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David Vogel

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# The Private Regulation of Global Corporate Conduct

## Achievements and Limitations

David Vogel

*University of California, Berkeley*

The article assesses the achievements and limitations of the private regulation of global corporate conduct. Private regulation occurs through voluntary, private, nonstate industry and cross-industry codes that address labor practices, environmental performance, and human rights policies. The author argues that while private regulation has resulted in some substantive improvements in corporate behavior, it cannot be regarded as a substitute for the more effective exercise of state authority at both the national and international levels. Ultimately, private regulation must be integrated with and reinforced by more effective state-based and enforced regulatory policies at both the national and international levels.

**Keywords:** *regulation; global; civil; governance; nonstate*

Global civil regulation—voluntary, private, nonstate industry and cross-industry codes that specify the responsibilities of global firms for addressing labor practices, environmental performance, and human rights policies—has become a highly visible and increasingly legitimate dimension of global economic governance. These regulations have provided important new vehicles for nongovernmental organizations (NGOs), primarily in Western countries, to participate in the regulation of global firms and markets. They have also pressured some global firms into internalizing some of their negative social and environmental externalities and increasing the private provision of some public goods.

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But while civil regulations can compensate for some of the shortcomings of public governance, they are not a substitute for the more effective exercise of state authority at both the national and international levels. The long-term impact of private global business regulation depends on the extent to which its standards for business conduct and its mechanisms for holding firms accountable are integrated with and reinforced by state-based and enforced regulatory policies at both the national and international levels (Ward, 1998, 2004a, 2004b).

### Defining Civil Regulation

Civil regulations employ private, nonstate, or market-based regulatory frameworks to govern multinational firms and global supply networks. A defining feature of civil regulations is that their legitimacy, governance, and implementation is not rooted in public authority. Typically operating beside or around the state rather than through it, civil regulations are based on “soft law” or private law rather than legally enforceable standards: Violators typically face social or market penalties rather than legal sanctions (Abbott & Snidal, 2000; Kirton & Trebillock, 2004; Moth, 2004). Civil regulations extend regulatory authority “sideways” beyond the state to global nonstate actors (Haufler, 2003). Its recent growth reflects an expanded “public role for the private sector,” as well as the growing importance of “private authority in global governance” (Haufler, 2001). Global corporate codes constitute part of an “emerging global public domain.” Civil regulation does “not replace states, but . . . (rather) embed(s) systems of governance in broader global frameworks of social capacity and agency that did not previously exist” (Ruggie, 2004, p. 519). Its growth reflects the emergence of a more complex global “governance triangle” in which states are no longer the exclusive source of global regulatory authority (Abbott & Snidal, 2009).

At the same time, there are also important linkages between civil and state regulations. For example, civil regulations typically include commitments by their corporate signatories to obey host-country laws and many private regulatory standards are based on those of intergovernmental organizations such as the Organization for Economic Cooperation and Development (OECD), the International Finance Corporation (IFC) of the World Bank, and the International Labor Organization (ILO). A number of developed countries’ governments, including that of the United States, the European Union (EU), Great Britain, Belgium, France,

Austria, and Germany, have promoted the development of global industry codes of conduct, as has the United Nations.

## The Political Dynamics of Civil Regulation

Throughout the history of capitalism, business self-regulation has existed in parallel with government regulation; indeed, historically the former often preceded the latter. The medieval guilds exercised a wide variety of regulatory functions, including price, market entry, and quality controls. In contemporary economies, private regulations govern a wide variety of business activities, most notably in the areas of electronic commerce, maritime transportation, bond ratings, and financial services. Numerous technical standards have been developed by private organizations and these play an important role in the global economy (Cutler, Haufler, & Porter, 1999; Mattli, 2003).

