Accountability 1999:20). Clearly this was an elegant non-definition, suggesting that it would be defined in time.

A new movement is defined

Despite the diversity of views, by the late 1990s some commentators did attempt to describe a "corporate accountability movement". Notable among these were Robin Broad and John Cavanagh (1999), who believed that the expanding number of corporate-related campaigns needed to be understood—by both commentators and participants in them—as parts of a larger movement (p. 167). They identified three levels of critique of corporations and corporate power amongst these campaigns. At one end, some campaigns sought to "fundamentally change the corporation or to get rid of corporations completely". Somewhere in the middle of the spectrum of views, were campaigns seeking "to change the rules that govern corporate behaviour". At the other end, some campaigns sought "to reform abusive practices of individual corporations" (p. 152).

Naming diverse activities as one movement was intellectual activism on their part (as this paper is on my part). They noted at the time that there was "no self-conscious" corporate accountability movement, since many activists were not yet making the connections, and were unaware of the history of struggles against corporate power, as described earlier (Broad and Cavanagh 1999:167). However, to describe something as a social movement suggests that there is a common set of values and aims, even if no identifiable co-ordinating infrastructures exist (see box 4). Their suggestion that those who were seeking to reform certain corporate practices shared something with those who were working to abolish or regulate corporate power more generally was questionable. It was true that many activists used the language of corporate accountability. The Web site of Global Exchange asked visitors to "help promote corporate accountability—join the anti-sweatshop movement". Moreover, some brand-bashers were definitely interested in a particular company as a symbol of a wider problem. For example, McSpotlight's Web site stated "we are not for one moment saying that McDonald's is the only corporation in need of public scrutiny and debate. Due to its massive public prominence and indisputable arrogance it has simply been used as a symbol of all corporations pursuing their profits at any price". However, not all campaigns aimed to challenge corporations as a whole. For example, although anti-sweatshop campaigns were often portrayed as high points in the corporate accountability movement, they often led to collaborative work with corporations on voluntary codes of conduct. Thus by the early part of the twenty-first century these campaigns had not yet instigated a movement toward legal and mandatory corporate accountability, which was Friends of the Earth's understanding of the concept.

Whether sweatshop campaigns were increasing the ability of corporations to be governed by the people they affected (my definition of corporate accountability, which includes the legal dimension) depended on a range of factors, particularly the ongoing interaction between the companies, Northern civil groups, sweatshop workers and their local representatives. Such campaigns could be understood as part of a spectrum of activities that together constituted the regulation of business by civil society, or "civil regulation" (Bendell 2000). Which parts of civil society were doing the regulating, and their accountability to those affected by the corporation, were complex questions that I deal with elsewhere (Bendell forthcoming).

Box 4: Understanding social movements

"Social movement" was defined in *Encyclopaedia Britannica* (2003) as a "loosely organized but sustained campaign in support of a social goal, typically either the implementation or the prevention of a change in society's structure or values". To suggest something is "a movement" is a political activity itself, suggesting that certain people and events are linked by a set of beliefs or experiences, and that they are moving toward a common goal. In outlining "a corporate accountability movement" in a paper such as this, one contributes to the identification of that movement, and possibly even to its own self-identity.

Although most ideas had the word "movement" appended to them at some time or other in the media, the study of "social movements" is a well-established academic area. Social movements of national determination and worker emancipation had been described and analysed throughout history, with theorists often focusing on the causal mobilizing factors for such movements. Some argued that movements stemmed from adversity and disadvantage (Aberle 1966) or, conversely, from people's ability to access resources to pursue their self-interests (Heberle 1949). In 1980 Alberto Melucci coined the term New Social Movements in recognition that the leading movements since the 1960s seemed to be mobilized around issues of lifestyle and beliefs rather than material matters, and where activists regarded participation in movements as success in itself rather than functional in producing some systemic revolution. Consequently the study of the gay, women's and civil rights movements led to theories that focused on the role of identity and culture in collective action (Castells 1997; Finger 1992), while the study of movements in non-Western contexts led some to question the focus on individual causal factors and single collective identities of movements (Oommen 1998; Veltmeyer 1997). Escobar (1992), for example, criticized the ethnocentrism of much Northern writing on social movements, and explained some of the specificities of Latin American struggles against a developmentalist state. He suggested that a divide between structure and identity was invalid, as identity politics was important yet played out in the context created by oppressive political-economic structures.

Some theorists attempted to bridge the divide between "new" and "old" social movements. For example, if one recognizes that every fundamental need that was not sufficiently satisfied is a sign of poverty, then there are many different forms of poverty, and the view that cultural identity is the key motivating factor can be reconciled with the position that deprivation is the key factor (Max-Neef 1992; Veltmeyer 1997). Jurgen Habermas's (in Kumar 2000) suggestion that social movements arose from the fallout of modernity, whereby prevailing rationality can oppress people's ability to reflect and express themselves, resonated with my own experience in the counter-globalization movement. Like most social science, the study of social movements was tentative in its investigation of the values and emotions involved. This is because to have a close knowledge of such phenomena you must experience them yourself, which posed a challenge to the objectivist basis of much social science. It is for this reason that the methodology, described in box 1, is particularly relevant for this study. It is why I report on my involvement in the "corporate accountability movement" as well as data from more traditional research methods.

Given the evident engagement of corporations by civil groups, yet the seemingly very different perceptions of and approaches to them, a key analytical question is what actors in the civil groups thought of *corporate power* itself. Drawing upon conversations, interviews and email correspondence with dozens of activists engaged with corporate issues, as well as a Web site review of various groups that were involved in selected corporate accountability initiatives, two important things emerged.[17] First, the level of reflection on corporate power varied significantly, with some obviously having considered it, whereas others had not, and so their perspective on it had to be drawn out. On the one extreme was the Stakeholder Alliance, whose slogan was "confronting corporate power with stakeholder power". On the other hand, many of those who were involved in collaborative work with corporations had not reflected on corporate power, and inviting them to talk about it was unusual for them. As Tracey Swift, then with Accountability, explained "there is a small cadre of people working in this area who see it's all about power. But yet we are not really working on power, as there is no funding for this sort of thing—it's not what people want to hear".[18]

Second, through this process, four broad perspectives on corporate power could be identified. For some, corporate power presented an *opportunity*, if it could be directed to better use. For others, corporate power presented an *obstacle*, a problem in a specific case because it was being used in ways that hindered their particular social or environmental objective. With both of these perspectives, people were not inclined to speak or think of corporate power as one

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[17]   The term "corporate accountability initiatives" is developed later in the paper.

[18]   Interviewed by author, London, June 2002.

phenomenon, as they saw the power as being different depending on the corporation in question. Others developed a wider and more categorical critique of corporate power, considering that it was an *obstruction*, a general systemic problem arising because of the logic of capital accumulation driven by stock markets, which led to externalizing costs, and shaping discourse in ways that would always hinder social and environmental objectives. A fourth attitude to corporate power could be identified, where it was regarded as an *obscenity.* Such people considered it morally wrong for corporations to have their power no matter how it was used, because they considered human self-determination, freedom and democracy to be fundamental and therefore the most powerful institutions in society would have to be democratic, or controlled via democratic means, as a matter of principle.

The different perspectives underpinned a range of tactics for engaging corporations and corporate issues, which are detailed in box 5. Each tactic gives some indication of the extent of the protagonist's perspective on corporate power and the corporate form. The first three tactics—to *remove, reduce,* or *redefine* corporate power—address the existence of the corporation itself, including its form and function. Such tactics were used particularly by those who considered corporate power to be an obstruction or obscenity, as defined above, and were working toward what could be called "corporate reductability". The second set of tactics—to *resist, restrain,* or *redress* corporate power—address the challenge of counterbalancing the power of corporations. Such tactics were used particularly by those who considered corporate power to be an obstacle or obstruction, as defined above, and who were working toward "corporate accountability". Therefore, corporate accountability can be defined as the ability of those affected by a corporation to regulate the activities of that corporation, and the corporate accountability movement defined as those who work toward this outcome, knowingly or not, in specific circumstances or in general. The final two tactics exhibited by those engaged with corporations—to *redirect* or *reinforce* corporate power—address the challenge of encouraging more beneficial impacts from corporations. Such tactics were used particularly by those interested in promoting voluntary corporate responsibility, which was often called CSR or corporate citizenship. For them, the argument that if corporates worked toward their particular social or environmental objectives, it could increase corporate power, was functional in encouraging a greater response.

The tactics were not exclusive to particular perceptions of corporate power, and are not meant to classify activists and civil groups, as many adopted a mix of tactics depending on circumstances. For example, after initially resisting corporate power, many civil groups sought to redirect it by establishing multistakeholder initiatives and voluntary codes. In any case, organizations often expressed multiple perspectives on corporate power. One reason for this was the diversity of personal opinions in organizations. For example, although the organization Accountability was not particularly critical of power, while working there Tracey Swift said she saw "corporate accountability as concerned with balancing up the hegemony of power exerted by corporations. For me this is a question of increasing the voice and power of people so corporations cannot treat them with impunity".[19] Another reason for organizations exhibiting various perspectives on corporate power was that they were not exclusive. For example, one could regard corporate power both as an obstacle to a particular problem, a systemic obstruction to solving problems generally and as a moral obscenity. Moreover, even with such a perspective one might consider that corporate power presented an opportunity if it could be channelled in support of efforts to control corporate power. This paradox of corporate power is returned to later in the paper.[20]

At the halfway point of this paper, the story so far has been one where world development was going awry, and where the invention of the corporation had helped create power imbalances in society that were shaping not only policy, but also what we considered as policy aims—indeed,

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[19] Interviewed by author, London, June 2002.

[20] There is a methodological challenge in defining such typologies of activists. The shifting, contextual and often contradictory nature of reality means that hard and fast definitions and correlations between activists, their goals and their strategies for achieving them are somewhat arbitrary. It is a necessary evil for anyone attempting to make sense of the diversity of the counter-globalization movement to end up with a somewhat reductionist worldview of the people who are part of it.

our very understanding of "development". It has been about the growth of corporate power and the failed history of attempts to control it. This story has spoken of the growth of an international civil society in the last decades of the twentieth century and how civil groups were increasingly engaging corporations in either conflict or collaboration. It has also been a story of how people engaged in these intersectoral relations (that is, relations between the business, public and voluntary sectors) helped to change how many people in the North perceived the corporate sector, and the potential and limits of voluntary responses of corporations to issues of world development. It has suggested that a corporate accountability movement was emerging in the first years of the twenty-first century.

In the latter half of this paper, a selection of corporate accountability initiatives emerging in the West will be described, as well as why there was new impetus and opportunity for these initiatives to grow and deliver enhanced corporate accountability. In addition a range of challenges to—and within—the movement will be described, including a growing backlash as well as problematic relationships between movement participants in the North and their intended beneficiaries in the South, as well as traditional social movements, such as trade unions and religious organizations. An essential paradox of engaging with powerful actors in the system will be described, before a discussion of whether accomplishing greater corporate accountability would address the systemic problems with world development described at the start of this text. In conclusion a concept will be introduced, that invites us to look beyond the corporation and to the accountability of capital itself.

Box 5: The 8 "Rs": A typology of responses to corporate power

The following eight "Rs" describe tactics that were adopted by various civil groups that engaged with the issue of corporations, their power and their effect on society and the environment. Some groups used a variety of these tactics, and some did not conceptualize their work directly in terms of corporate power.

- **Remove it.** Sometimes people attempted to remove corporate power from their life, community or country completely. Examples included the campaign for nationalization of corporations, the expulsion of natural resource companies from certain regions or the prohibition of certain forms of for-profit activity.

- **Redefine it.** Sometimes people attempted to redefine what a corporation was and how it was permitted to exist under law. Examples included the campaign for rechartering corporations in the United States.

- **Reduce it.** Sometimes people attempted to reduce corporate power by breaking up corporations. Examples included the use of competition law to break up monopolizing companies.

- **Restrain it.** Sometimes people attempted to restrain corporate power with rules governing the behaviour of corporations. Examples included environmental and labour laws and penalties and also civil activism.

- **Redress it.** Sometimes people attempted to try and redress the negative impacts of corporates. Examples included litigation against corporations, and also taxation.

- **Resist it.** Sometimes people attempted to resist the expression or extension of corporate power, in a particular instance or generally. Examples included campaigns against multilateral trade and investment agreements, but also campaigns against high profile branded companies over specific issues.

- **Redirect it.** Sometimes people attempted to redirect corporate power into more socially and environmentally beneficial ways of working, often as the second step to "resist" tactics, and often as the indirect outcome of all other previous tactics, as corporations began to operate differently in response. Examples included responsible or ethical investing, and corporate coalitions on social and environmental issues.

- **Reinforce it.** Sometimes people attempted to reinforce corporate power in specific or general cases. Examples included efforts to expand certain corporate activities and freedoms that were seen as beneficial to society. More often though, this appeared to be a tactical argument, or even an unintentional by-product of the other tactics mentioned above.

New Impetus for Corporate Accountability

There were a number of developments in the early twenty-first century that created a new impetus for work on corporate accountability. These included the growth of counter-globalization, legal activism, the end of the dotcom boom and subsequent accounting scandals, and the tenth anniversary of the UN Conference on Environment and Development, also known as the Earth Summit. The importance of these events depended on where you lived, but they constituted a significant impetus for corporate accountability globally. Combined with the growing critique of voluntarism, mentioned earlier, they created the context for a new movement toward greater corporate accountability.

One impetus for corporate accountability came from the counter-globalization movement (box 2). A global reaction to the global extension of corporate power was perhaps inevitable. Jonathan Rowe (2001:1) commented at the time that the "raw aggression" of corporations "claiming new territory in virtually every dimension of existence" was key to creating the backlash. Early descriptions of counter-globalization protests suggested they were "anti-corporate" (Starr 2000). The group Globalise Resistance used the phrase "challenging the global growth of corporate power" as its slogan.

Protests in Seattle 1999 were important for the fact that the world's mainstream corporate media gave them such extensive coverage. There were two aspects to this; that a protest movement could become known to others, and that it could become known to itself. The fact that protests appeared on television meant that journalists began covering how trade, corporations and international institutions related to issues such as debt, poverty and the environment. Post-Seattle, those who had for years questioned the merits of economic growth, free trade and global corporations were no longer ignored, although most commentators in the corporate media still considered them misguided.

