

“Oh, Canada, Show Us the Way”

Wesley Cragg (ed.), *Ethics Codes, Corporations, and the Challenge of Globalization*
(Cheltenham, UK: Edward Elgar, 2005)

A Review by William C. Frederick, June 2007

This group of highly qualified scholars—most of them from Toronto’s York University—set out to discover if “ethics codes and voluntary self-regulation” are effective instruments for tempering corporate conduct in the global marketplace. Here is what they found:

- **Regarding human rights in conflict zones:** “. . . existing self-regulation regimes with their permissive and inadequate provisions, voluntary compliance, voluntary self-assessment and voluntary verification of such assessment are at best minimalist and at worst ineffective in creating real accountability on the part of TNCs for complicity in violations of human rights . . . in conflict zones and repressive regimes.”
- **Regarding US and OECD cross-border anti-corruption laws:** “Neither legislatively mandated standards nor voluntary self-regulation can be relied on as effective antidotes to unethical standards of corporate conduct.”
- **Regarding money-laundering through the global financial sector:** “. . . there are four main difficulties with reliance on voluntary reporting . . . : the goals and the culture of [banks] are adverse to policing at the cost of profit; the criteria for detection of suspicious transactions are . . . too vague [and technologically outmoded]; [there is an evidentiary mismatch of harm from laundering and what might be accomplished through anti-laundering strategies]; and there is too little evidence of harm and risk attached to non-compliance [by banks] and too little reward for compliance.”
- **Regarding workplace labor conditions:** “Employers are supposed to be the object of [voluntary code] regulation, but they are also its primary authors and administrators; they can conjure it up or make it disappear pretty much whenever and for whatever reason they wish. But workers . . . lack the power to create it, to significantly influence its terms or even to insist that they receive its promised benefits”
- **Regarding minority shareholder CSR pressure on an international mining company:** “. . . even with only a 5 percent [ownership] interest, a globally committed company can actively participate in CSR issues at the local level through committee membership, independently conducting CSR audits and meetings with external stakeholders.” “[C]orporate codes of conduct can have an impact on corporate activity”
- **Regarding self-regulating sentencing guidelines:** “Clearly sentencing guidelines are not the final answer to corporate regulation in the global market.”
- **Regarding sustainability governance:** “*If* [emphasis added] supported by other policy instruments and underpinned by a regulatory framework, voluntary initiatives can be a valuable tool in an overall framework of sustainability governance.”

- **Regarding self-regulation in general:** “It is difficult to see how a system of voluntary self-regulation designed and implemented unilaterally could resolve adequately the conflicts between private and public goods that corporations can be expected to encounter in the pursuit of business objectives in intensely competitive commercial environments.” And “Voluntary instruments cannot exist in a regulatory vacuum nor can they function (generally speaking) as a total replacement for law and regulation. . . . Rather both are needed.”

As others have observed [see the review on this website of Wijen et al., *A Handbook of Globalisation and Environmental Policy*], reliance on purely voluntary, self-regulatory CSR initiatives by private corporations is occurring more frequently as globalization pressures weaken national governments’ traditional oversight role. Well known and well reported are the numerous voluntary transnational codes of conduct—the Kyoto Protocol, the UN Global Compact, etc.—that provide overarching principles protective of human rights, ecological integrity, community welfare, and trade relationships. So as governments step down from CSR, private entities are supposed to step up.

The issue is particularly keen in Canada where a 1990s government downsizing movement weakened regulatory regimes, much in the spirit of US President Ronald Reagan who a decade earlier promised voters he would “get government off our backs” (and did). One result in Canada was the emergence of Voluntary and Non-Regulatory Initiatives (VNRIs) intended to replace government directives, about which Canadians have been arguing ever since.

Without question, the book’s two most impressive chapters—both powerfully corrosive critiques of voluntary self regulation—are by York’s Margaret Beare and UK Oxford Brookes University’s Penelope Simon. Beare takes on international efforts to control money laundering through voluntary cooperation of the world’s banks. Little is left standing after she documents what is actually going on. She cites loose and diverse standards and definitions of money laundering; the practice of recording but not reporting suspicious transactions; the low priority assigned by banks to the practice; lack of incentive for detecting and reporting; lack of training of employees plus inadequate computer detection systems in place; little or no follow-up of reports to police authorities; and implicit collusion among lawyers and their banker clients. Citing solid research, she argues that banks put profits first, bank protection against fraud second, and money laundering suspicions third. Banks are often hesitant and evasive because money laundering profits can offset the potential costs of detection and bad publicity.