Civil regulations are distinctive from traditional forms of industry self-regulation in three primary respects. First, in contrast to many technical standards whose primary purpose is to lower the transactions costs of market transactions, civil regulations require firms to make expenditures and undertake commitments associated with changing and broadening public expectations of corporate conduct associated with corporate social responsibility (CSR). Second, compared to traditional forms of business self-regulation, civil regulations are more likely to be politicized: They have typically emerged in response to political and social pressures on business, often spearheaded by national and transnational activists who have embarrassed global firms by publicizing the shortcomings of their social and environmental practices. Third, the governance of civil regulations is more likely to be transparent, contested, and to either formally or informally involve stakeholders outside the firm—in contrast to traditional business self-regulation that is typically exclusively governed and controlled by firms. This is notably true for those civil regulations whose standards are independently certified by third parties (Conroy, 2007).

Civil regulation does not privatize business regulation in the sense of removing it from public scrutiny. Rather it represents an effort to develop new nonstate, political mechanisms for governing global firms and markets. “Private governance helps empower global civil society by providing activist groups with political levers that exist outside state system” (Falkner, 2003, p. 79). The expansion of global civil regulation is closely linked to the emergence of a global “civil society,” an increasingly sophisticated and

extensive international network of NGOs primarily based in North America and Europe, which monitor and seek to influence a wide range of global business practices (Cohen & Rai, 2000; Edwards & Gaventa, 2001; Keck & Sikkink, 1998; Mayo, 2005; Tarrow, 2005).

“NGO’s role and influence have exploded in the last-half decade” (Matthews, 1997, p. 53). NGOs have also become more global in scope: More than a thousand draw their membership from three or more countries. Many such organizations have become influential and legitimate global political actors. While their political activity has historically focused on changing public policies and institutions, over the two decades they have increasingly sought to directly challenge the practices of many global firms, markets, and industries. The participants in the movement for global corporate accountability are wide ranging: They include unions, environmental organizations, human rights and labor activists, religious and consumer groups, student organizations, consumer groups, as well as social or ethical mutual funds and socially oriented institutional investors.

Western activists seek to improve business practices in developing countries by placing public pressures on global firms that have a highly visible presence in the United States and Europe—in effect bypassing both their own governments and those of developing countries. Civil regulation seeks to turn globalization on its head, making the global scope of business activity into a source of political vulnerability for global firms. A key objective of the global movement for CSR is to politicize consumer and financial markets in developed countries in order to socialize market practices in developing ones.

Global civil regulations are thus engaged in a nonstate, marked-based, variant of trading-up. By attempting to transmit more stringent regulatory standards from developed countries to firms, industries, and markets in developing countries, they are essentially seeking to privatize the “California effect,” a term coined to describe the dynamics of the transmission of more stringent standards among states via international trade (Vogel, 1995). Their emergence and impact has been facilitated both by the growth of global brands—which make firms more vulnerable to threats to their reputations in important consumer markets—and the expansion of international communications—which enables activists to more easily acquire information about global business practices and then to rapidly disseminate it.

The number and scope of global civil regulations began to expand significantly during the 1990s. Private regulations that define standards for “responsible” business practices now exist for virtually every global industry and internationally traded commodity, including forestry, fisheries, chemicals, computers and electronic equipment, apparel, rugs, coffee, cocoa, palm

oil, diamonds, gold, toys, minerals and mining, energy, tourism, financial services, and athletic equipment—though most formally they are meant to govern only a portion of these global products or sectors (Gereffi, Garcia-Johnson, & Sasser, 2001; Jenkins, 2001; Koenig-Archibugi, 2004; Kolk & van Tulder, 2005; Vanderbergh, 2007).

There are now more than 300 industry or product codes, nearly all of which address labor or environmental practices; many sectors and products are governed by multiple codes. More than 3,000 global firms now regularly issue reports on the social and environmental practices and many of these firms have developed their own codes and/or subscribe to one or more industry or cross-industry codes. The largest private business code, the UN Global Compact, has more than 3,500 corporate signatories. More than 2,300 global firms have endorsed the Business Charter for Sustainable Development developed by the International Chamber of Commerce and more than 46,000 firms have been certified as compliant with ISO 14001, an environmental process standard. More than 70 major global financial institutions from 16 countries, representing assets of 4.5 trillion dollars, have signed the United Nations Principles for Responsible Investment.