Nevertheless, this meant that such issues had been revived in the public consciousness. People could even question "capitalism" without being chastised for being "ideological". Academics, for example, began researching the reasons for this movement, as illustrated by the London School of Economics' (LSE) first yearbook on global civil society, which looked at this (LSE 2001). Civil groups and politicians had more confidence in being critical about systemic problems. The power of corporations was a valid question again.

The second implication of these protests was that activists became aware of being part of something that could mobilize millions of people around the world to demonstrate or take direct action on a particular day for a particular cause. With a growing sense of identity, the focus shifted to the activist's own agenda, not merely criticizing that of others. The development of the World Social Forum (WSF) in Porto Alegre illustrated this process. It began as a counter-summit to the World Economic Forum (WEF) in Davos, but within a few years had grown to a massive event of 100,000 participants sharing ideas about strategies for reclaiming society from global capitalism. "Porto Alegre used to be anti-Davos, now Davos is anti-Porto Alegre" said one delegate. The WSF was created and led by Southern activists, based on plural and decentralized organizing principles. It inspired a South-to-North process where similarly framed events were planned in Europe and Asia.

Reporting back from the European Social Forum, *The Guardian's* John Vidal (2002) suggested that the movement was maturing "into a very broad social justice movement, and shedding its TV-inspired image of grungy anarchists smashing symbols they do not like". Although there were diverse views on solutions to the world's problems, as described earlier, for most people involved, any proposal or tactic for addressing corporate power was of interest. All the areas of agreement highlighted in the newspaper related directly to corporations, including a "tax on financial markets and regulation of corporations; there should be no GM [genetically modified] foods or pollution; no privatization of public services; the media should be in the hands of the many not the few" (Vidal 2002). The WSF itself explained that all the alternatives being proposed were "in opposition to a process of globalization commanded by the large multinational corporations and by the governments and international institutions at the service of those corporations interests" (WSF 2001). Therefore those who had been working on corporate accountability issues for years, such as the Program on Corporations Law and Democracy and CorpWatch, began to receive a wider audience within this movement.

Some also argued that the second US-led war on Iraq in 2003 added to the energy of counter-globalization. The WSF called for global protests against the war to take place on 15 February 2003. On that day millions of people marched, in the largest worldwide peaceful mobilization of people ever. The fact that so many people took to the streets before a shot was fired, and while leaders were saying that war was not inevitable, illustrated how large sections of publics around the world had their own sense of the system behind the politicians' choice words. The author and activist Arundhati Roy (2003) suggested that the Iraq war exposed the logic of US imperialism once and for all, and joined in the many calls for boycotting the products of TNCs to undermine the "Empire" that had waged war. Others stressed the importance of seeing the "Empire" not in terms of one state but as the global capitalist system (Hardt and Negri 2001). With either analysis, the war had made people more receptive to questions about corporate influence over global politics.

Another trend that had an effect on the corporate accountability agenda was that of human rights lawyers increasingly directing their attention to the international operations of

corporations. For years there have been debates in the international relations literature about the nature of the "international," and whether non-state actors had responsibilities for upholding principles of human rights and democracy.[21] The Universal Declaration of Human Rights (UDHR) stated in its preamble that its provisions related to "every organ of society," yet the legal infrastructure and precedents for applying international law directly to corporations were weak.

Prosecuting corporations in their home country for abuses committed in other countries, by their subsidiaries, was one means of addressing the problem (Ward 2002). In the United States, the Alien Tort Claims Act (ATCA), dating from 1789, held government officials and corporations liable for wrongs committed against non-US citizens. One example was *Doe v. Unocal*, where Burmese villagers sued the California-based energy giant for complicity in abuses committed by the Burmese military. In the United Kingdom, courts could hear cases if they determined that the plaintiff would not receive justice in other courts. Therefore prosecutions were brought against two British companies, Cape and Thor, on behalf of workers suffering from work-related ill-health in South Africa.

International law was often referred to during such cases. The International Council for Human Rights Policy (ICHRP) reported in 2002 that there was evidence that in various courts, ideas about the relevance of human rights conventions and soft laws such as declarations to non-state actors was changing, and that companies could expect to increasingly defend themselves in national courts against complaints of human rights abuse (ICHRP 2002:75).

Further evidence of this trend toward recognizing the application of international law to TNCs was when the UN's Sub-Commission for the Promotion and Protection of Human Rights adopted the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (UNHCHR 2002). This translated the UDHR into something more tailored to business. The principles covered issues such as the rights of workers, the right of people to security, the need for companies to respect national sovereignty and local communities, and to observe obligations with regard to both consumer and environmental protection. In reviewing all the developments in the realm of international human rights law, the ICHRP concluded that "a movement toward direct legal accountability [of corporations] is underway" (2002:143).

Of course history is about events as much as trends, and dramatic events in the areas of corporate accounting and governance in the early twenty-first century also added impetus to the corporate accountability debate. After the high-tech speculation bubble burst in 2000, it suddenly became apparent how a variety of companies had fiddled their finances to inflate their share prices. These scandals were so big that they humbled previously billion-dollar companies such as Enron, WorldCom and Arthur Anderson. As a result, a number of prosecutions were brought against accountancy and financial service companies in the United States.

Despite attempts to suggest that this was the work of a few rogue elements in the corporate world, many people realized it was more systemic: a dangerous mix of massive financial power, conflicts of interest, greed and pressure to deliver ever-better financial results was at the heart of the crisis. What was surprising, though, was the lack of engagement with broader questions of corporate accountability by those involved in and commenting on the scandals. The intellectual impoverishment of journalism in the corporate media could not have helped. The only legal intervention in the United States that followed from this was the Sarbanes-Oxley act in 2002, which increased oversight of the accountancy profession but was of limited scope.

Nevertheless, the 1990s celebration of corporate culture, which Thomas Frank (2000) had chronicled, was over and a new scepticism about the motives and methods of the business community existed. A variety of civil groups used the accounting scandals to launch a campaign for corporate accountability. The Unity Platform on Corporate Accountability

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[21] Held 1997; Dower 1998: Linklater 1998.

(UPCA) comprised of more than 200 "global justice groups" based in the United States. They argued that the accounting scandals marked "a defining moment regarding the nature and role of the corporation in society" (UPCA 2002). Their joint statement consisted of 11 main points, outlining an agenda for the public funding of elections, an overhaul of corporate governance, controls on speculative investment, stronger labour and environmental obligations, an end to international corporate welfare, and a redefinition of financial accountability, among other proposals. Their statement specified corporate power as the problem to be tackled: "In our efforts to build a better world, we hereby pledge ourselves to vigorously promote this common plan of action as an antidote to the systemic concentrated greed, power and control by enveloping corporate power that is relentlessly eroding our future as democratic societies under the sovereignty of their people" (UPCA 2002:1). The UPCA was signed by a variety of women's, religious, student, youth and consumer organizations, fairtrade groups, anti-sweatshop campaigners, peace activists and green political parties. However, no trade unions, very few Southern groups, few development organizations, and none of the large established civil groups such as Greenpeace, Oxfam, World Wide Fund for Nature (WWF) or Amnesty International signed on. Nevertheless, that year such groups were becoming more involved in corporate accountability themselves, as part of their work on the World Summit on Sustainable Development.

As 2002 was the tenth anniversary of the Earth Summit, the UN decided to mark a decade of increasing environmental degradation and inequality in the only way they knew—with another expensive conference. As mentioned above, the WSSD in Johannesburg marked the crowning of partnerships and CSR on the international policy scene. A variety of participants in the preparatory process over the preceding two years saw how voluntary measures were beginning to dominate the agenda of the WSSD. The charity Christian Aid released documents, which suggested an early draft agenda called for a "multi-lateral agreement" on rules to make business accountable, but this was soon diluted to "a framework" and in the end only promised to "promote" best practice (Macalister and Brown 2002).

Given these concerns, a number of groups rallied behind Friends of the Earth and the South African group Groundwork, which were trying to persuade governments to make the conference declaration affirm the need for new mechanisms for the international regulation of corporations. The coalition of groups in this campaign, called Peoples' Action for Corporate Accountability (PACA), was diverse and drawn from both North and South. During the conference, the South African government championed the issue and drew the support of the Group of 77 (G-77), the European Union and others, whereas the United States was opposed to making any substantial requirements of companies. In the end the words corporate accountability found their way into *The Political Declaration* (WSSD 2002). Paragraph 45 of the plan of implementation opened the possibility for negotiating new international legal mechanisms for this. "[We will] actively promote corporate responsibility and accountability, based on the Rio Principles" the document read, "including the *full development and effective implementation of intergovernmental agreements and measures*, international initiative and public-private partnerships, and appropriate national regulations, and support continuous improvement in corporate practices in all countries"(emphasis added). This statement had originally read "existing intergovernmental agreements"; however, the word "existing" was dropped during negotiations. "The removal of the word 'existing' is important because it seems to signal that the international community is no longer satisfied with the voluntary approach to corporate accountability," suggested Justin Alexander of Schroeders.[22]

Friends of the Earth's leading role in this campaign was significant as it was a more mainstream civil group with a diverse membership and had previously been thought of as an apolitical single-issue group. The December 2001 issue of its international magazine illustrated a growing

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[22] Correspondence with the author, September 2002. It is worth remembering that the Rio Declaration contained clear language on the way governments should collaborate to create international law for punishment and compensation related to environmental damage. Under Principle 13 it is stipulated that "States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction".

focus on corporations, and it featured articles by specifically anti-corporate groups such as CorpWatch and Corporate Europe Observatory (FoE-I 2001). They were now more explicit about seeing corporate power as a cause of problems: "the growing scale of multinationals has consolidated their power and influence while greatly increasing distance between corporate leadership and the communities and lives that their activities affect" (FoE-I 2002b). FoE's specific proposal was for a corporate accountability convention to be negotiated, which would make companies accountable to a range of other stakeholders, such as the communities they operate in.

A Wave Of Accountability Initiatives

Friends of the Earth was not the only mainstream civil group that had become involved in specific corporate accountability initiatives, by which I mean initiatives specifically aimed at helping non-corporate actors to govern corporations. The British development group Christian Aid called for a global regulatory authority to oversee corporate practices. Oxfam Australia called for laws on the practice of Australian companies abroad and an ombudsman to receive complaints about mining companies. The Earth Council proposed a human rights ombudsman who would hear complaints about corporate practice. Greenpeace (2002) proposed a set of *Bhopal Principles on Corporate Accountability*, named after the Indian city where thousands died from an accident at a Union Carbide factory. The Indian group Consumer Unity and Trust Society (CUTS) proposed linking the OECD guidelines on multinational enterprises with trade agreements. In 2003, even the World Wide Fund for Nature International called for a stronger framework for corporate accountability (WWF-I 2003), and Amnesty International announced at the World Economic Forum that it would "campaign for legal accountability of corporations for human rights under international law" (cited in Ward 2003). Human Rights Watch also began focusing on international initiatives that could lead to soft laws or create legal precedents.

In addition to these initiatives, various civil groups formed coalitions to work for specific corporate accountability objectives. One example was the Publish What You Pay (PWYP) campaign, launched in 2002 by the Open Society Institute and Global Witness with a coalition of more than 70 other civil groups. It sought to tackle the problem where international oil, gas and mining companies paid billions of dollars a year to the governments of many countries in the global South, such as Angola and Nigeria, but where "few of these countries' citizens" benefited from this "financial windfall…because of government corruption and mismanagement".[23] The financial speculator and philanthropist George Soros backed the campaign, explaining that "secrecy over state revenues encourages ruling elites to mismanage and misappropriate money rather than invest in long-term development" (PWYP 2002). Therefore the campaign aimed "to help citizens hold their governments accountable for how…resource-related funds are managed and distributed". The campaign was not voluntarist. "Relying on companies to disclose information voluntarily has so far failed because they fear being undermined by less scrupulous competitors," said the campaign (PWYP 2002). Therefore they called for the G-7 governments to require transnational resource companies to publish the net taxes, fees, royalties and other payments made in countries where they operated. A key action proposed by the campaign was for stock market regulators to require that resource companies report net payments to all national governments as a condition for being listed (PWYP 2002).

The campaign involved Western-based international civil groups working on environment, such as Friends of the Earth; on human rights, such as Amnesty International; on development, such as Oxfam; and even groups closely linked to direct action on globalization issues, such as ATTAC and the Campaign Against Arms Trade. The Southern participants were significant in number, including 27 from Africa, and eight from other parts of the global South. These were as diverse as the West Africa NGO Network; the Lawyers' Environmental Action Team, Tanzania; and the Bureau on Human Rights and Rule of Law, Kyrgyzstan. A number of them were

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[23]   www.publishwhatyoupay.org, accessed in September 2003.

Southern affiliates of international civil groups, such as the six groups affiliated to Transparency International.

The campaign argued that the recommendations would be positive for the individual companies, who faced a dilemma of wanting to act on moral grounds, but with likely exclusion by some governments if they did. Moreover, they argued that disclosure would be in the interests of shareholders. "We believe it is in long term shareholder interest (more stable, enabling environment and sustainable development) if these companies operated more transparently in all countries".[24] They explained this by suggesting that "direct involvement or indirect complicity with funding conflict or supporting a corrupt regime also carries a number of associated credit risks for investors".[25] They identified reputational risk and the possibility of post-dictatorial governments, such as the one in Indonesia, punishing companies that funded the previous regimes.

The PWYP initiative was a watershed. Although it was about corporate accountability, seeking legislation on the transparency of corporate operations in foreign countries, it avoided anti-corporate rhetoric and focused instead on a specific problem and solution. It even articulated a business case for supporting the initiative. In this sense PWYP could bring together people and groups with divergent views on corporate power—from opportunity to obscenity. It suggested a dual tactic of both restraining corporate power and redirecting it (box 5).

The same year, the California Corporate Accountability Project published a document that mapped out what public institutions like the California state government could do to address corporate malpractices (Leighton et al 2002). This work was built upon by a coalition of US groups, including the American Federation of Labor—Congress of Industrial Organizations (AFL-CIO), Amnesty International USA, Earth Rights International, Global Exchange, Oxfam America, Sierra Club and the Working Group on Community Right to Know. The following year they launched the International Right to Know campaign (IRTK), which called on the government to require companies based in the United States or traded on US stock exchanges (and their foreign subsidiaries and major contractors) to disclose information on the environmental impacts, labour standards and human rights practices of their overseas operations (IRTK 2003).

