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From De-Responsibilization to Re-Responsibilization: The Global Institutionalization of the Social Responsibility Norm -- Exploring the Key Role of Non-State Actors and Rule Instruments in Regulating Multinational Corporations[1]

par Kernaghan Webb

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[1] This paper is a revision of a paper originally presented at the CRMT/Workshop « Social Responsibility : Redefining the Firm as a Social Institution », part of the International CRIMT Conference «Multinational Companies, Global Value Chains and Social Regulation », held in June, 2011, in Montreal, Quebec.

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Résumé

The key proposition explored in this paper is that on both the domestic and global level, an evolution from de-responsibilization to re-responsibilization of multinational corporations (MNCs) is taking place, in terms of the social obligations attaching to them, and that this evolution, coupled with the global institutionalization of the social responsibility (SR) norm, represents a paradigm shift in the way that MNCs are being regulated (moving beyond state-based top down command and control regulation to encompass multiple public and private regulators, often using market-oriented rule instruments). The paper undertakes this exploration by first defining and discussing the concept of responsibilization and describing and analyzing the evolution from de-responsibilization to re-responsibilization of MNCs, and then examining the institutionalization of the norm of social responsibility. The paper suggests that non-state actors and rule instruments are playing a key role in the re-responsibilization of MNCs.

Avant-propos

Ce cahier de recherche a été réalisé dans le projet *La responsabilité sociale : une redéfinition de l'entreprise comme institution sociale* financé par le programme Initiative de développement de la recherche du CRSH. Ce projet vise à développer une problématisation de la responsabilité sociale comme symptôme d'une redéfinition fondamentale de l'entreprise comme institution sociale des sociétés modernes avancées. Cela suppose de mettre en commun une perspective sociale mais aussi juridique, historique et managériale de l'entreprise comme objet de recherche. On vise ainsi à mettre au jour les déterminants de l'entreprise comme résultat d'un compromis social institutionnalisé, afin d'envisager l'issue des contestations dont elle fait l'objet actuellement.

Les contestations sociales participent à redéfinir la dimension institutionnelle de l'entreprise en présidant à de nouvelles règles qui en modifient à la fois les contours et la logique interne ; or, c'est une dynamique dont ne rend pas compte le courant de la responsabilité sociale qui met l'accent sur les réponses organisationnelles offertes à ces contestations. De telles redéfinitions institutionnelles se sont articulées autour de différents enjeux au cours de l'histoire, à tel point qu'à chaque période correspond une forme dominante d'entreprise comme l'ont illustré des auteurs tels que Eells et Walton (1961), Chandler (1977), Harris (2000) ou McLean (2004). Aujourd'hui, les contestations sociales qui pourraient présider à des refondations institutionnelles de l'entreprise se déclinent principalement sur deux fronts : la crise écologique dans sa matérialité et de par les transformations symboliques qu'elle induit quant à la conception du développement et du progrès d'une part, et la cohésion sociale qui, avec la fin du fordisme, semble incertaine même en période de vigueur économique d'autre part. En se basant notamment sur les transformations institutionnelles que l'entreprise a connues en regard des contestations marquant d'autres époques, et en explorant les réponses institutionnelles qui se font progressivement jour à l'heure actuelle à travers le monde, le projet de recherche vise à

clarifier comment les contestations d'aujourd'hui pourraient reconfigurer l'entreprise comme institution sociale.

La série de cahiers issus de ce projet étudient la constitution de l'entreprise à travers l'histoire ainsi que l'analyse de six mutations institutionnelles passées et actuelles. *CG.*

Préface

The question underlying the purported evolution from de-responsibilization to re-responsibilization of MNCs is deceptively simple: In light of the significant economic and social power and impacts of corporations (in some cases surpassing the economic power of nation-states), and in light of the fact that large numbers of corporations now operate in multiple jurisdictions, including through subsidiaries and supply chain relationships, and as such their activities and influence extend beyond the exclusive jurisdiction and authority of any one nation state, then what is expected of them, in terms of their obligations and impacts on individuals and local communities, the environment, states, and others, and how will those expectations be imposed?

Or to put it another way, what are the "social responsibilities" of MNCs and how are those responsibilities instrumentalized and implemented? The question is important for MNCs themselves, as well as those who are impacted by their conduct, and those who variously attempt to evaluate, influence, address and regulate their conduct (be they investors, lenders, communities, workers, consumers, courts, governments, NGOs, standards organizations, rating organizations, or others).

The developments discussed in this paper are in keeping with the observations of Robé et al's (2011) that there has been a global redistribution of powers from public to private actors, and that the nature of the re-distribution is still being conceptualized.