During the 1960s and 1970s, interest in the global dimensions of CSR was primarily an American phenomenon (Vogel, 1978). However, over the last decade civil regulation has become more internationally based. In fact, in a number of respects, global CSR is now more important in Europe than in the United States (Perrini, Pogutz, & Tencati, 2006). Ethical brands that certify coffee, rugs, flowers, and wood products have larger market shares in many European countries than in the United States. London has replaced New York as the global center of CSR conferences, activism, research, reporting, and monitoring. Europe is also home to more global NGOs than is the United States. The “Europeanization” of CSR is an important development, as it has significantly expanded the international scope of civil regulations and number of global firms that have agreed to accept them (Habisch, Jonker, Wegner, & Schmidpeter, 2005).

## **Governance Failures and the Growth of Civil Regulation**

The growth of global civil regulation primarily represents a political response to the recent expansion of economic globalization and the firms and industries that have promoted and benefited from it (Gereffi & Mayer, 2006). During the last two decades, the dynamics of economic globalization have significantly transformed the international economic landscape in two respects. First, they have shifted the locus of manufacturing from

developed to developing countries. Second, the production and supply networks of global firms increasingly transcend national boundaries: Most international trade is now among firms or interfirm networks.

The emergence of global civil regulation is rooted in the perception that economic globalization has created a structural imbalance between the size and power of global firms and markets and the capacity and/or willingness of governments to adequately regulate them: Economic globalization, with the increased legitimacy and influence of neoliberal values and policies, appears to have undermined both the willingness and capacity of governments to make global firms politically accountable. Accordingly, transnational corporations are said to “wield power without responsibility. They are often as powerful as states and yet less accountable” (Newell, 2000, p. 121). Another critic observes: “Corporations have never been more powerful, yet less regulated” (Newell, 2000, p. 121). Civil regulation proposes to fill the regulatory gap between global markets and global firms on the one hand and government regulation of multinational firms on the other. It is intended to “compensate for the decreasing capacities of national governments for providing public goods [as] . . . internationalization yields an increasing gap between territorially bound regulatory competences at the national level and emerging problems of international scope” (Knill & Lehmkuhl, 2002, p. 42).

The claim that the state is “in retreat” is contestable as the scope and extent of business regulation continues to expand in many countries, as well as at the international level. But arguably the global economy is characterized by systemic regulatory failures or a structural “governance deficit” (Newell, 2002, p. 908). The structure and scale of global production has challenged the existing capacities of governments to regulate the growing share of business activities that take place beyond their borders (Abbott & Snidal, 2009). Regulatory failures at the global and national level are pervasive, in large measure because both global firms and national governments have not developed adequate mechanisms to effectively govern many of the negative social and environmental impacts. The growth of civil regulation represents a political effort to extend regulation to a wide range of global business practices for which the scope or effectiveness of national and international government authority is currently either weak, limited, or nonexistent (Koenig-Archibugi, 2004).

## **The Emergence of Civil Regulation**

Where have civil regulations come from? Who has initiated them? The organizational or institutional sources of civil regulations vary widely

(Bartley, 2003, 2007; Gulbrandsen, 2004). They include both domestic and international NGOs such as the World Wildlife Fund, Greenpeace, the Clean Clothes Campaign, Amnesty International, the Council on Economic Priorities, and Oxfam; trade associations for coffee, chemicals, mining, apparel, electronics, toys, and cocoa; trade unions such as the International Textile Workers Association; and international standards bodies such as the International Standards Organization. Some civil regulations have been established with the support of governments or interstate organizations. For example, the United Nations Environmental Program helped establish the Electronics Industry Code of Conduct, the British and American governments worked with firms in extractive industries to develop Voluntary Principles on Security and Human Rights, the Fair Labor Association emerged from an initiative of the American Government, and the Austrian government supported the development of the Forest Stewardship Council. However, states have not participated in the enforcement of these regulations, which remain voluntary. Rather they have primarily served as facilitators, bringing firms, and in some cases, labor unions and NGOs together; helping them agree on common standards; and in some cases, providing civil regulatory organizations with initial funding.