Partly in response to the 1984 Bhopal chemical disaster in India, US legislators passed the Emergency Planning and Community Right to Know Act in 1986. The legislation established a US Toxic Release Inventory, which required companies in the United States to register information on their use, storage and release of toxic substances. This had a beneficial impact in reducing emissions by US companies over subsequent years. However, the legislation only applied to activities in the United States. The 200 groups backing the IRTK campaign argued that the United States should extend its right to know laws geographically to cover US activities abroad, and qualitatively, to also cover important non-environmental issues.

The IRTK campaign produced a report that attempted to combine different perspectives on corporate power. On the one hand, the report presented a series of case studies of corporate malpractice. The McDonald's case study alleged the use of child labour in China to produce its Happy Meal toys, and the Unocal case study discussed human rights abuses in Myanmar. On the other hand, the report also suggested some positive benefits of corporate disclosure—not only to communities. Arguments presented under subtitles such as "companies as good ambassadors", "faith in US companies", "US leadership" and "Support for US companies", suggested that the IRTK would benefit business. Although corporate power was seen as the problem, sustaining corporate power was seen as a functional argument. Thus the IRTK was similar to Publish What You Pay in suggesting tactics to restrain and redirect corporate power, but also suggested it would reinforce it. The two campaigns demonstrated that as a business case could be made for corporate accountability measures, so the range of perspectives on corporate power—opportunity, obstacle, obstruction and obscenity—could be accommodated

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[24] www.publishwhatyoupay.org, accessed in September 2003.

[25] www.publishwhatyoupay.org, accessed in September 2003.

in campaigns on transparency. They also showed that tactics thought of as relating to corporate responsibility could be engaged to promote corporate accountability.

These strategic attempts to build a broad coalition by making business case arguments in favour of their goals, meant that neither PWYP nor IRTK emphasized the existing legal demands on corporations to disclose the information they were calling for. The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, referred to freedom of information from "public bodies" in Article 19, which could be interpreted as meaning any organization that provides a public service, which therefore covered corporations involved in such activities (ICHRP 2002). If this view had been more widely endorsed at the time, then all government signatories to that covenant would have had to ensure more information on corporate practices was available. National courts might also have expected this of companies. The issue, however, was not only interpretation of the law but whether people and governments had the capacity and willingness to use it.

Legal analysis of corporate accountability initiatives

Looking more closely at the legal aspects of the various corporate accountability initiatives, four key types of *governmental* regulatory innovation could be identified. Different proposals and campaigns embraced some or all of these elements. First, many proposals focused on creating greater *transparency*. This included compulsory social and environmental reporting from corporations, or improved rules regarding broader and more robust financial auditing and reporting. The Corporate Responsibility Coalition (CORE) in the United Kingdom was one example of civil groups making this a key objective. Second, many proposals focused on requiring corporate *consultation* with communities and local governments. This included requiring compulsory stakeholder engagement by corporations, and the necessity of signing community agreements. Greenpeace's *Bhopal Principles* was one of many initiatives that included this. Third, a range of proposals called for governments to require *extra-territorial performance*, extending the jurisdiction of national courts to cover practices abroad and providing foreign legal aid. IRTK was one initiative that called for some aspects of this. Fourth, some argued for the subordination of corporations and their officers to *international jurisdiction*. A specific suggestion was for governments to extend the International Criminal Court to cover their corporations. Friends of the Earth's proposal for a Framework Convention on Corporate Accountability and Liability included this as well as elements of the previous three types of regulatory innovation (FoE-I 2002b).[26]

Each of these proposed innovations sought to use existing state governance mechanisms to support new forms of local or supra-state governance. By increasing transparency and requiring consultation, the intention was to empower local governance. This was about using the institution of representative democracy—the state—to facilitate more participatory democracy. By extending the coverage of national laws, or extending the jurisdiction of the International Criminal Court, the intention was to allow persons living in states that failed to protect their rights to seek justice abroad.

Others argued for regulatory innovations that did not necessarily involve governments, but courts and international organizations. This was because lawyers increasingly argued that international law applied directly to international corporations, so that corporations should directly acknowledge international treaties, and their performance be judged by courts, ombudsmen or other complaints processes accordingly (ICHRP 2002).[27] In sum, all these

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[26] A key challenge would be to ensure the enforcement of any new convention. All signatory governments could be required to incorporate these requirements into their stock markets for companies over a certain size. Signatory governments would not give government contracts or licenses to companies that did not comply, and would prosecute them, while also revoking the corporate charters of repeating offenders. Other possibilities included signatory governments funding the work of a convention council, which would accredit and appoint auditors, as well as operating a dispute resolution system for governments to bring complaints about other governments not upholding their commitments under the convention. Enforcement measures would have to include financial penalties and punitive trade sanctions.

[27] It was an unusual thought at the time that non-state actors might sign up to conventions. Such a convention would need to be established by governments, but perhaps a convention council could then invite non-state actors such as local governments and corporations to sign. If a corporate signed a convention, this could be referred to in court cases as a reaffirmation of the applicability

approaches were an operationalization of what international relations theorists had called a cosmopolitan notion of citizenship and democracy (Dower 1998; Held 1997).

Rather than focusing on such innovations, many groups called on government to uphold their obligations under international treaties and enforce their legislation on corporations. After the Enron scandal, many civil groups and professional associations suggested increasing the liability of corporate owners and management. Efforts were targeted at requiring directors to sign financial statements and be criminally liable for damage caused by their companies. Moreover, rather than just proposing new regulations, increasingly various groups began testing existing mechanisms for corporate accountability. For example, Friends of the Earth Netherlands (FoE-NL) and environmental organizations in seven other countries filed an official complaint with the OECD against the UK oil company British Petroleum (BP) and other companies that were involved in the construction of an oil pipeline from Azerbaijan to Turkey. They argued that the companies were violating the *OECD Guidelines for Multinational Enterprises*, and demanded that construction activities be postponed until these guidelines were met (FoE-NL 2003b). The groups did not really hope for success, due to prior experience with enforcing the OECD guidelines. However, they were testing whether it might be a mechanism of corporate accountability and prepared a booklet on how to use the system, so that others could do the same (FoE-NL 2003a). The trade union advisory committee also produced a handbook on using the guidelines (TUAC 2003).

All these examples show that, by 2003, there was a broad range of groups involved in specific corporate accountability initiatives, by which I mean activities specifically aimed at helping those affected by corporations to govern them. Whereas it may have been premature to suggest brand-bashing activities in the 1990s were part of a corporate accountability movement, by 2003 the range of activities on corporate accountability could justify description as a social movement. This was because common objectives were arising between the mainstream civil groups that used to say they were not political, the specialist groups that had always been critiquing corporate power, the counter-globalization movement that were developing various proposals, and the human rights lawyers who had begun to apply their discipline directly to international companies. Yet by the twenty-first century, it was a movement that was just beginning to recognize itself and its history.[28]

Would this story have a happy ending? Why would this movement not join its predecessors in the historical dustbin of progressive ideas? Neoliberalism was more advanced than in the 1970s and 1980s when the previous big push to tackle corporate power was thwarted. In addition, many Southern governments had become involved in the neoliberal project, either by choice or imposition, and focused on attracting foreign direct investment (FDI), no matter what the cost or benefit. At the time everyone was deregulating, and here were some civil groups proposing new regulations! They might not have succeeded, but there were a number of new circumstances, which suggested that history might not repeat itself. First, global civil society had more power than ever before. Secondly, they were finding more friends, drawn from their old adversaries in the private and financial sectors. This was because of developments in the "corporate responsibility movement", which I shall now explain.

Corporate Responsibility Grows Up

On the surface it appeared that business was unlikely to support any corporate accountability initiative, as it was against any new state regulations. This impression was supported by responses to the European Commission's (2001) Green Paper *Promoting a European Framework for Corporate Social Responsibility*, where most companies, business groups and consultant firms argued against any regulatory action on CSR from the European

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of international law to corporations, which would thus provide another avenue for enforcement. In return, perhaps the corporations could themselves have direct access to the dispute resolution system, as in investment agreements.

[28]   Indeed, this was a key reason why I wrote this paper, to use the power of storytelling to suggest a coherence and meaning to events isolated in time and place. Social movements are themselves stories, as they exist in our cognition of social life.

Commission.[29] The Union of Industrial and Employers' Confederations of Europe (UNICE), argued that any such action would "run the risk of turning voluntary initiatives into a pro forma exercise, kill creativity and impose significant cost without bringing any of the desired results" (cited in Maitland and Mann 2002). A senior figure in the corporate membership civil group, Business in the Community, argued "regulation can only defend against bad practice—it can never promote best practice" (Baker 2001). This debate illustrated how labeling a wide range of ideas and activities as one thing can actually stifle intelligent dialogue. First, there were a range of practices covered by the term "CSR", some of which (such as reporting), if made mandatory, might encourage the voluntary pursuit of other practices. Second, "regulation" was also a generic term, with different types of state regulation serving quite different purposes, such as "risk management, facilitating trade and generating public trust" (Newell 2001:40).

Despite this, if one looked beyond this rather confused debate, there were signs of conceptual development within the community of practitioners working on corporate responsibility issues. Those with legal training began challenging the misinformed voluntary-versus-mandatory divide by identifying the complex relations between laws and voluntary corporate responsibility (Ward 2003).

Meanwhile, whether professionals and their organizations were involved in CSR for financial or ethical reasons, or both, by the early twenty-first century various factors were leading them to question the relationship between the law and corporate responsibility. These factors included doubts about the financial rationale of voluntary corporate responsibility, its effectiveness in delivering systematic change, as well as a growing focus on the economic and political dimensions of business activities. These factors meant that those involved in CSR were beginning to explore systemic or structural issues, and were therefore preparing to support moves to greater corporate accountability. I'll now review these factors in more detail.

Perhaps one of the first disappointing realizations for many managers who were championing voluntary corporate responsibility was the fact that this did not lead to a reduction in reputation-damaging criticism from civil society. Darcy Frey (2002) noted in *The New York Times* that "by virtue of its slogans and its actions" the oil company BP "tried to seize the moral high ground and so is judged by a different standard" (p. 99). For the media, hypocrisy was a much better story than mere malpractice. The clothing company Nike also experienced continual campaigning despite investing more in voluntary corporate responsibility measures than its direct competitors. What most proponents of voluntary corporate responsibility had failed to realize was that the key issue was corporate power, not just corporate practices. To illustrate this point, two of the highest profile corporate responsibility issues in the 1900s, deforestation and child labour, had existed for thousands of years. They had become issues of corporate responsibility because enough people believed that other organs of society, such as communities, religious institutions and governments, were no longer strong enough to act on these issues alone. If corporate power was what had made these issues damaging for companies' reputations, then any voluntary initiative addressing these issues might further develop corporate power, and therefore compound the root of the business problem. Some businesses realized this; journalist Carl Frankel (2001) noted in an environmental business magazine that "too much corporate power is becoming a business risk".

What was worse for these pioneers of voluntary corporate responsibility was that they could be undercut by competitors that were not targets for activist pressure. This understanding led companies such as Nike to see how they could support domestic labour inspection processes in the countries they sourced from. Thus companies were beginning to see a business case for governments performing their regulatory function on social and environmental issues. George White of the UK retailer J. Sainsbury's told me in 1997 that "it would be a great testament to the vision of the managers here at J. Sainsbury Plc if legislation [related to the impacts of our purchasing] were to be agreed at the national or international level [in the following]…years. By setting new and higher environmental standards, we establish targets for both our competitors

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and the Government to aim for" (Murphy and Bendell 1997:238). Within a few years this enlightened view was being expressed by the top echelons in organizations. The chairman of the oil company Royal Dutch/Shell put it this way: "Having thus prepared themselves, it is in those Chief Executive Officers' (CEOs) interests to advocate societal and governmental changes in the right direction to speed up the trends. Thus smart CEOs not only are going to orient their companies toward sustainability, but also are going to try to orient society toward sustainability" (Watts 2002:19).

This realization was compounded in 2002 when the financial figures that had been used to support the argument for a financial case for voluntary corporate responsibility suddenly looked rather shaky. Green and ethical funds slid at the same or higher rates as normal funds, when they had previously outperformed them. This was because green or ethical funds tended to be overweight in technology stocks during the boom of the 1990s rather than because of any competitive advantage derived from responsible behaviour. Meanwhile "unethical" stocks remained strong. "Look at any public information on [defence] stocks like Lockheed Martin or General Dynamics. You'll see that they outperformed the Standard and Poor's (S&P) 500 Index by wide margins over the past 15 years," argued MutualFunds.com on their Web site in 2002. Faced with this information, there was some confusion among CSR professionals. One public debate illustrated that some still held to the argument that there was a business case, while others suggested there might not be and the focus should instead be on the moral case for responsible corporate behaviour (Webb 2003). Still others, however, realized that this debate was dead: whether there was a business case or not depended on the company and the industry sector in question as well as the cultural, economic and political environment. The implication of this was that people needed to work together to change market signals, and to channel the power of those who were being more responsible in their own operations in ways that would then move others.[30] This combined business-and-moral case for state and intergovernmental intervention was beginning to be understood by some executives I spoke to in 2003, suggesting a growing latent energy for corporate accountability.

Some elements of the investment community were attentive to these debates. Yet for them there were further concerns. Whereas part of the argument for individual companies adopting CSR was to look better, or be better managed, than one's competitors, some sections of the financial community were interested in the performance of all companies on certain key issues where the risks to investments could only be addressed by widespread action. Climate change was one such issue, which prompted the following statement, published by a pension fund:

> Institutional investors and pension funds in particular, aim to provide pensions and other benefits through long term investment. They can also be seen as 'universal investors' in that, due to their size, they commonly invest across the whole economy. If climate change threatens economic development, and especially if there are many or significant impacts, it will also therefore be likely to undermine the ability of pension funds and other institutional investors to fulfil their aims, so it is in their interests to see that risks associated with climate change are minimised (Mansley and Dlugolecki 2001:3).

Similar arguments were being made in the context of the risks of HIV/AIDS to economies and thus long-term investments by TNCs (Bendell 2003), and in the context of effective and socially legitimate global regulation, which would be necessary to prevent corporations competing in ways which would undermine our common good and thereby remove the social legitimacy of global capitalism altogether (Bendell 2000, 2002).