The new multi-actor, multi-instrument regulation of MNCs by a combination of public, private and civil society actors reflects recognition that MNCs are not just profit making mechanisms, but rather a specialized organization for wealth creation, wealth distribution, and for the carrying out of work, in keeping with the observations of Saussois (2011).

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1. Introduction

The key proposition explored in this paper is that on both the domestic and global level, an evolution from de-responsibilization to re-responsibilization of multinational corporations (MNCs) is taking place, in terms of the social obligations[2] attaching to them, and that this evolution, coupled with the global institutionalization of the social responsibility (SR) norm, represents a paradigm shift in the way that MNCs are being regulated (moving beyond state-based top down command and control regulation to encompass multiple public and private regulators, often using market-oriented rule instruments[3]). The paper undertakes this

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[2] In this paper, "social obligations" is considered to be synonymous with "social responsibilities". Following the definition of social responsibility in ISO 26000, for the purposes of this paper, social obligations are here taken as involving an organization taking responsibility for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that: is consistent with sustainable development and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the organization and its relations with others. For more detailed discussion of the definition of social responsibility in ISO 26000, see Gendron, C., "ISO 26000: une definition socialement construite de la responsabilite sociale," in Capron, M., F. Quairel-Lanoizeelee, and M-F Turcotte, ed., ISO 26000: une Norme "hors norme" (Paris: Economica, 2011), pp. 17 – 36.

[3] For the purposes of this paper, "rule instruments" refers to stipulations of objective criteria that are designed to
influence or control behaviour and that allow for evaluation of whether the behaviour or conduct of an entity or an individual conforms with the criteria. In keeping with this definition, laws, principles, standards, guidelines, compacts and voluntary codes all qualify as examples of rule instruments, although the status and effect of the rule instrument can vary significantly depending on its author, form, and other characteristics. This rule instrument definition is derived from: K. Webb (2005), "Sustainable Governance in the 21st Century: Moving Beyond Instrument Choice," in P. Eliadis, M. Hall and M. Howlett, eds.,

exploration by first defining and discussing the concept of responsibilization and describing and analyzing the evolution from de-responsibilization to re-responsibilization of MNCs, and then examining the institutionalization of the norm of social responsibility.

The question underlying these developments is deceptively simple:

> In light of the significant economic and social power and impacts of corporations (in some cases surpassing the economic power of nation-states[4]), and in light of the fact that large numbers of corporations now operate in multiple jurisdictions, including through subsidiaries[5] and supply chain relationships, and as such their activities and influence extend beyond the exclusive jurisdiction and authority of any one nation state, then what is expected of them, in terms of their obligations and impacts on individuals and local communities, the environment, states, and others, and how will those expectations be imposed?

Or to put it another way, what are the "social responsibilities" of MNCs and how are those responsibilities instrumentalized and implemented? The question is important for MNCs themselves, as well as those who are impacted by their conduct, and those who variously attempt to evaluate, influence, address and regulate their conduct (be they investors, lenders, communities, workers, consumers, courts, governments, NGOs, standards organizations, rating organizations, or others).

Designing Government: From Instruments to Governance (Montreal: McGill-Queen's University Press, pp. 242 – 280).

[4] Per S. Anderson and J. Cavanagh (2000), *The Top 200: The Rise of Corporate Global Power* (Washington: Institute for Policy Studies, 2000).

[5] It has been said that around the globe there are currently over 70,000 transnational firms with approximately 700,000 subsidiaries. See e.g., A. Snyder (2007), "Holding Multinational Corporations Accountable: Is Non-Financial Disclosure the Answer?," 2007 Colum. Bus. L. Rev. 565.

2 Responsibilization

Drawing on the work of Michel Foucault and in particular his conception of governmentality, [6] responsibilization is described here as the process whereby societal actors are encouraged or compelled to acknowledge and assume a pro-active or reflexive moral capacity to govern their own risks.[7] In other words, governmentality and responsibilization bring together the economic sphere and the moral sphere[8] of societal activities rather than keeping them separate, suggesting that every actor has moral regulatory capacity in all activities. Thus, for example:

- a homeowner who purchases a home security system is engaging in a process of responsibilization rather than simply depending on state policing to protect his or her household;
- a worker who participates in the development and implementation of a firm's occupational health and safety (OHS) management system that is certified by a private standards body, and who participates in a joint health and safety committee with the management of the firm, is

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[6] As used here, the concept of responsibilization builds on the work of Michel Foucault and his conception of governmentality. See in particular M. Foucault (1991) "Governmentality" in G. Burchell, C. Gordon, and P. Miller, eds., The Foucault Effect: Studies in Governmentality (London: Harvester Wheatsheaf), pp. 87–104.