This in turn poses two additional questions: What has motivated both NGOs and some Western governments to promote civil regulations and why have many firms agreed to adopt or accept them? The motivation for Western NGOs is straightforward: They regard civil regulations as an important source of leverage over global business activity. The international impact, and thus the potential leverage, of many large Western firms is substantial. Changing the procurement policies and practices of firms such as McDonalds, Wal-Mart, Starbucks, and Home Depot would have major global social and environmental impacts—comparable if not greater than that of many national regulations. At the same time, many NGOs have been repeatedly frustrated by their inability to promote stronger and more effective international treaties and domestic regulatory policies. For many global activists, lobbying corporations has come to represent a viable, though clearly second best, alternative to pressuring for changes in public policies. Though some NGOs continue to emphasize the “naming and shaming” of global firms, others have chosen to cooperate with firms and industry associations to develop voluntary standards and participate in their enforcement. Their willingness to enter into alliances with global firms has been critical to the emergence, legitimacy, and relative effectiveness of many civil regulations (Gerefii et al., 2001; Pattberg, 2005; Rondinelli & London, 2003).

Some Western governments, especially in Europe, have also played an important role in promoting civil regulations (Aaronson & Reeves, 2002). Several European governments have indirectly promoted CSR by requiring companies that trade on their stock exchanges to issue annual reports on their social and environmental practices and encouraging, or in some cases, requiring, public pension funds to consider corporate social and environmental practices in making investment decisions. The procurement policies of some governments give preference to privately certified products. For its part, the EU has been a strong supporter of global CSR (Herrmann, 2004). Many aspects of civil regulation are consistent with the European approach to business regulation: The EU and many European governments make extensive use of voluntary agreements and soft regulation and frequently rely on private organizations to develop and enforce regulatory standards (Ansell & Vogel, 2006; Egan, 2001; Golub, 1998; Joerges & Vos, 1999).

In this context, an important advantage of civil regulations as a vehicle of global business regulation is that their provisions are not currently governed by the World Trade Organization (WTO), whose rules only apply to regulations formally adopted by governments and which do not govern domestic environmental, social, and human rights practices. (Bernstein & Hannah, 2008). For example, though state ecolabels are regarded by the WTO as (potential) technical barriers to trade, private product labels and certifications are not (OECD, 2006). Firms can demand adherence to labor and environmental standards by their global suppliers as a condition for doing business with them, whereas WTO rules restrict the ability of governments to make such standards a condition for market access. This means that foreign producers who have been disadvantaged by private regulations or standards have no legal remedy: They must comply with them or risk losing export markets. The reliance of civil regulations on private, market-based standards and enforcement thus represent a major “loophole” in international trade law—one which civil regulation has exploited.

For the UN, the Global Compact provides it with a vehicle to address some of the criticisms of the social impact of economic globalization voiced by many activists and some developing countries—without engaging in the much more challenging task of enacting legally binding business regulations. The voluntary CSR standards adopted by the OECD and promoted by the World Bank follow a similar logic. These organizations primarily affect governmental policies through soft law; civil regulations essentially extend this same regulatory approach to corporations. The same

dynamic holds for the ISO, whose development of ISO 14001 flowed from the recent focus of this international standards body on process standards.