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[30] Political events of 2002 reminded us how people shape the context of doing business and, in turn, the business case for corporate responsibility. Defence stocks such as Lockheed Martin (over 40 per cent), Northrop Grumman (over 25 per cent) and General Dynamics (over 4 per cent) shot up because of the US government's increase in the military budget and the threat of war. Meanwhile political developments in Germany in September had major effect on the business case for environmental investments; Reuters noted that "companies with an environmental edge saw their stocks gain after the Greens' success". The wind power specialist Plambeck shot up 15 per cent in Frankfurt, while the green energy firm Umweltkontor rose 3.3 per cent (Reuters 2002).

In sum then, despite the rather ill-informed debates about regulation and the business case for CSR, by 2003 there were people in the corporate and financial worlds that understood, from a practical profit-oriented point of view, that structural political-economic issues needed to be addressed. Yet perhaps more important than this was the fact that over the previous decade more managers and financiers had begun seriously considering their impacts on society. There was hope that their work could have a beneficial impact on society. Faced with the realizations described above, would they go back to the old idea that the business of business is business, and forget the idea of expressing their values through their work? From a personal knowledge of many such executives, I thought not, and some would therefore want to use their power in a responsible fashion by promoting improved regulation of TNCs.

This last point was also important to those people who had previously worked on specific social and environmental issues and had become more involved in voluntary corporate responsibility either as the civil group they worked for became involved, or because they had moved into a specialist role in a consultancy. In addition to the concern that their pitch to those who were only interested in the bottom-line might not work as well as during the boom years, there were a number of lessons arising that led some to question the efficacy of their work.

One key lesson was the weakness of market-based mechanisms for social and environmental goals. Although many had argued that market-based mechanisms were of defective scope, as described earlier, it took time for participants in them to realize this themselves. In 1995 I had argued in my undergraduate dissertation that WWF's work with the timber trade to establish market demand for products from forests certified as well-managed might shift trading patterns but would do little to combat tropical deforestation, the original purpose of the WWF's work. Six years later, 345 logging operations and 23.8 million hectares of forests had been certified under the FSC system, yet 84 per cent of certified forests were in the global North (Bass et al. 2001). Deforestation rates in the tropics had increased (Worldwatch Institute 2003).

The success of voluntary corporate responsibility on social issues was even more problematic. Civil groups had put significant effort into creating and participating in the Ethical Trading Initiative in the United Kingdom and the Clean Clothes Campaign (CCC) in other parts of Europe. These initiatives were aimed at improving the labour conditions of people working in factories supplying European markets. Yet by 2003 these initiatives had focused their efforts on research (pilot projects) and done only a limited amount to improve the situation of workers around the world. Civil group participants in the ETI, such as the World Development Movement, New Economics Foundation, War on Want and Christian Aid all reported that they were no longer very involved in this. When the company Littlewoods was taken over by new owners and quit the ETI, it had no effect on the company's immediate financial performance.

Despite the mixed results of voluntary corporate responsibility partnerships in delivering change, they were increasingly celebrated on the intergovernmental scene. The prominence of partnerships at the WSSD in Johannesburg concerned some who had pioneered partnerships because of government inaction, not as justification for such inaction. As partnerships and voluntary corporate responsibility morphed from a methodology to an ideology, it became clear that some participants in and commentators on partnerships were using them to pursue a neoliberal political agenda. For example, the existence of the UN Global Compact, a partnership between the UN and business, was used by the International Chamber of Commerce (ICC) to undermine other initiatives within the UN, such as the work of the Human Rights Sub-Commission, referred to earlier (Bendell and Abrahams 2002). Many partnership participants had to face the realization that, by working with companies, they might be helping the corporate sector as a whole to defend itself from calls for state and intergovernmental regulation.

Like many other commentators on and participants in multistakeholder partnerships, David Murphy and I had argued that a key benefit was the learning that came from such interaction (Murphy and Bendell 1997). At the time we remained agnostic about the nature of that learning:

> Ultimately, because of the structural problems with shareholder capitalism, [partnerships for voluntary corporate responsibility] may fail to deliver environmentally secure and just societies. However, even if the new structures built between business and environmental groups do crumble, at least we will have learnt more about the architecture of human societies (Murphy and Bendell 1997:243).

Six years later the structures were far from crumbling, with funds flowing in to support partnerships. However, many participants were learning more about their limitations and thus "the architecture of human societies". This growing realization was in tension with other factors, namely the institutional infrastructures and professional skill sets that were based on the partnership approach. Some civil groups had founded their strategies on the idea of partnership with the corporate sector, so their funding, skills, networks and reputation related to this. The importance of this institutional infrastructure meant that some might be as interested in maintaining the appearance of progressive partnership than achieving real progress. Such tensions led to various staff members quitting civil groups because the management refused to admit poor results. For example, one staff member of a Swiss civil group was so disappointed by the management's willingness to accept a lack of progress in the Clean Clothes Campaign that she resigned. These tensions within intersectoral partnerships meant that some called for them to be abolished. However, there was an opportunity for the partnerships to be refocused, so they would address systemic issues of legal accountability rather than promoting voluntarism.

Influences external to the CSR community were helping to redefine the concept and shift the focus of existing partnerships. Key here was the renewed interest of society in the economic and political dimensions of business practice, particularly as a result of the accounting scandals in the United States, described earlier. While CSR professionals were working on recycling programmes, sweatshop codes and stakeholder dialogues, another version of corporate responsibility had hit the front pages. Marjorie Kelly, the editor of the magazine *Business Ethics*, suggested that what CSR had been focused on now seemed "colossally beside the point" (2002:1). The fact that CSR had become a popular acronym attached to a growing industry made it a target for those who were focused more on the economic and political dimensions of business practice. *The Observer* said the CSR industry had "comprehensively failed to make the fair and transparent payment of tax a core issue" (Lopatin 2003). They estimated that transfer pricing was costing the US Treasury $53 billion dollars a year, and well over $50 billion dollars a year to countries in the global South. Transfer pricing was the practice where one company reported that it sold products to another company in the same group at a higher or lower price to ensure the profits could be recorded in the company that faced lower tax rates. The practice was not without social consequences, given the poor state of national budgets in Southern countries, and because governments had to shift the tax burden onto labour, raising the costs of employment and reducing the take-home wages.[31] A report by the UK's Association of Accountancy and Business Affairs (AABA) suggested the way ahead, by detailing how companies should report turnover and tax by territory so that transfer pricing activities could be transparent (in Lopatin 2003). The newspaper was touching on a key issue thinly hidden behind CSR and corporate citizenship debates — corporate power.

The various processes and events described in this section were helping the CSR or corporate citizenship community to wake up to structural issues and to begin thinking about power, democracy and governance more closely. Simon Zadek (2003) argued in the magazine, *Ethical Corporation*:

> We have to move beyond what individual, enlightened companies choose to do. This must include the amplification of the corporate community's progressive role in changing the framework conditions, including difficult policy areas covering international trade and investment, public subsidies, intellectual property and competition policy.

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31 Of the world's 100 largest corporations in 1995, 20 would have gone bankrupt if they had not been provided with tax assistance from governments (Ruigrock and van Tulder 1995).

This resonated with previous analysis on the concept of "corporate citizenship" (Bendell 2000). One aspect of the concept of "citizenship" relates to being active on issues of public concern. There was already a precedent for thinking of large organizations in a similar way: the Universal Declaration of Human Rights called on "every organ of society" to secure "universal and effective recognition and observance" of the rights and freedoms described in the declaration. One aspect of a company's responsibility as an organ of society would be to support measures for ensuring these rights were universally enjoyed (ICHRP 2002). This leads us into another aspect of the "citizenship" concept, which relates to membership of a political community. As individual citizens, people give up certain freedoms, such as the freedom to kill, drive fast and so on, in order to benefit from others not having such freedoms. This is done by subordinating oneself to a political community. If this concept is applied to organizations like TNCs, then the question must be what political community they were being subordinated to, what freedoms they were relinquishing and what benefits there were for them in return; especially given that these corporations were no longer properly governed by nation states. Therefore, voluntary corporate responsibility did not need to be voluntarist—that is, part of a project of undermining state and intergovernmental regulation. Indeed, if corporate managers were concerned with the state of the world, rather than just how good they were, then the highest form of corporate responsibility or corporate citizenship would be to not expect it of others and instead work to ensure that no one could do harm to the world. Therefore companies could voluntarily support state and intergovernmental regulation, indeed such actions could define their responsibility.

In the early twenty-first century, this idea of corporate citizenship had not yet taken hold in either academia or society. Peter Newell (2002:95) noted that most expressions of corporate citizenship did not extend to an integrated view of rights and obligations, "relying instead on charitable acts subject to philanthropic whim". Yet the events described above suggested that a fuller understanding of citizenship would spread, and help explain a rationale for companies beginning to support the concept of corporate accountability. There were already signs. The British civil group Forum for the Future, which had built itself on the corporate partnership model, published a report where it concluded that leading corporate citizens needed to enter the debate on the role of government intervention for sustainable development (Porritt and Cowe 2002). The same year, the founder of the Amnesty International UK Business Group and a former senior executive at Royal Dutch/Shell Group called on government to be supported by business in leading the CSR agenda (Chandler 2002).

However, good ideas were never the only motivator in our institutional lives—fear was still important. Therefore the transition to a post-voluntarist vision and practice of corporate citizenship that might support corporate accountability needed some external pressure. This took the form of increasing civil group activism targeting the lobbying activities of TNCs and their associations, and subsequent "calls for the CSR agenda to embrace the issue of corporate influence on government and intergovernmental decision-making processes" (Utting 2002:26). The following section describes how people awoke to the "political bottom line" of business.

Targeting corporate lobbying

Corporate lobbying was not a new phenomenon but it increasingly made the news in the first few years of the twenty-first century. Of particular interest to civil groups and the media were the lobbying activities of pharmaceutical companies on the issue of intellectual property and access to medicines. The US Vice-President Dick Cheney was reported to have personally intervened to block a global deal to provide cheap drugs to financially poor countries (Elliot and Denny 2002). The United States refused to relax global patent laws that placed the price of drugs beyond reach of many people in the global South, and the agreements finally reached at the Fifth WTO Ministerial Conference, held in Cancún, Mexico in 2003, were criticized for hindering access to medicines. America's drug industry was accused of lobbying the White House to impose the narrowest possible interpretation of the Doha declaration,[32] thus

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[32] The Doha Declaration, which was agreed at the Fourth WTO Ministerial Conference held in Doha, Qatar in 2001, stressed that WTO agreements and their implementation needed to respect the particular needs of less industrialized countries, including health crises.

restricting any deal only to drugs to treat HIV/AIDS, malaria, tuberculosis and other diseases particularly problematic in Africa. Oxfam, Médecins Sans Frontières, among other groups, challenged the pharmaceutical companies for working on drug access initiatives on the one hand, while lobbying against access on the other (Elliot and Denny 2002).

Lobbying on climate change policy was also another area of increasing concern. Friends of the Earth attacked lobbying by the Confederation of British Industry (CBI), saying that "whilst accepting the need to tackle climate change" the CBI had "actively opposed attempts to use economic instruments to alter the price of carbon to reflect its environmental damage—primarily the climate change levy [CCL], and the fuel duty escalator" (FoE-I 2002a:1). They suggested the CBI was only representing the interests of its heavy industry members and criticized them for not balloting their members on opposition to the CCL.[33] The questionable activities of such trade associations led the Green Alliance to launch a project in 2003 to document all the lobbying positions of trade associations and other business groups, so they could be compared to the social and environmental policy positions of some of their corporate members. Even lobbying on corporate accountability issues was coming into the range of civil groups. As the chair of the ICC, Shell CEO Phil Watts, was accused of "anti-accountability lobbying". This was after the ICC had launched a campaign against the Alien Tort Claims Act in the United States, with the UK branch declaring this as a major plank of its lobbying operation in the United Kingdom (FoE-UK 2003).

Civil groups were beginning to argue that these lobbying activities be made central to analyses of corporate responsibility. *Ethical Consumer* (2001) stated in its model code for corporations that "corporations should be obliged to list in their annual reports membership of any industry associations or lobby groups held during the year. Industry associations and lobby groups should, in turn, be obliged to publicly declare the objects of any representations that have been made to governments in the year in question". The *Bhopal Principles on Corporate Accountability*, drawn up by Greenpeace (2002), included a provision against "non-transparent corporate-led lobby practices". At the World Social Forum, Global Exchange and Corpwatch specifically proposed that "indexes for measuring corporate responsibility must include an evaluation of their stand on accountability" and that "companies lobbying against and evading accountability, should not be considered 'responsible'" (Karliner and Lewis 2002).

These developments were not unnoticed in the voluntary corporate responsibility community. Mallen Baker (2001:1) of the business-led group Business in the Community had earlier argued that lobbying was "a landmine waiting to explode" and that "a company's record on lobbying will increasingly be expected to be a part of what the company reports related to social responsibility". In 2003 he went further and suggested that it was time for corporate lobbying to be reported on (Baker 2003). Others in the British business community agreed. In their report on the state of sustainability reporting, the first technical recommendation from the judges of the main accountancy body of the United Kingdom was that "reports should disclose the lobbying positions an organization takes on key public policy issues" (ACCA 2003:18).[34]

A key driver of increasing interest was the investment community. Some investment analysts reported that they were beginning to ask companies about their lobbying activities. British Telecommunications' (BT) pension fund manager Hermes (2002) stated in their Business

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[33] Other environmental groups raised concerns about the ICC's lobbying of governments against the implementation of the "precautionary approach" to environmental and health issues. The ICC was acting due to some of its member companies' concerns about the European Union's restrictions on hormone-treated beef and the campaign against genetically modified food that had kept food aid out of famine-stricken regions of Africa.

[34] Some sections of the business community had proposed action on this back in 1999, but were generally ignored at that time. Meanwhile, there were already some intergovernmental guidelines that touched upon lobbying issues, such as the OECD Guidelines. The fifth general policy principle said that TNCs should "refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues" (OECD 2000:14). This could be interpreted to mean much more than bribery, and include lobbying for various exemptions such as those provided in free trade zones, and weak monitoring and enforcement of various laws. The 11th general policy principle stated that corporations should "abstain from any improper involvement in local political activities" (OECD 2000:14): the key issue being what might constitute "improper". On environmental issues, the guidelines were clearer, with point 8 stating that corporations should "contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection" (OECD 2000:19).

Principles that "companies should support voluntary and statutory measures which minimize the externalization of costs to the detriment of society at large". A significant development came in 2003 when the Interfaith Committee on Corporate Responsibility (ICCR) adopted a new set of benchmarks for its engagement and/or screening of companies included in the funds of its members. These included a range of principles and criteria on lobbying activities (Bendell and Visser 2003).