Penelope Simon’s story is possibly an even more devastating case against relying on voluntary efforts to protect human rights in conflict zones where repressive governments rule. Her examples include UK- and Canadian-based oil companies in Myanmar/Burma, Sudan, Colombia, and Nigeria said to be complicit with repressive regimes in violating human rights in oil exploration and development areas. Such companies being beyond the effective reach of national and international laws, a trend emerged in the 1990s to use voluntary self-regulatory principles and compacts to overcome this “governance gap.” But with successive hammer blows, Simon demolishes voluntarism as a way to protect human rights. Companies typically make weak, symbolic commitment to protective principles and practices. Compliance benchmarks are few and far between.

Human rights themselves are often ill defined by the voluntary pacts. Mandatory provisions for complying, reporting, monitoring, auditing, correcting abuses are absent. Performance oversight and third-party independent monitoring are rare. There are no timetables for dealing with complaints or enforcing non-compliance. Company-generated reports exhibit little or no neutrality and balance, resulting in “spinning” results favorably for public consumption. Not only are verification efforts and methods not uniform, but verifiers have no agreed professional qualifications. And on and on.

These are just two specific examples arguing that it will take far more than voluntary codes to curb the personal, social, community, financial, and ecological harms being done by globalization.

Legal minds weigh in as other chapters attempt to situate the corporation as an institution that, through law and custom, bears a moral responsibility to produce both public and private benefits. Moving toward that goal, Wesley Cragg, the book’s editor and Professor of Business Ethics at York, proposes a “new social contract” that will “confront the dominant management paradigm” of maximizing profits as the “overriding social responsibility of the modern corporation.” (Hello, there, Milton Friedman.) This social contract would introduce a new model of governance, involving cooperative efforts of government, business, and NGOs. It would require greater transparency and accountability of all parties, recognize “the need for strong legislated public policy and legal frameworks”, induce greater voluntary compliance with code provisions by private companies, and incorporate “robust forms of independent auditing and monitoring.”

Well, OK, but isn’t all of that precisely what the entire book argues is presently unachievable? Why would private corporations now accede to the terms of the new social contract when all of the evidence presented has argued against that prospect? Cragg draws considerable comfort from two “portents”: the greater emphasis on transparency and accountability shown by a few corporations that may draw global companies toward a moral accountability, and the aggregated power of pension funds to promote higher global standards in the interest of leveling up fund earnings.

I think there is a bit of “whistling in the dark” here. Cragg predicts that if “widely acknowledged public goods are not supported willingly by the corporate sector, public demand for profound changes in the way international commerce is regulated is bound to grow.” Hmmm, that jeremiad sounds somewhat familiar. It was precisely the warning implied by the Committee for Economic Development in the early 1970s that private companies must become socially responsible on pain of losing their favored status in American society. By the end of that decade, CED had changed its mind, and Ronald Reagan and his neoliberals had begun the process of reasserting the supremacy of free markets and private corporate decision making along with dismantling what was left of the US Welfare State—all the while boosting the power and prosperity of the private corporate sector and its over-paid CEOs.

Another of the book’s authors—Harry Arthurs, York University’s President Emeritus and Professor of Law and Political Science—offers a more realistic assessment of the problem and prospects. “In part the answer is power: its shift from states to markets, within markets to a shrinking number of larger and larger corporations, amongst such corporations to those located in a very small group of countries, within those corporations from local management closest to the social consequences of corporate activity to head offices closest to the economic outcomes, and within head offices from those involved with

products and people to those involved with earnings and share prices. . . . In short corporate codes in general have not evolved in the ways we believe they should because this would involve a retrenchment, however modest, of corporate power and the revision of the deeply held belief system of those who wield that power.”

Now *that* rings a bell, at least with me. As can be observed at other locations on this website, I have argued for years that **power aggrandizement** is one of the major values driving the behavior of corporations and their top-level executives. The quest for power and its attainment will take precedence over *all other organizational goals*, including even the corporation’s own financial and economic well-being (Enron the best current example). That power impulse is rooted deeply within an executive psyche in thrall to ancestral neural algorithms from the ancient past.

But Cragg is right to counterpoise a social contract to corporate power, for socially cooperative and reciprocally altruistic impulses also find a place within human genomic behavior, including that manifested occasionally by corporations, such as The Gap cited by Cragg. The 12-point agenda emerging from a meeting of Canadian leaders in business, government, NGOs, and academics—convened by Cragg and summarized in an Appendix—which emphasizes multistakeholder collaboration in promoting corporate responsibility and accountability may well be the way forward, for Canadians as well as the rest of us.