## **Business Acceptance of Civil Regulation**

What about corporations? In some cases, industries have adopted or accepted private global regulations to avoid additional government regulation. For example, Responsible Care was adopted by several national chemical industry associations in part to forestall national laws establishing more stringent plant safety standards following the Union Carbide chemical plant explosion at Bhopal, India, in 1984. The International Chamber of Commerce's Business Charter for Sustainable Development was initiated by global firms who feared that the 1992 Rio "Earth Summit" would lead to an expansion of global environmental regulations. The global confectionary industry adopted a code of conduct banning forced child labor in part as a response to the threat of American trade sanctions on imports of cocoa from West Africa. During the 1990s, many apparel producers and retailers endorsed voluntary international labor standards to secure Congressional support for the renewal of China's most favored nation status as a trading partner.

But typically global firms have not developed or accepted civil regulations to avoid additional government regulation as there has been little prospect of additional regulations being enacted, let alone enforced, especially at the global level or by developing countries. Nike, for example, did not agree to improve health and safety conditions in its factories in Vietnam because it wanted to prevent the government of Vietnam from strengthening its own occupational and safety standards. About 3,500 firms or more who have signed onto the UN Global Compact did not do so to prevent the UN from adopting legally binding regulations for global corporations since there was no likelihood that it would do so.

Why, then, have an increasing number of global firms and industries accepted the legitimacy of voluntary regulations? Most civil regulations have their origin in citizen campaigns directed against particular companies, industries, and business practices (Bartley & Child, 2007; Klein, 2001; O'Rourke, 2005). Such campaigns have proliferated over the last decade, focusing on such issues as working conditions and wages, child labor, the income of agricultural workers, unsustainable forestry practices, business investments that support corrupt governments, and natural resource investments that adversely affect human rights and environmental quality. These

public campaigns of “naming and shaming” have been directed at highly visible European and American based firms such as Nike, Home Depot, Shell, Ikea, C & A, the Gap, Tiffany’s, Nestle, Starbucks, Hennes & Mauritz, Rio Tinto, Freeport Mining, and Citibank, which then became public symbols of “corporate irresponsibility.” Such widely publicized demonstrations of corporate irresponsibility have played a critical role in placing political pressures on global firms to act more “responsibly.” Indeed, for many global firms CSR stands for “Crisis Scandal Response.”

Few of these public campaigns, even when accompanied by product boycotts, adverse media coverage, and pressures from socially concerned investors, have adversely affected either the sales or share prices of targeted firms (Vogel, 2005). Not only do relatively few consumers know or care about how the products they consume are produced, but the proliferation of industry codes of conduct and “ethical” or “green” labels has added to the confusion of those consumers who want to consume “responsibly.” For their part, financial markets remain largely indifferent to a firm’s CSR policies: Articles in the business press on a firm’s financial performance or prospects rarely mention its CSR performance or lack thereof and the growth of ethical investment fund have had no discernable impact on share prices.

Nevertheless, many firms have chosen to respond to public criticisms—or the threat of public criticism—by subscribing to civil regulations, often by joining multistakeholder codes involving NGOs. “NGOs have become highly sophisticated in using market-campaigning techniques to gain leverage over recalcitrant firms” that sell directly to consumers (Gereffi et al., 2001). Such firms are especially vulnerable to public criticisms that might adversely affect the value of their brands—though there is scant evidence that they actually have or are likely to do so. But even many global firms that do not market to consumers are concerned about their reputations: They value public approval and dislike negative media attention. For an increasing number of global firms, subscribing to one more civil regulation has become a component of their risk management policies and their marketing, public, employee, and investor relations. Some firms have also developed or agreed to accept civil regulations in response to pressures from employees or prospective employees (Battacharya, Sen, & Korschun, 2008).