In Germany, a study found that many investment analysts wanted sustainability reporting to be compulsory for larger companies (ECC 2002). Some investors began to act. A watershed move came when 35 major institutional investors, who collectively represented more than $4 trillion in assets in 2002, established The Carbon Disclosure Project (CDP). Involving such financial giants as the Credit Suisse Group, Henderson Global Investors, Jupiter Asset Management, University Superannuation Scheme and Walden Asset Management, the initiative aimed to make companies report on their carbon emissions. The rationale, was that "investors failing to take account of climate change in their asset allocations and equity valuations face serious investment repercussions over time" (CDP 2003:1) For example, when Japan announced a potential coal tax, it caused the company Xstrata's market capitalization to fall 12 per cent over two days. The company did not report on its carbon emissions or climate-related strategies (FoE-EWNI 2003). Climate change was not the only issue that investors worked for greater transparency on. In the United States, the Corporate Sunshine Working Group (CSWG) was formed as an "alliance of investors, environmental organizations, unions, and public interest groups working to enforce and expand SEC [Securities and Exchange Commission] corporate social and environmental disclosure requirements".[35]

Given this pressure, and a growing understanding of the limits of voluntary corporate responsibility, some business people and their partners were reconsidering their stance on governmental regulation. Jules Peck of WWF-UK said that during 2002 leading companies were "showing signs of discontent with trade associations that do not adequately represent their interests. For many pioneering companies, environmental regulation or economic instruments would reinforce their competitive position by pushing other companies to internalize more of their environmental costs".[36] Companies were beginning to break ranks and advocating for governmental intervention on a range of issues. For example, veteran business leaders such as Sir Mark Moody-Stewart (ex-Shell) and Bjorn Stigson (World Business Council for Sustainable Development, or WBCSD) pointed out the limitations of what business could achieve alone, and highlighted their support for (unspecified) legislation (Zadek 2002). *Tomorrow Magazine* published an article that called on business leaders to "go against the conventional lobbying grain and take a stand contrary to narrow self-interests" and also to "denounce [corporate] behaviour that gives your [business] sector a bad name" (Frankel 2001:51).

One of those companies that was breaking ranks with the party line of many trade associations on government intervention for sustainable development was the oil company BP. It withdrew from Arctic Power, a group that lobbied for oil drilling access in the Alaskan Arctic National Wildlife Refuge. Then BP began advocating government intervention on climate change. CEO John Browne said "we need the help of governments to establish the appropriate framework of incentives to move toward climate stabilization" (Frey 2002). The chair of Shell, Sir Philip Watts went to Houston, on rival ExxonMobil's home turf, and called on global warming sceptics to get off the fence and take action "before it's too late" (Macalister 2003).

Other companies had previously expressed commitment to regulation on climate change issues by forming the coalition Emission55.com. The initiative helped companies to express their commitment to the Kyoto Protocol, and encourage at least 55 governments to ratify it so it would become a convention. It was set up by e5, a European business association established by

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[35] Investors also began looking at how they could lobby progressively. In the United Kingdom, the Climate Change Working Group of the London Responsible Investors Network established a sub-group to look at opportunities for the city to engage with government on public policy. Meanwhile the CSWG began campaigning for the SEC to expand its environmental and social disclosure requirements.

[36] Correspondence with the author, November 2002.

companies who "realised the necessity of long term and efficient usage of our natural resources, particularly energy, in order to obtain a competitive economy".[37] Members included the global electronics and entertainment company Sony International and the telecommunications giant Deutsche Telekom.

There were even signs that trade associations were beginning to lobby in more progressive ways. The Civil Aviation Authority (CAA) in the United Kingdom began to move toward supporting a tax on aviation fuel. Sir Roy McNulty (2002:1), chairman of the CAA, noted that

> the world as a whole is now increasingly aware of the effects the aviation industry has on our environment and there are growing calls to either curb aviation activity or place an environmental tax on it. As we have previously stated, it is the CAA's belief that the aviation industry should meet the full costs of its environmental impact. In other words, 'the polluter pays'.

Most of these developments related to environmental concerns. However, a shift toward supporting corporate accountability more generally could be determined, in terms of corporations' own practices and their advocacy. For example, individual companies began adopting more transparent practices on political issues. Shell's Business Principles stated that "all business transactions on behalf of a Shell company must be reflected accurately and fairly in the accounts of the company in accordance with established procedures and be subject to audit" (Shell 2003:22). BP (2002:5) stated that it aimed for "radical openness" in any dealings with governments.

These were tentative beginnings. Would this lead to companies supporting the new wave of corporate accountability initiatives arising from civil society, and thus new business-civil group partnerships aimed at public policy advocacy? Partnerships between businesses and civil groups need not be voluntarist. Instead, partnerships could be "compatible with calls for enhanced intergovernmental and governmental regulation and enforcement" (Murphy and Bendell 1997:238). One suggestion I made in 1997 was that "companies and [civil groups] might collaborate to lobby for legislation and directives" that were supportive of sustainable development (Murphy and Bendell 1997:225). Six years later, some executives were working to obtain their company's endorsement of initiatives such as the PWYP and IRTK campaigns. The UK-based International Business Leaders Forum (IBLF), which worked with hundreds of companies, joined the PWYP campaign, while Shell and BP expressed support, although were still not members by 2003. The launch of a multistakeholder Extractive Industries Transparency Initiative at the WSSD suggested that more companies were taking the issue seriously. In the United Kingdom, a number of companies supported CORE's call for governmental regulation. It was however, early days, and the business community was deeply divided over how to respond to the corporate accountability movement. These divisions were highlighted by the various conflicting responses from the private sector to the work of the United Nations in developing human rights norms for TNCs. On the one hand the FTSE4Good Advisory Committee, IBLF and others supported the development, while the International Organisation of Employers (IOE) and the ICC tried to stop the adoption of the norms (Bendell and Abrahams 2002).

Although these battles were set to continue, many people working on voluntary corporate responsibility had woken up to more structural political and economic issues, and new coalitions on corporate accountability could be forged across sectors. There was some agreement among leading thinkers involved in voluntary corporate responsibility about where this was headed. The Canadian company Van City commissioned a report on what such leaders thought would happen in the future. It read:

> there is a strong view that market leaders will increasingly call for regulation in an attempt to institutionalize the market levers that give them a competitive advantage...there is extreme likelihood that corporate CSR leaders will be either neutral or supportive of future regulation, an

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[37] www.e5.org, accessed in March 2004.

environment that is increasingly conducive to government involvement (Strandberg 2002:15).

And so, the paradox had arisen where those who were concerned about the effect of corporate power on world development were now presented with new allies—from the corporate world. The corporate accountability movement faced far greater corporate power than those who had previously attempted to challenge it, yet this time they had people on the inside. How this paradox was managed would determine how useful the movement became in fostering sustainable world development. This challenge is explored in the following section.

What Was Being Achieved?

In a broad review such as this, with the partial sight of an English-speaking person with particular networks in civil society and business, it is impossible to give anything approaching a comprehensive view of the diversity of activities on corporate power and world development. This instant history of the corporate accountability movement is only based on what I witnessed from one particular vantage point in 2003: more research on developments around the world was definitely required. Nevertheless, from this vantage point, a number of legislative moves suggested progress, even though the developments in the corporate and financial world described above were still extremely new, and most companies remained resistant to these moves. In this section I discuss some of these legal developments.

There were a variety of legislative developments at the national level. Some of these related to corporate transparency. Halina Ward noted in 2003 that "mandatory legislation on various aspects of business transparency is emerging around the world"(p. iii). Some of this legislation related to social and environmental issues. For example, in 1999 the British parliament approved the pension disclosure regulation, amending the 1995 pensions act, requiring all trustees of UK pension funds to disclose "the extent, if at all to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments" (Ward 2003:3). Subsequently Belgium, Germany and Australia all passed similar legislation. In 2001 the French parliament passed legislation requiring mandatory disclosure of social and environmental issues in the annual reports and accounts of those companies with the largest market capitalizations (Ward 2003). In 2002 the Johannesburg Stock Exchange became the first in the world to require publicly listed companies to report to the standards developed by the Global Reporting Initiative. The requirement took effect by virtue of the JSE's adoption of the code proposed in the *King Report on Corporate Governance for South Africa* (Ward 2003). South Africa also recognized the constitutional right of citizen-initiated access to information held by private companies. In the United States, the accounting scandals led to the Sarbanes-Oxley Act. Although it did not create any specific new environmental or social disclosure obligations, the increased focus on reporting risks meant that social and environmental issues would be increasingly discussed. The *Financial Times* suggested that the act prompted the US mining company Freeport to disclose its long-standing payments to the Indonesian military (Chan-Fishel 2003).[38] Other legal developments covered economic aspects of business practice. In March 2003, US Representative Lloyd Doggett announced the introduction of a Corporate Accountability Tax Gap Act. The bill would require publicly-traded corporations to report, and in some cases, to explain, the discrepancy between what a corporation claimed as profits to lure investors (called "book" profits) and what they reported as income to the Internal Revenue Service (called "tax" profits).

There were also national level legislative developments on the issue of stakeholder consultation. Legislation in Ghana required logging companies to secure a social responsibility agreement

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[38] Not satisfied with the extent of the Act, in January 2003, Senators Tom Daschle and Jim Jeffords introduced the Global Climate Security Act, which included, among other items, a resolution urging the Securities and Exchange Commission to clarify that the existing regulations and interpretive releases required that publicly traded firms inform shareholders of the financial exposure risks due to their net greenhouse gas emissions and the potential economic impacts of global warming on the assets of the firms.

with customary owners of the land. The 1997 Indigenous Peoples Rights Act in the Philippines required prior informed consent for corporate projects in ancestral lands and domains.[39]

Given that calls for an international legal framework for international corporations were an important element to the corporate accountability movement, any developments in international law and intergovernmental co-operation would be key. In 2003 a legally binding protocol to the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention) was agreed, which required that signatory states ensure companies report annually on their releases (into the environment) and transfers (to other companies) of certain pollutants (UNECE 2003). This came on the back of a raft of national legislation requiring corporate disclosure of environmental information.

For single sectors of corporate activity, the agreement of a *Framework Convention on Tobacco Control* was a milestone. It was adopted unanimously in May 2003 by the WHO's 192 member states and set out requirements for countries to impose restrictions on tobacco advertising, sponsorship and promotion, establish new labelling and clean indoor air controls and strengthen legislation to clamp down on tobacco smuggling. Similar initiatives for other sectors were in the pipeline. Amnesty International and other Nobel Peace Laureates and their supporters proposed a *Framework Convention on International Arms Transfers* to the 2001 United Nations Conference on Small Arms. It set out certain core principles and mechanisms based upon existing international law relating to international transfers of arms.

There was also an entirely new form of intergovernmental agreement that addressed the way in which the trade in diamonds had been fuelling conflict in Africa. The Kimberley Process had been launched in 2000 as a means for stemming the flow of diamonds from conflict zones and was developed with active engagement of civil society groups and the trade associations of diamond companies. In November 2002, the Kimberley Process Certification Scheme was signed by 51 countries. Signatory governments agreed only to allow imports of rough diamonds carrying Kimberley process certificates issued by designated authorities in exporting countries. The trade associations agreed to establish a system of warranties guaranteeing that they were not from conflict zones. Halina Ward described this as "an innovative combination of national regulation implemented to an internationally agreed baseline, coupled with commercial incentives for industry players to avoid adverse reputational impacts or contractual claims for breach of warranty" (2003:6). This intergovernmental institutionalization of certification schemes was an example of "global private regulation" predicted in previous UNRISD research, and represented a new innovation in corporate accountability (Murphy and Bendell 1999).

As discussed earlier, trade agreements had been one area of international law militating against corporate accountability. There was some limited movement on this. The *US Trade Act 2002* formally recognized that environmental priorities must be addressed as part of any trade negotiation. This had a particular bearing on the bilateral trade agreements the United States was seeking, which was seen as a success by some (Audley 2002).

Undoubtedly, around the world governments were making some advances on the corporate accountability agenda. These moves were, however, far from the type of proposals made by civil groups, such as a framework convention on corporate accountability and liability. They were even further from a more systemic restructuring of the corporate form that the more critical elements of the corporate accountability movement were calling for. Legislative developments were still limited to specific aspects of accountability or focused only on particularly contentious sectors such as tobacco. Broader initiatives such as the 1998 resolution of the European Parliament that called on the EU to draft a code of conduct and a monitoring and complaints procedure had stalled.

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[39] Previous developments on this issue included the 1975 Land Rights Act in Australia which gave Aboriginal peoples the right of veto over mining on their land. In practice, this allowed them to set conditions relating to royalties, job provision and training. The ILO *Indigenous and Tribal Peoples Convention*, 1989 (number 169) also required respect for the rights of communities and local populations.

The new multisectoral coalition for corporate accountability that was possible because the developments described earlier still had much work to do. The next section describes some of the key challenges faced in order to build the coalition and deliver results.

Some Challenges We Faced

The nascent corporate accountability movement faced a range of challenges. Those interested in legal mechanisms faced a complex mix of commercial, criminal, tort, case, trade and international law. This was further complicated by different forms of intergovernmental complaints processes, as well as various standards and codes with different levels of authority over — and autonomy from — corporations. The movement needed to focus its efforts: whether to use existing law or work for new laws, to test existing complaints mechanisms or work for new ones, to operate nationally or internationally, to focus on governments or expand the scope of accountability mechanisms, to seek corporate support or build a coalition within civil society. Some of these challenges are reviewed below.

For those using existing law there was the issue of how their particular prosecution related to the broader aims of corporate accountability. What precedents would be the most useful to set? What if the case and therefore precedent went the other way? How might bringing or winning a court case then improve corporate accountability elsewhere? What if the plaintiffs and their lawyers preferred out-of-court settlements than pursuing the risk of a court judgment? How sensible was it for a Western court to make judgments on matters that had occurred in the South? Then there were the major logistical challenges of bringing a case to court, such as collecting the evidence, obtaining scientific proof and determining a chain of liability.

For those proposing new laws there were also issues to consider. First, legislation on corporate transparency, such as that proposed by IRTK, would not necessarily improve accountability and performance unless other activities followed on the basis of the information. Although IRTK highlighted the case of Bhopal as reason for their proposals, it was debatable whether such legislation would have had an effect on the management practices of Union Carbide that led to a catastrophic accident (not a regular emission). Perhaps the Bhopal community would have wanted the plant closed down if they knew what was stored there, but then this would have depended on many economic, political and legal factors. Second, legislation requiring community consultation might have helped further, as this would then have awakened people to the potential danger. However there would still be issues of power relations between companies and communities, as well as power disputes within communities, which companies could use to their advantage.

Third, the proposals that Northern governments introduce requirements for extra-territorial performance from their TNCs also raised some concerns. Valpy Fitzgerald (2001) identified three limitations: that different home-country standards would apply in the same host country; that TNCs could avoid the legislation by locating off-shore; and that this would not affect companies that were not headquartered in countries with this law. Others questioned whether this was avoiding the problem of the state of the legal system in Southern countries. However, if an intergovernmental convention on extraterritorial jurisdiction was agreed, then TNCs might become advocates of better legal systems in the South (Ward 2002). No matter the state of such legal systems, often it was difficult for Southern courts to seize assets or impose penalties. For example, in 2002, 580 workers affected by the pesticide Nemagon/DBCP won a court verdict in Nicaragua, and Dow Agro Sciences, Shell and Standard Fruit (Dole) were ordered to pay US490 million dollars in damages. However, the companies involved did not have significant assets, if any, in Nicaragua. Local newspapers reported that the "battle" would have to move to the United States (La Prensa 2002). Therefore extending the jurisdiction of courts in Northern countries remained one practical, although problematic, method of realizing justice.

Some suggested that a more multilateral solution was required. It seemed logical: global regulations and courts for global companies. One aspect of this was for companies to come under the jurisdiction of the International Criminal Court. Proposals for this encountered two

key areas of difficulty. First was the nature of the "crime". Some actions, such as the payment of militias to kill trade unionists or community activists, are close to what are called "crimes against humanity" when states or armies commit them. Yet other issues of concern to the corporate accountability movement, such as child labour, pollution and so forth, are a different category of malpractice, and the international court would not necessarily be an appropriate place to hear complaints or prosecutions. There was also the problem of determining liability. Different governments had different approaches to determining liability for harm caused by a corporation, depending on whether the company, the parent company, a staff member or the senior management was held responsible. This was a highly technical issue where international consensus would be difficult. In any case, the founding Rome statute of the International Criminal Court did not include the possible prosecution of corporate leaders, and the statute could not be reviewed before 2010. Creating new legal mechanisms for TNCs was therefore a major challenge, with some commentators assessing it would take many years for a corporate accountability treaty to be negotiated by nation states (ICHRP 2002).

In the face of these challenges, civil groups had to strategically plan the steps needed for an improved international legal environment for corporations. Should they aim for a comprehensive convention, or focus more on specific sectors and issues, such as tobacco, or diamonds from conflict zones? Would focusing on such specific sectors waste time or provide a ratchet effect? The success on establishing the Kimberley process on diamonds from conflict zones, for example, then logically made people ask "what about other natural resources from conflict zones?" Civil groups needed to go beyond strategic planning and work together in dividing up their campaigning and advocacy to best use their expertise and mandates. How might they sell their campaigning for legal reform to their membership or other funders? How could they measure—and then possibly advertise—their successes when this process was set to take years?

The difficulty civil group campaigners faced was in turning these complex issues into a straightforward campaign with simple messages. The lurking threat was a lurch into comfortable opposition, where success would be measured by the number of quotes in the mass media rather than progress upon a defined strategy. Some regarded that the call by Friends of the Earth and others for a convention was an expression of frustration and amounted to little more than rhetoric that played well with their target audiences. They noted that proposals such as using the International Criminal Court, discussed above, were based on what sounded right in principle rather than what might work practically in the near future. Others bemoaned the posturing of civil groups against innovations on corporate practices that were not explicitly state-led, suggesting that this was driven by their desire to differentiate themselves from those advocating voluntary approaches, rather than to deliver results.

This last point was significant. Despite the new impetus for focusing on legal mechanisms for corporate accountability, campaigners had to recognize that even if new national and international legislation was adopted, then it would not automatically deliver improved corporate accountability. According to the director of ICHRP, many of the civil groups did not realize at the time that what they were calling on companies to do was already required of them in international law, it was just not often understood, used or enforced.[40] Theoretical legal rights and realized rights are different things (Gagnon et al. 2003). To assume that the law is more about "enforceability" (being held to account) than "answerability" (giving an account)—as opposed to non-legal accountability mechanisms—was misguided. There were "voluntary" initiatives that were more mandatory than some laws, for some companies. And certain interpretations of international law, which understood it as applicable to corporations, were definitely less mandatory than most civil regulatory initiatives. Even where laws were the basis of prosecutions, many fines and penalties imposed by courts could be tax-deductible and have a limited impact on broader performance.

Examining the ICHRP's (2002) review of enforcement mechanisms for corporate obligations under international law, it appeared that most did not warrant the term "enforcement". Only

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[40] Conversation with Robert Archer, June 2003.

the courts had the power to exert direct punishments, with the problems mentioned above. All the other mechanisms involved complaints procedures that produced reports, sometimes confidential. The enforcement would therefore only come if such reports were public and had an impact on the company via reputational damage. Therefore, in the end, the enforcement relied on civil regulation. Just because some codes were intergovernmental, such as the OECD Guidelines, did not make them any more enforceable than codes developed in civil society. Indeed, perhaps they were less enforceable, as at least "voluntary" codes were increasingly being incorporated into law via contracts—with a much more robust and active court system on contract law (Ward 2003). Other problems with the intergovernmental complaints processes reviewed by IHCRP (2002) were that they did not provide complainants with financial support to bring their claims, thus making it quite difficult, especially in cases where the affected party, rather than a third party, had to bring the complaint. Among intergovernmental organizations, the particular problem for the United Nations was that it did not have a mandate within its charter to directly regulate corporations. This, and the problems with intergovernmental codes described above, needed to be understood by civil groups commenting on or supporting the work of the UN's Sub-Commission on TNCs, or calling for other corporate accountability mechanisms at the UN.[41]

Efforts at legal reform would not, on their own, be able to deliver real corporate accountability. This was because if and when legal reforms were forthcoming they would rely on non-state processes to create change. Take, for example, extraterritorial jurisdiction. Halina Ward (2002) highlighted that if a convention on this was agreed then companies could reduce their liabilities by restructuring. Therefore she argued that

> ensuring long-term benefits (in terms of social and environmental impacts) from each of the possible bases for liability depends on a wide range of external actors—consumers, insurers, lenders, investors—using their influence to ensure that the response to foreign direct liability is management by 'best practice', not by restructuring (p. 10).

Civil regulation would be required to make a legal regulation deliver corporate accountability. National and international corporate transparency legislation was another example. This would likely incorporate processes developed by business and civil society, as was the case with the Johannesburg Stock Exchange requiring reports in accordance with the multistakeholder GRI. Another example of intergovernmental processes, national law and private actors jointly administering regulation was the Kimberley Process, where an intergovernmental agreement and national law supported a system for the global private regulation of diamond trading.

Whether any national or intergovernmental legal innovations referred to them explicitly or not, the implementation of these innovations would likely rely upon and promote the appliance of practices and processes developed by voluntary initiatives. New national or international law on corporate accountability would not necessarily specify that processes or indicators of compliance had to be managed by democratic institutions.[42] It should be remembered here that corporate accountability implies the governance of corporations by those affected by their operations. As democracy and rights were meant to be the rationale for focusing on accountability rather then responsibility, then an honest assessment of probable outcomes had to lead corporate accountability campaigners to engage with voluntary multistakeholder initiatives such as the GRI, to ensure their agendas and processes did not serve Northern

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[41] Another place for complaints mechanisms was within trade agreements. The labour and environmental side agreements of NAFTA did provide some scope for indirectly complaining about corporations (ICHRP 2002:106). While weak in various regards, "the mechanisms do allow almost any concerned citizen or group in one country to complain about corporate behaviour if one of the other two governments has failed to enforce its domestic regulations" (ICHRP 2002:78). By 2003 the process was not being used and had no discernible effect on corporate accountability.

[42] International trade law was already giving an indication of what might happen with intergovernmental agreements on corporate accountability. WTO agreements referred to international standards developed by "relevant international organizations". It did not elaborate further on the accountability of these international organizations that were delegated to determine for the member governments of the WTO what were acceptable international standards. Reviews of the Technical Barriers to Trade Agreement gave further details, but did not deal with the question of the democratic accountability of standards organizations. The WTO collaborated with the International Organization for Standardization (ISO), which was seen by many as the most "relevant international organization" (Bendell and Font 2004).

corporate or civil group interests at the expense of Southern stakeholders. Here we should remember the "democratic deficit" of such multistakeholder initiatives.

A significant example of this problem was the International Organization for Standardization (ISO). This corporate-dominated organization established a range of technical standards, which were then beginning to influence domestic state regulation,[43] via incorporation into international trade law. ISO was, however, not accountable to stakeholders in the trades it was influencing. For example, just 3 per cent of 500 delegates attending a technical committee meeting in 2002 to consider the development of a corporate responsibility management standard were from civil society (Rotherham 2002). Other standards initiatives on corporate responsibility may have involved more civil society participation but nonetheless had questionable levels of accountability to the (supposed) intended beneficiaries of their work (Utting 2002).

One area where this was a particular problem concerned the monitoring of labour standards in Southern factories. A variety of initiatives in the North that were established to co-ordinate responses to sweatshop practices, including the Worldwide Responsible Apparel Production (WRAP), Fair Labor Association and Social Accountability International in the United States, and the Ethical Trading Initiative in the United Kingdom, had questionable accountability to Southern stakeholders. In 2002, the board of WRAP did not have any Southern representatives, FLA had some on their Advisory Council whose power was debatable, and ETI only involved British organizations and international unions. The participation of Southern civil groups and companies in the provision of inspection services was poor. Apart from Reducción de Riesgos, a business consultancy in El Salvador, by August 2002 all the auditors accredited to inspect and award factories a WRAP Seal were US accounting firms. Similarly SAI's procedure for accrediting inspection companies was such that international inspection companies predominated. Worse, the involvement of Northern commercial interests in the development of inspection methodologies reduced the transformative power of the process, as well as marginalizing approaches developed in the South (Bendell 2000; Prieto and Bendell 2002). The power of Northern actors in these processes meant that the cause of the problem was largely defined as the practices of Southern country suppliers, rather than regarding this as a symptom of the problem of one-sided buyer-supplier relations between Northern and Southern companies and countries (Bendell forthcoming).

The challenge for corporate accountability activists was to reconceive governance processes without losing sight of democracy and rights. Government was an important but not exclusive means for governing corporations. As Shapiro (1991) pointed out, the condition of state sovereignty was "a relatively recent and contentious set of practices rather than a naturally evolving wisdom" (p. 474), and it should not limit the political horizon. Political scientist James Rosenau (1997:145) argued that "any actors who resort to command mechanisms to make demands, frame goals, issue directives, and pursue policies" partake in governance. Whereas "governments exercise rule, governance uses power...[with] each party trying to induce, or to force the other party to do certain things it otherwise would not have done" (Rosenau and Czempiel 1992:250). According to Dahl (1961), a community of people in a democratically governed society should have meaningful participation in decisions and processes that affect them, and they should not be systematically adversely affected by another group of people, without being able to rectify the situation.[44] From this approach to human rights and democratic governance, people and communities should be able to influence organizations or persons that affect them, especially when they affect the material foundations of self-determination. In other words, the organizations or persons must be accountable. Therefore corporate accountability can be reconceived as the democratization of corporations. Whereas the state had a role to play in this, it was not the only agent of democratizing corporations. Advocates of corporate

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[43] Teubner 1997; Cutler 1999; Finger and Tamiotti 1999.

[44] This conception of democratic governance is based on a belief in the human right to self-determine one's life. A number of other human rights stem from this, once we recognize the material foundations of self-determination, and self-actualization: namely, the right to basic necessities of life, which includes a safe environment. David Korten (1995) suggested that "there are few rights more fundamental than the right of people to create caring, sustainable communities and to control their own resources, economies and means of livelihood" (p. 307). This approach to democracy and progress is developed further elsewhere (Bendell forthcoming).

accountability could not, therefore, just attack and ignore voluntary multistakeholder initiatives, but seek to transform them into links in a system of corporate accountability. This approach also meant the movement had to consider its own accountability, which is developed further below.

Countering the backlash

The movement did not only have these internal, conceptual and technical, challenges to attend to; it was also facing a backlash against the (still limited) progress, coming from some elements of the private sector, as well as from governments, both North and South.

A backlash from corporates was expected. The National Foreign Trade Council (NFTC), a trade group of some of the largest multinational companies, supported by the ICC, began lobbying the US Congress in 2003 to amend the Alien Tort Claims Act. They suggested that new interpretations of this act were giving too much in the way of rights to the victims of corporate misadventure. The civil groups Earth Rights (2003:1) stated that "it is no coincidence that the NFTC includes many of the corporations who are being sued. The NFTC's effort to 'curb abuses' of the law is in fact an attempt by its members to avoid civil liability for wrongdoing". Such action made it more important for civil groups to define corporate political power as an issue of corporate responsibility, and thus encourage companies to break ranks with the reactionary efforts of trade associations.[45]

A backlash from Southern governments was less expected. In the 1970s, the governments of most Southern countries had been supportive of and indeed pioneered efforts for a New International Economic Order that would involve greater controls on TNCs. However, by 2003 the ideology of neoliberalism was pervasive, which coupled with the needs to service debt and maintain relations with the IMF, meant that the aim of attracting foreign direct investment (FDI) was a major priority for most countries. Therefore the argument that civil actions brought against foreign corporations might reduce FDI was a powerful one. In light of this, Papua New Guinea (PNG) enacted legislation, initially triggered by litigation in Australia against the mining company BHP Billiton, a major PNG investor, making it a criminal offence for citizens of PNG to bring legal proceedings in a foreign court for compensation arising from mining or petroleum projects in that country (Ward 2003). The Indonesian government also reacted badly to their nationals seeking justice abroad. Regarding the ATCA case against Exxon Mobil's support for military oppression in Indonesia, the government argued that they "cannot accept the extraterritorial jurisdiction of a United States court over an allegation against an Indonesian government institution e.g. the Indonesian military, for operations taking place in Indonesia" (Ward 2003:11). When prosecutions were launched in the United States, seeking more than $100 billion in compensation on behalf of tens of thousands of apartheid victims from 34 TNCs, the South African president condemned the litigation because the government was concerned about the impact on the country's attractiveness to foreign investors.[46]

Southern governments had increasingly acted against social and environmental issues influencing trade. For example, even though it was a voluntary initiative aimed at supporting worker health and safety, Ecuador and Colombia complained to the WTO about a flower-labelling scheme in Germany. The Belgian government's creation of a voluntary social label for products that indicated core labour rights had been upheld in their production, brought a complaint from Argentina, Brazil, Egypt, China, India, Malaysia, Pakistan and Thailand at the WTO's Committee on Technical Barriers to Trade (Ward 2003). This was not unusual, with many Southern governments having argued against social and environmental issues being

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[45] This was a difficult challenge. Although British oil firms including Shell and BP privately backed calls for mandatory reporting requirements in line with PWYP, reports emerged that after pressure from the US government acting on behalf of US oil companies, the British government was abandoning a mandatory approach, instead going for a statement of voluntary principles, which would have little hope of achieving anything, as described earlier (Denny 2003).