This in turn raises a more interesting question. Why don’t firms simply adopt their own codes of conduct? Why do they frequently encourage the formation of, or endorse, civil regulations that also govern their competitors? The two are not incompatible; many large global firms have also

adopted their own regulations, and in some cases, these go beyond industry standards. But for “targeted” firms, industry-wide regulations make strategic sense. Adopting higher social or environmental standards can raise a firm’s costs, and thus persuading their competitors to adopt similar standards creates a more level-playing field. In principle, industry and cross-industry regulations can also discourage firms from competing with one another by adopting weaker standards for the treatment of workers or poorer environmental practices. A collective action dynamic is also at work as the public often does not distinguish among the social or environmental practices of firms in the same industry: Accordingly all firms may be tainted if anyone of them is accused of violating a social or ethical norm. Civil regulations also increase the ability of firms to learn from one another, helping them formulate best practices and learning how to more effectively respond to activist pressures to improve their performance. Finally, civil regulations, particularly if NGOs participate in their governance, are also more likely to enjoy greater legitimacy and credibility than a code of conduct adopted by a single firm.

Business organizations frequently adopt structures and practices similar to that of other firms in their industry. As the *Financial Times* observed in describing the growth of industry-wide social standards, “Industries seek safety in numbers” (Maitland, 2005, p. 1). Such “herd effects” have played an important role in disseminating many management practices—including a commitment to CSR (Lieberman & Asaba, 2006). Accordingly, when an industry leader agrees to a voluntary code, other firms in its sector often decide to do so as well. This dynamic also operates across industries. The greater the number of global industries that have developed or accepted voluntary codes, the more likely it is that other industries will follow their example. The growth of civil regulations among global firms and industries has thus created its own momentum: Few global firms or industries headquartered in the United States or Europe want to be regarded as less “responsible” or “enlightened” than their peers.

Moreover, changes in norms can and do affect business policies. What begins as a primarily defensive response or largely rhetorical commitment can, over time, become viewed as legitimate. “Corporate preferences are driven in part about norms about the appropriate approaches to [managing] a business” (Haufler, 1999, p. 201). For many highly visible global firms, engaging in various forms of global CSR, including having a CSR office, issuing a CSR report, cooperating with NGOs, and agreeing to be bound by one or more voluntary industry codes, has become an accepted part of managing a global firm in a more politicized and transparent global economy

(Dickerson, 2002; Kollman, 2008). The growth of civil regulation has not reduced the importance firms place on profit maximization; rather many global firms have now concluded that professing their commitment to “good global corporate citizenship,” often by subscribing to a civil regulation, makes business sense.

But ironically, to the extent that various CSR commitments and policies have become a business norm—for example, virtually all major global firms now issue an annual CSR report, subscribe to one or more codes of conduct, develop partnerships with NGOs, monitor their supply chains, initiate community development programs, and so on—the competitive advantage a firm is likely to derive from any or all of these practices has diminished. A company’s CSR practices and policies certainly can provide it with both financial and reputational benefits, but it is rarely a source of sustainable competitive advantage. An important reason why a firm’s CSR practices and policies rarely improves its *relative* financial performance is that it is often relatively easy for its competitors to adopt comparable social or environmental programs, policies, and commitments. For example, virtually every brand and corporation now has incorporated some highly visible CSR link or association into its marketing and institutional advertising. In a further irony, the very transparency of most firm’s CSR’s policies and programs makes it relatively easy for its competitors to imitate them. Paradoxically, this may have effect of increasing the resources many firms devote to CSR—without necessarily improving the competitive position of any of them.

## **The Relative Effectiveness of Civil Regulation**

The growth of global civil regulation and CSR has been both hailed as a highly promising solution to the shortcomings of state regulation and sharply criticized on the grounds that voluntary business regulations are inherently incapable of addressing market and regulatory failures—especially then these failures were created by global firms in the first place (Lipschutz & Rowe, 2005; Savitz, 2006). The reality is somewhere in between. On one hand, many business codes have measurably improved many aspects of corporate conduct, most notably with respect to a wide range of labor and environmental practices. Twenty years ago, only a handful of global firms accepted any responsibility for the social or environmental practices of their suppliers; now the acceptance of such responsibility has become a business norm. On the other hand, the overall impact of most civil regulations on addressing the global social, environmental,

and human rights problems they were intended to ameliorate remains limited. In particular, business compliance with most codes has been uneven: Relatively few civil regulations are effectively enforced and most cover only a minority of relevant global producers (Seidman, 2007; Vogel, 2005, 2009). Thus, on balance, the growth of civil regulation has only partially addressed the lack of global corporate accountability (Scholtz, 2004).