[46] *Business Report* (www.busrep.co.za, accessed in May 2003). Interestingly, the Truth and Reconciliation Commission had suggested that some affected parties might want to seek compensation against many of these companies, but the government had done little on the matter.

incorporated into trade agreements during the Uruguay Round that formed the WTO in the first place (ICHRP 2002).

James Paul and Jason Garred (2000) noted that often Southern governments opposed new regulations on TNCs because they feared new rules would have protectionist effects on their export industries. A particular concern, articulated by the United Nations Industrial Development Organization (UNIDO), was the impact on small and medium-sized enterprises (SMEs) in the global South (Raynard 2002). Therefore Paul and Garred (2000:1) pointed out that "advocates of global rulemaking must overcome the strength of corporate lobbyists and must allay the concerns of Southern governments—not an easy task".

In my time in Central America I found that many people in the academic institutes, often connected with the business and political classes, supported this concern about protectionism. However, I did not find any trade union leader, community activist, plantation or sweatshop worker who subscribed to the view that they should not have a safer working environment, better pay and basic human rights at work because that might then impede their country's development. Instead, they raised concerns about the lack of locally appropriate processes for ensuring the implementation of both local and international standards (Bendell 2001b; Prieto and Bendell 2002). The challenge, therefore, was for the Northern corporate accountability movement to nurture its networks with civil society in the South. These links were not only important for tactical reasons, but also to ensure that the movement created true corporate accountability, where those affected by corporations could govern them, rather than creating a new elite of Western policy makers. This brings us to questions about the accountability of the movement itself.

The Accountability of the Corporate Accountability Movement

The question of civil group accountability was already well established in the development studies literature, particularly in relation to their influence over governments and international organizations (Simmons 1998; Wahl 1998). Once business was added to this mix, Marina Ottaway (2001) suggested that a new global corporatism was arising. She argued that despite claims about the potential of intersectoral partnerships to

> introduce greater democracy in the realm of global governance, it is doubtful that close cooperation between essentially unrepresentative organizations— international organizations, unaccountable NGOs and large transnational corporations—will do much to ensure better protection for, and better representation of, the interests of populations affected by global policies (Ottaway 2001:1).

To avoid becoming agents of a corporatist world, civil groups had to stop "paternalistic advocacy" and move to more participatory and "people-centred advocacy," with the philosophy of democracy at its heart (Eade 2002). Such advocacy was, however, time consuming and expensive, and many civil groups were not able to demonstrate formal accountability to their intended beneficiaries.

An analysis of the participation of Southern civil groups in key corporate accountability initiatives indicated that this was a major challenge for these initiatives. For example, the IRTK campaign was essentially a US coalition: there were no representatives from Southern civil society in the initial 202-strong membership, and only 8 per cent of participants were from international federations of civil groups. Of the 189 initial members of the Unity Platform on Corporate Accountability, none were from the South. There was stronger Southern participation in the PACA campaign, which was co-led by a South African group, Groundwork. Of the initial 63 members, 30 per cent were Southern civil groups, and 11 per cent were international federations of civil groups. Meanwhile, 25 per cent of civil society participants in the Kimberley Process were Southern civil groups, and the other 75 per cent were international federations of civil groups. Of the 104 backers of the PWYP campaign, 34 per cent were independent civil

groups from the South, 7 per cent were Southern affiliates of Northern civil groups and 19 per cent were international federations of civil groups. By June 2003, around 80 civil groups had been consulted formally by David Weissbrodt for the UN Sub-Commission's drafting of *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (UNHCHR 2002). Of these, 9 per cent were independent Southern civil groups, 4 per cent were trade unions and 15 per cent international federations of civil groups.[47]

These data are limited to the extent that they do not give a sense of the level and importance of the participation and consultation in the various processes, nor the amount of consultation with Southern groups by Northern participants. Commenting on the norms, David Weissbrodt said "a significant voice for the South in the entire drafting process has been Chairman Guisse from Senegal, but also colleagues from Cuba, Korea, and Russia. They hear from and represent a broad spectrum of opinion".[48] Nevertheless, the data suggest that the participation of Southern civil society in these various corporate accountability initiatives was very limited, even though it related to corporate practices in the global South. Looking beyond civil society, while the UN Sub-Commission's work involved significant consultation with hundreds of persons in industry, UN agencies, government agencies and academics, the data suggested only one Southern-based company had been formally consulted by June 2003.

Moreover, these corporate accountability initiatives faced a related challenge of broadening their base of support to more traditional constituencies in civil society—specifically religious institutions and trade unions. Within the 202 members of the IRTK coalition, only 3 per cent were trade unions, while only 2 per cent of the 189 initial members of the Unity Platform were trade unions. By June 2003, there were no trade union members of the Kimberley Process, or the PACA and PWYP campaigns. Building links with trade unions was a major challenge, especially as there had been a history of divisions, such as in the late 1990s when many campaign groups fought against trade union proposals to have a social clause integrated into agreements at the WTO.[49] Unions were also sceptical of the increasing role of some civil groups in influencing corporate workplace policies and practices. Meanwhile, some elements of the labour movement were hesitant in engaging with broader critiques of globalization, with some suggesting it was "not confronting the corporate political economic model" (Starr 2000:152). Thus efforts at building coalitions had to deal with differing perspectives about the challenge of corporate power, and how to respond to it, as described earlier.

Building links with religious institutions was also important, given the previously successful experience of the churches' involvement in Southern country debt cancellation campaigns, under the Jubilee Coalition. However, only a couple of Christian or Jewish religious institutions were involved in any of the corporate accountability initiatives mentioned above, and no other faiths were represented. Again, differing perspectives on the nature and depth of the problem with corporate power posed obstacles to broader co-operation.

One religious institution that was active in corporate accountability also sought to address the problematic accountability of the movement to its intended beneficiaries in the South. The Interfaith Center on Corporate Responsibility's director David Schilling (2002:1) noted "the most effective way to press for global corporate accountability is to have strong connections

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[47] The data on those consulted in this drafting process was produced in the following way. First, David Weissbrodt provided a list of those whom he remembered or had a record of participating in various meetings on the draft norms. Such data is therefore not a complete record but an approximation. Second, he supplied a list of the domain names in the email addresses of those who had submitted comments by email: for example, if Bendell@unrisd.org had submitted a comment, @unrisd.org was listed. These domain names were then checked and those of Internet Service Providers were removed. This data was combined with the list of names, and those from academic institutions, UN agencies, government agencies and business were then removed, so data on the participation of civil society could be generated. This data is biased toward people with email contacts as opposed to regular hard-copy letters, faxes, and so on. In addition, it does not indicate the importance or depth of communications.

[48] Correspondence with the author, 27 May 2003.

[49] Some civil groups had argued that the WTO was not the appropriate venue for the oversight of human rights. The trade unions, however, considered it unlikely for existing institutions such as the ILO to be given power to impose penalties on non-compliant countries, and therefore the WTO dispute processes needed to somehow take more notice of labour rights when deciding upon disputes. In retrospect, the principle of the WTO referring social and environmental dimensions of trade disputes to relevant UN organizations, and incorporating their decisions into dispute settlements, should have been pursued.

between Northern shareholder groups who have access to multinational corporations and Southern groups who are close to impacts of corporate practices on local peoples and communities". Given this, they reconstituted their board so that Southern representatives predominated.

Some proponents of corporate accountability recognized the importance of links between Southern groups, trade unions and so forth, and the lack of these was identified at the World Social Forum as a major threat to the success of the corporate accountability movement (Karliner and Lewis 2002). Some Northern civil groups had based their approach on this philosophy. In their campaigning on the social and environmental conditions in Central American banana plantations, Northern activists of BananaLink and the World Development Movement always relayed what the Southern community and trade union leaders were calling for, not what Northern activists wanted. This close co-operation went beyond rhetoric, as their campaigns on the banana TNCs were carefully developed in co-operation with those Southern leaders (Bendell forthcoming). Other Northern civil groups did face the problem of tokenism, with Southern civil group partners often existing in a client relationship to the Northern donor. Moreover, some Southern civil groups were formed of elites who had no mandate from the people they either said they represented or who would be affected by their work (Huddock 1999).

Given the history of failure to develop greater corporate accountability, the challenge was to form novel coalitions with all manner of sectors, including the corporate world, in order to succeed. Would this militate against the need for the movement to involve and be accountable to Southern participants?

Paradoxes of power in social movements

As Peter Utting (2002:34) noted, "government and international regulation does not happen… in response to the lone voice of academic or technocratic opinion. Historically, such regulation has often emerged either in contexts of crisis or in response to significant social pressures". The issue was not so much whether corporate accountability was a logical and rational argument, but which coalitions might back campaigns for it. Previous efforts at corporate accountability had failed because of corporate power, and by the turn of the millennium that corporate power was greater than ever before. If civil groups chose to continue boxing with corporate power, they might win a few rounds, but past form suggested that they would lose the fight. Instead, they needed to learn corporate judo, to use the power of some corporations to floor the system of corporate dominance as a whole. As Tracey Swift suggested, "although there are some interesting campaigns within civil society, I think support amongst professional associations will be key, as it is individuals not organizations who would need to mobilize to overturn corporate culture".[50]

The developments in the 1990s, described above, had made this paradoxical situation possible. Key was the change in attitude within, and about, the corporate world, so that the old story of business being apolitical was untenable. Coupled with a growing awareness of the limits of voluntary responsibility, various people and groups within the private sector were awakening to the role of government and intergovernmental institutions in providing a countervailing force to capitalism. However, still only a part of this situation was being understood and acted upon by parts of the private sector—the investors pushing for disclosure on carbon emissions, for example. Therefore, civil groups needed to help drive this process forward. As recognized at the World Social Forum, a new wave of brand-bashing was required that did not call for an individual company to improve its own internal practices, but instead to ensure that its power in society was not used to undermine needed regulatory controls (Karliner and Lewis 2002). Just as the CSR idea was created by social activism, so social activism could—and had to— redefine it. The short history of CSR showed that the more substantial responses of corporations to social and environmental problems were the result of conflict, where civil groups had initially created problems for the companies concerned (Murphy and Bendell 1997). Therefore,

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[50] Interviewed by author, London, June 2002.

Friends of the Earth's targeting of Shell's support for the ICC, discussed earlier, was an important beginning in putting the political power of corporations on the agenda of CSR. Although such campaigns were about the problem of corporate lobbying, ultimately, how this lobbying could be channelled for more progressive outcomes was important to explore.

The concept of corporate responsibility did not have to be redefined so that it was not about voluntary actions. Instead, any company's voluntary corporate responsibility could be regarded as necessarily including support for governments and intergovernmental agencies to serve the people of the world. Ultimately such a situation would require that corporate influence over governments and intergovernmental agencies be drastically reduced. However, to reach such a situation, some corporate influence would have to be redirected. Therefore, even if one considered corporate power to be an obstacle, obstruction or obscenity, it could also be considered as an opportunity. Even though activists sought to remove, reduce or redefine corporate power, working to redirect some existing forms of corporate power was important to achieve that purpose. Therefore, just as people were recognizing the difference between corporate responsibility and corporate accountability, the two had to come together. The highest form of responsibility is to work for accountability.

As discussed earlier, there was already evidence of some corporate support for regulatory innovations to promote corporate conduct more supportive of world development. An example of this actually delivering a legal agreement between governments occurred in 2003. The concerns of Asian tobacco producers about the US and other Northern tobacco companies using trade agreements to lower trade barriers was key to the creation of the *Framework Convention on Tobacco Control*. This was because local companies did not believe they would be able to compete with well-marketed Western cigarette brands. Consequently, they looked at Thailand, where the introduction of tough advertising laws had restricted the ability of new brands to penetrate the market, despite the country being ordered by the WTO to remove its trade barriers to foreign tobacco companies (Boyd 2003). Therefore, corporate accountability campaigners needed to avoid an us-against-them assumption and actively identify which parts of the private sector could support specific legal innovations on corporate accountability. Only then could more public policy partnerships, aimed at corporate accountability, emerge.

Clearly some campaigners were against such a strategy. In 2001, when I explained these ideas to some people involved in the counter-globalization group Reclaim the Streets, they objected to seeking corporate support for our objectives. The discussion resonates with the dialogue of activists throughout history, with some believing that working with actors who are privileged by a dominant system is essential for revolutionary change, rather than just reform, and others believing that this is wrong headed, as the focus should be on building coalitions among those who are subjugated by, or outside, that dominant system (Clarke 2000).

As mentioned above, personal factors militated against activists moving from a corporate boxing approach to one of corporate judo. The latter would draw criticism and concern from one's own community of activists. Moreover, the message might be too complicated to be understood easily by observers, and especially the corporate media who often sought binary divisions between different viewpoints on a subject. In this way, the concern of some to appear like radical activists manning-the-barricades militated against innovative approaches. There were also personal issues that would hold back the ability of those working in boardrooms to engage in this new agenda. Those working on CSR in major corporations often worked in specialist departments. They faced significant challenges in getting people in other departments, such as purchasing, marketing, legal affairs and so forth, to adopt novel progressive practices: some therefore did not and preferred instead to focus on high-profile external initiatives. However, a key aspect of a redefined corporate responsibility agenda would require managers attempting to stop their colleagues in other departments from doing things, such as certain types of corporate lobbying, or the funding of certain trade associations and research institutes. Progress therefore relied on people in civil groups and companies transcending the real and metaphorical barricades that separated them, and identifying with a collective movement for reshaping the relationship of corporations with society.

Progress also relied on people maintaining a spirit of democracy, as paradoxes arose when working with corporations toward corporate accountability. Looking at the coalitions that could be formed with the private sector on corporate accountability indicated how this would occur. First, the financial services sector wanted increased transparency on corporate management of social and environmental issues. Second, the new industry of CSR consultants was also beginning to realize that any regulatory innovation on this might provide them with a gold mine of new clients. Together, these private sector players could support a convention dealing with corporate transparency, community consultation and responsibility. However, they would have different aims. Investors required information from corporations that was somewhat different to that sought by those concerned primarily with world development. For example, data on issues like child labour, were more relevant to investors than freedom of association, as the former created more reputational risks, despite the fact that both are covered by international law (and the most effective response to child labour was a complex one).[51] Meanwhile, the CSR consultants were more interested in companies wanting or being required to provide information and develop policies, with little prescription of the nature of these policies or how they should report, so they could have a market for their own advisory services.[52] Consequently, as the private sector became more involved in debates about legal corporate accountability, the outcome might be a "consultants convention" that required only a form of increased transparency. Any convention that mandated governments to require corporations to produce more public relations would be a cruel twist to this process, as would a convention that only required information of pertinence to investor risk management.

This threat illustrates the problem of working with powerful actors. If one group's proposals on a specific issue are less threatening to established centres of power than another group's proposals, the former will receive less resistance and gain more support from those centres of power. Consequently, the success of one civil group in getting its objectives on the agenda can have the effect of marginalizing other equally valid agendas. In addition, a successful move forward on a particular issue can establish vested interests that then create a barrier to further change. This was the essential paradox of power faced by all social movements. Essential, because collaboration with powerful actors in systems is required for social movements to attain their goals, yet a paradox, as such collaboration creates tensions that can undermine the goals of the movement.

I develop this paradox in detail elsewhere (Bendell forthcoming). These processes were theorized in the context of other social movements, with feminists writing extensively about the co-optation of the women's movement,[53] and environmentalists about the co-optation of that movement.[54] The implication was that the corporate accountability movement needed to focus on its own democratic practices in order to ensure that as it increased its power, it would not lose its democratic goals. The challenge was to accept, but then manage the paradoxes of power.

Conclusions: Beyond Corporate Accountability

In the previous pages you have read about a range of events and processes that were leading some to suggest that a corporate accountability movement was taking shape at the start of the new millennium. However, given the long and arduous battles that lay ahead of this

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[51] This assertion comes from an analysis of the questionnaires sent by socially responsible investment fund managers, and analysts, such as Sustainable Asset Management, who prepared the Dow Jones Sustainability Index. The approach was "how does managing issue x add to share value?"

[52] The state of CSR reporting in 2003, even that in accordance with the GRI, illustrated the power of the consulting industry in shaping its practice. Key economic and political issues were left out of reporting frameworks. In addition, they focused on qualitative policy statements and processes, rather than quantitative measures of performance. Basic information on the following was required: political donations, memberships of trade associations, payments to lobby groups and civil groups, pollution records, average wages paid to different types of employee (including supply chain), pending court cases, court rulings, out-of-court settlements, admonitions or investigations from Intergovernmental bodies, recognized trade unions, collective bargaining agreements, and multienterprise codes endorsed and certifications received, taxes paid and transfer pricing activities undertaken.

[53] Cornell 1999; Jahan 1995; Taylor 2000.

[54] Chatterjee and Finger 1994; Finger 1992; Welford 1997.

movement, it is important to reflect on whether these efforts would actually solve the problems of world development that were set out at the beginning of this paper. In this concluding section, the limits of corporate accountability are discussed, as are arguments for a more fundamental transformation of global capitalism.

Jack Beatty (2001) pointed out that previous attempts to deal with corporations, such as the New Deal in the United States, served largely to save corporate capitalism from its own excesses. If this was to be repeated at the global level, then it would be saving global capitalism—indeed this was an argument that was used to engage the financial world in corporate accountability issues (Rowe 2001). Perhaps worse, it would be necessitating the creation of something resembling a centralized global state, with possible negative implications for local autonomy and self-sufficiency.

Even if the corporate accountability movement led to an intergovernmental convention on corporate transparency, responsibility or accountability, greater international jurisdiction, an International Criminal Court that would prosecute corporate leaders, and more democratic civil regulatory initiatives, it was debatable whether this would solve key social and environmental problems, which had at their root something more fundamental than corporate power. As discussed at the start, a key to the world's problems was that money was entering society as debt and thus economic growth was an imperative, which then necessitated resource consumption and commodification (Douthwaite 1993). The only pressure valve for this process was capitalists making bad decisions and losing their money to bankrupt ventures or persons, although even this valve was being tightened by some governments.

Some were therefore critical of what they saw as a limited and limiting agenda for corporate accountability. Tony Clarke (2000) of the International Forum on Globalization (IFG) argued that the task was "not simply to make individual corporations more 'socially responsible' or more 'publicly accountable'." Instead, it was "dismantling the systems of corporate rule that now dominate both humanity and the earth" (Clarke 2000). Others went further, suggesting abolishing current forms of capitalism altogether and replacing property rights with livelihood rights (Korten 2000). However, history showed that to overthrow something very autocratic and powerful often required an alternative force that was similarly autocratic and powerful. Although often inspired by democratic concerns, advocating overthrowing capitalism was not itself democratic, if it was an imposed solution. Demonizing capitalism could lead one to ignore those aspects of human nature that are always expressed in society in any time, no matter what political economic system dominates. Therefore, as counter-globalization activists became more vocal and certain about the problems of capitalism, so it was important to be reminded of the values that underpinned one's initial concerns, and not negate those values in subsequent struggles.

In grappling with these questions, it is important to re-question capitalism—to understand it in plural, as *capitalisms*. Richard Whitley (2000) demonstrated that corporate law, labour markets and so on, differed across the world, so there were very different forms of capitalism. One example was Islamic finance, accounting for over $200 billion in assets in 2003. Many Islamic institutions considered usury, and thus interest, to be wrong, due to a number of key principles in Shari'ah law. First, money should only be a medium of exchange, a way of defining the value of a thing; it has no value in itself, and therefore should not be allowed to give rise to more money. The human effort, initiative and risk involved in a productive venture are more important than the money used to finance it. Second, a lender must share the risk with the borrower—the potential profits or losses that arise out of the enterprise for which the money was lent. Third, transactions should be entered into honestly with the minimum of uncertainty, risk and speculation. Fourth, investments should not support practices or products that are incompatible with the core beliefs of Islam. As a result, the charging of interest, trading in futures, speculation on currencies and investment in products like alcohol, were not permissible

for many Islamic financial firms. In practice Islamic banks usually worked by taking an equity stake in the enterprises they helped finance (Bendell and Concannon 2003).[55]

By 2003 most corporate accountability advocates had yet to properly explore capitalism and finance very closely. As James Paul and Jason Garred (2000:1) realized, most work on corporate accountability and regulation had "focused on manufacturing, leaving services, and particularly financial services, neglected". Yet the financial sector was "enormously influential" (Paul and Garred 2000:1). Might corporate accountability campaigners have been missing the wood for the trees? Corporations were not necessarily the powerful actors some made them out to be. "The perception that corporations have too much power may be true at the macro level but not for single companies" argued Jane Nelson (cited in Frankel 2001). Many corporate managers reported that they did not feel powerful at all, as they felt constrained and under pressure to deliver results every financial quarter.[56] This was even noted by sociologist Amory Starr, despite arguing that "the enemy" was the corporation. She noted that "since corporations are primarily accountable to the financial markets, corporate leaders have little choice in the setting of goals and policy. Human beings may still sit on boards of directors, but they cannot change the rules of the global financial casino or its systematic pursuit of ever-increasing growth" (Starr 2000:26). Corporations were the foot soldiers of capitalism, not its generals. The legal invention called the corporation was vested with power by the financial markets and was thus important to focus on. However, analysis needed to move beyond corporate accountability and consider the accountability of capital.

Box 6: Toward capital accountability

The following are some ideas on how a particular company, of a certain size, could demonstrate or develop its accountability.

- The company has principles that are aligned via dialogue, and management decision making is responsive.
- The company is proactive in its legal compliance—including international law relating to international bodies.
- The company operates in places that are increasingly democratic, with laws and judicial processes.
- If these are not in place, it works to develop them.
- The company's lobbying is transparent and the result of dialogue.
- The company produces a range of data, rather than opinion, on issues of social and environmental concern (including data on tax, court cases and so on, as described in a footnote earlier).
- The company operates where there is competition law and if there is none, then it supports the development of it and does not lobby against it—this relates to the issue of accountability to competitors, especially as in 2001 only half of WTO member states had competition law (Fitzgerald 2001).
- The company does not undermine workplace democracy measures, such as free trade unions and collective bargaining.
- The company is subject to binding complaints processes and dispute settlement systems, that are available to all who might wish to use them, particularly for all the issues described above.
- If these are not in existence, the company works toward their establishment.

The principle of capital accountability is that absent owners of capital should ensure that any company they invest in meets these criteria. They could ensure this by introducing codes, or campaigning for new laws, relating to these criteria.

Financial capital is one expression of property rights. In a democratic society, property rights should only exist because people collectively decide to uphold them; they are not inalienable but are upheld by society as a matter of choice. Therefore, if society confers us the right of property, then we have obligations to that society (Fitzgerald 2001). By the start of the new millennium, property rights had become so divorced from this democratic control that they were undermining other human rights. A reawakening to the first principles of economic democracy was required: that there can be no property right without property duties, or

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[55] Similar concerns about money and interest also occupied both theologians and other followers of Judaism and Christianity for centuries. However, over time the view that charging interest is permissible became dominant.

[56] Various anonymized conversations with the author during the years before this report.

obligations. From such principles, it could not be left up to the powerful to decide if they were responsible or not, or if they were carrying out their obligations or not. The focus needed to be on the governance of capital by those who are affected by it—a concept that can be termed "capital accountability".

By 2003 most work on finance and ethics had focused on questions of responsibility, not accountability. Action on finance and ethics was limited to causing trouble for companies (shareholder activism on ethical issues), increasing the security of one's returns via expanded risk management assessments and corporate engagement (socially responsible investment), ethical venture capital (in environmental technologies, for example) or being clean (screening out certain sectors from investment portfolios). Little had been done on the accountability of the people who invested, rather than that of what they invested in.

The fact that most of this work was based on a paternalistic concept of responsibility was problematic from a democratic perspective. When funding an activity with capital, people should not only have a responsibility to know what happens with that property but should also be accountable to those who are affected by it. An obligation should therefore exist for owners of capital to only invest in activities that are accountable to those affected by them. If owners do not carry out their obligations, they should lose the right to the specific property involved.

In essence this principle would mean investors ensuring that those who manage their money require that the activities they fund/own are accountable. Thus when banks lend or when fund managers buy stocks, that is, when an activity is financed, the companies involved must be accountable to the people affected by that activity. Box 6 describes some aspects of how a corporation could demonstrate and promote its accountability. Mechanisms would then be needed to ensure that banks, fund managers, and in turn, individual absent owners of capital carried out their obligations to ensure companies followed these accountability guidelines.

Promoting capital accountability could involve a number of other issues, which have implications for public policy. The first relates to creating more "present" ownership. An owner of property is often more accountable if they are present with that property. For example, an owner of a factory experiences a face-to-face form of accountability by seeing those affected by the activities of his or her property. Closing the distance between those who own property and those who are affected by it can also be promoted by increasing employee, customer, supplier and community ownership of that property. Jeff Gates (1998) therefore argued for more "up-close ownership" so as "to link a nation's people to their workplace, their community, their economy, their environment—and to each other". (page xxv). Sharing the risks associated with an economic activity is another way of increasing the involvement of owners, as with Islamic banking. The public policy implication is that governments need to assess how their approach to trade negotiations, privatization, liberalization, corporate law and taxation affects patterns of capital ownership and risk sharing in their jurisdictions. How trade and investment agreements undermine capital accountability would also need to be examined, particularly the issue of corporations gaining rights over states.

Financial markets are another area to consider. Currency speculators on international financial markets had no accountability to the people affected by volatility in the cost of borrowing, devaluations and so forth. At a minimum, owning the property of money should confer duties to the society or societies that underpin that currency. The concept of capital accountability could suggest that all financial transactions be taxed, due to the transactor's obligation to the social infrastructure that provides the opportunity for their transaction. Such a measure could end short-term currency speculation, as well as moderate the trading of futures, hedge funds and so forth which have been identified earlier as a key cause of maldevelopment. It would also create resources that permit the abolishing of other taxes, suggesting a completely new approach to governmental economic policy.

The concept of capital accountability moves beyond corporate accountability, but does not suggest abolishing either the corporation or capitalism. Instead it suggests returning these decisions to the people affected. What might happen when those who are affected by capital can

govern it more effectively? They might choose to support profit-taking and the existing ownership patterns, if they determined these to form a useful system—or they might not. The important thing is that it would be their choice, not imposed by outsiders who were autocratically supporting or abolishing property rights. Thus the true revolution in economic democracy is not about abolishing capitalism or extending capitalism, but about creating choices for people to transform, reform or remove corporations and capital in certain contexts.

Is the concept of capital accountability yet another interesting but unrealistic idea? Not necessarily, as it provides an opportunity for common ground to be found among progressives working in the quite separate arenas of corporate accountability, corporate social responsibility and counter-globalization. It provides a link between the civil groups campaigning on corporate regulation, and the broader counter-globalization challenge. It provides corporate executives with a framework within which to challenge the pressures they experience from the financial markets. It also provides the corporate social responsibility community with a more systemic and transformative agenda. Various personal and organizational factors described earlier might hinder the sharing of ideas and building of novel coalitions across the barricades. To help, a great deal of research and dialogue is required to facilitate a deeper understanding of the problems of global capitalism and the role that each organization and person in society could play in its transformation. As a focal point of the international community, the United Nations could and should help this process. The development studies academy could also support this process, by re-engaging with fundamental questions around the nature of progress and economic democracy.

Whether a new coalition for capital accountability would help the human race to survive in harmony with itself and the planet was impossible to know. It would not immediately dethrone corporate rule over societies, as some were calling for, but it would begin changing the dynamics in society and preserve non-capitalist spaces in people's lives, and so allow debate and action on the transformation of society. As a result, perhaps further financial and social reforms would evolve over time. Whatever would be forthcoming, it would be more democratic. Then we would know that our common destiny, good or bad, had been consciously decided by the many, not by the few.

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