Nonetheless, any realistic assessment of civil regulation should compare it not to an ideal world of effective global economic governance but to actual policy alternatives. When compared to most government regulations in developed countries, civil regulation is clearly less effective. In fact, civil regulations exhibit many of the well-documented shortcomings of industry self-regulation at the national level, with whom they share many important characteristics (Lennox & Nash, 2003; Morgenstern & Pizer, 2007; OECD, 1999). Both remain weaker than well-enforced command and control regulations in forcing corporations to change their behavior.

But the effectiveness of civil regulations *is* roughly comparable to that of many intergovernmental treaties and agreements, whose effectiveness in addressing environmental protection, labor practices, and human rights is also mixed and uneven (Victor, Raustiala, & Skolnikoff, 1998). In fact, some civil regulations, for all their shortcomings, have been *more* effective than intergovernmental treaties in protecting forests, improving labor practices, and safeguarding human rights. At the same time, their scope is much more limited as they primarily affect the way products exported to highly visible Western firms are produced.

But civil regulations are undoubtedly *more* effective than the labor, human rights, and environmental regulations of many developing countries. For some developing countries, they constitute the only effective form of business regulation. The environmental, social, and human rights practices of firms in developing countries that either produce for global supply chains or are directly owned by Western MNCs are frequently better than those of domestic producers and this is in part due to the impact of global civil regulations.

By creating new expectations of global corporate conduct and by establishing new regulatory institutions to address them, civil regulations have thus partially reduced the governance deficits and regulatory failures that characterize many global firms and markets. If, “accountability . . . implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that

these responsibilities have not been met,” then civil regulations have undoubtedly made *some* global firms *more* accountable on *some* dimensions (Grant & Keohane, 2005, p. 29).

## Improving the Effectiveness of Civil Regulation

What would it take to make civil regulation a more effective form of global economic governance? Two factors are critical. First, the business case for compliance with civil regulations would need to become stronger (Vogel, 2005). For all the widespread and widely believed rhetoric about the “win-win” case for CSR, many developing countries regard the civil regulations imposed by Western firms a burden: Meeting the requirements of Western codes raises their costs but rarely increases the prices they receive. (Fair Trade branded products are a notable exception.) For many developing country producers, especially smaller firms for whom the costs of compliance and certification are burdensome, the private regulatory requirements of Western producers civil regulations have made it more difficult to maintain or increase their exports to developed countries. Many firms in developing countries have developed an adversarial relationship with private inspectors responsible for certifying their compliance with civil regulations and often seek to deceive them (Roberts & Engardio, 2006).

A similar logic holds for Western firms. They have accepted civil regulations for a variety of reasons, including public and peer pressures, changes in business norms, and in some cases, a more sophisticated understanding of the basis for profitable business activities. But because the financial benefits of CSR remain for the most part either modest or elusive, few firms have integrated the standards of civil regulation into their core business practices. Many global CSR commitments and policies remain akin to corporate philanthropy or community or public relations, remaining on the periphery of their business strategies (Porter & Kramer, 2006). They typically represent more a form of insurance against public opprobrium than a source of competitive advantage, in part because relatively few firms have been able to pass on the higher costs of more responsible procurement practices to their consumers or have experienced increased sales or improved brand loyalty due to a better CSR reputation.

To be sure, some firms such as Timberland, Whole Foods, Starbucks, American Apparel, and Seventh Generation have made their CSR practices an integral part of their brands. But these firms operate in niche markets and primarily sell to relatively affluent customers. Moreover, such a strategy does not guarantee business success; For example, the first three firms on the above list have recently experienced business difficulties. Their

financial reverses have *not* been due to the additional resources they have devoted to CSR, but neither have their positive CSR reputations compensated for other shortcomings in their business strategies and changes in their competitive environment.

For virtually all firms, their CSR performance and reputations remain largely *irrelevant* to their financial performance: They neither improve it nor detract from it. This dynamic can be clearly seen in the cases of Citibank and Bank of America. Both firms have played leadership roles with respect to both their domestic environmental practices and their global lending policies. Yet both financial institutions have experienced a major reduction in shareholder value due to their heavy exposure to poorly performing housing loans. In a similar vein, both Levi Strauss and the Gap have long had above average commitments to the welfare of the workers in their contractor factories in developing countries. Yet both companies have faced declining sales due to shifts in consumer preferences. In each of these four cases, the benefits of their positive CSR's reputations have been overshadowed by other business shortcomings and risks.

The second critical determinant of the future impact of civil regulation involves their relationship to governments. Some developing country governments have recognized the legitimacy and importance of civil regulations and have promoted compliance with them; in some cases, civil regulation has led to the strengthening of such countries' domestic laws and regulations. However, many developing countries are either indifferent to, or actively oppose, the efforts of Western firms to impose "Western" standards on domestic producers.

In the long run, civil regulations must be more closely integrated into the domestic regulatory policies and the competitive strategies of developing country governments if they are to become more effective (MacGillivray, Sabapathy, & Zadek, 2003; Zadek, Raymond, & Olivera, 2005). Equally importantly, developing country governments need to promote or at least permit the strengthening of civil society so that their citizens are able to define and defend their own social, political, and environmental interests vis-a-vis business firms, without having to rely on Western activists to do so in their name. Unfortunately, many developing country governments are unwilling to strengthen or empower civil society, especially states whose elites benefit from corruption and pervasive human rights violations.

The future effectiveness of, or demand for, effective civil regulations also depends on the policies of developed countries' governments. As noted above, some Western governments have assisted the development of civil regulations. But there is much more they could do to improve the

behavior of global firms. For example, they could make greater efforts to promote compliance by developing country governments with the wide array of international treaties governing labor conditions and human rights that already exist as well as support legally binding standards for the conduct of global firms—both of which would in effect “harden” public and private international soft law (Hertz, 2004; Ruggie, 2007; Zerk, 2006). They could also impose global corporate reporting requirements, develop procurement policies that give priority to more globally responsible firms, establish voluntary but legally enforceable labeling requirements and certification standards, and provide financial assistance to strengthen the regulatory capacity of developing country governments—as some countries have done. They could also support changes in trade rules that would integrate voluntary CSR initiatives into the WTO (Aaronson, 2007). Until the world’s developed countries are willing to more closely integrate the norms of civil regulations into their domestic laws and international relations, the global regulatory failures private social regulation was intended to redress will persist.

## Conclusion

Voluntary business regulation has emerged as a response to the failures or shortcomings of existing legal mechanisms of regulatory governance in the global economy. Civil regulation has played a critical role in highlighting the ineffectiveness of existing state regulations and in persuading many firms that they have a responsibility to help ameliorate them. But “private approaches towards global governance are not a substitute for public policy, but rather an imperfect addition” to it (Chan & Pattberg, 2008, p. 118). Global business activity can only become more effectively governed if the inadequacies of both government regulation and civil regulation are recognized by both firms and governments. The future effectiveness of global business regulation depends on the extent to which private and public authority, civil and government regulation, and soft and hard law, reinforce one another.

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**David Vogel** is a professor in the Haas School of Business and the Department of Political Science at the University of California, Berkeley. His research focuses on business—government and business—society relations. He is the author of seven books, the most recent of which, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility*, for which he received the 2008 best book award from the Social Issues in Management (SIM) Division of the Academy of Management. He also serves as the editor of the *California Management Review*.

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