[7] The application of the concepts of responsibilization and governmentality applied to private actors in furtherance of public policy governance objectives is elaborated on in K. Webb, (2005) "Sustainable Governance in the 21st Century: Moving Beyond Instrument Choice, in P. Eliadis, M. Hall and M. Howlett, eds., Designing Government: From Instruments to Governance (Montreal: McGill-Queen's University Press, pp. 242 – 280).

[8] Discussion of the idea that there are separate economic and moral spheres of societal activities is provided below under the heading "From De-Responsibilization to Re-Responsibilization".

involved in a process of responsibilization for his own health and safety that moves regulation beyond a simple conventional top down command and control model that relies on government health and safety inspectors revealing incidents of non-compliance;[9] and

- a community that establishes a "riverkeeper" civil society organization to monitor water quality,[10] and participates in a "Blue Flag" clean beach label/certification scheme[11] is involved in a process of community responsibilization rather than simply relying on a government environmental regulator to protect water quality.

Synthesizing the writings of several commentators, Shamir describes Foucauldian analysis of neo-liberal governmentality as a new governmental technique for controlling individuals by responsibilizing them to self-manage and self-regulate social risks.[12] But Shamir does not see responsibilization as a concept that applies only to individuals:

> The central point I wish to make here, however, is that a curious inversion takes place once responsibilization and its underlying project of constructing moral agencies begin to flow in all directions. The very same moral agency that neo-liberalism attributes to and constructs in

[9] See, e.g., Tucker , E. (1995), ' And Defeat Goes On: An Assessment of Third Wave Health and Safety Regulation ' , in F. Pearce and L. Snider , eds, *Corporate Crime: Contemporary Debates* . Toronto : University of Toronto Press.

[10] See, e.g., the Ottawa Riverkeeper organization, accessible at: http://ottawariverkeeper.ca/about/

[11] See, e.g., the Blue Flag Canada program, accessible at: http://environmentaldefence.ca/campaigns/blue-flag-canada

[12] R. Shamir (2008) "Corporate Social Responsibility: Towards a Market-Embedded Morality," Theoretical Inquiries in Law Vol. 9, No. 2, pp. 371 – 394 at p. 380.

> relation to individuals and civic groups applies, by the very same logic, to market entities as well. Moreover, corporations – through the neo-liberal scheme of governance itself – are put on a par with governments. The cumulative effect of these two tendencies is to facilitate both the notion and concrete expectation that market entities will also dispense governmental responsibilities. The shift is further facilitated by the already extant conception of both the body-human and the body-corporate as extensions of the legal subject. Capitalism, therefore, may be humanized, and the dynamism of the market can become a means for the realization of public interests.[13]

The focus of attention here is on the process of de- and re-responsibilization as applied to the corporation and other market actors.

[13] Shamir, ibid., at p. 381.

3 From Corporate De-Responsibilization to Re-Responsibilization

3.1 Corporate De-Responsibilization

Following Weber,[14] Shamir states that capitalism, in its modern rational-systematic form, was born out of the idea that the economy and morality were conceived of as separate entities -- a socially constructed process of separation that he says only fully matured at the beginning of the 19th century.[15] He remarks that "….the very notion of 'the market' and 'the economy' as signifiers of distinct spheres of social reality are modern social constructs."[16] For Shamir, "….the invention of the economy as a distinct sphere of human action….also proclaimed the autonomy of market relations from moral sentiments" with "a complex web of social institutions" acting as "the effective collective guardian of ethical standards":[17]

> The business enterprise could claim moral exemption because other social mechanisms, most notably governments, assumed the task of "managing populations and things" according to the logic of welfare and security. It was the "legal/ethical wardenship exercised by the nation-state" that secured for the market its social licence to operate as an imagined autonomous sphere throughout the second half of the 19th and most of the 20th century.[18]

The process of de-responsibilization of the corporation, in which the corporate entity was given increasing amounts of autonomy to act and grow in an unencumbered way in the economic sphere

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[14] M. Weber (1914), Economy and Society: An Outline of Interpretive Sociology (reprint: Univ. of California Press, 1978).

[15] Shamir, op cit., at p. 374.

[16] Ibid.

[17] Ibid., at p. 375.

[18] Ibid., at pp. 375 – 376.

(except as regulated through top down command and control regulations of the state), with its investors and officers shielded in important respects from liability, has taken place over a long period, beginning in the 16th century.[19] Some of the key de-responsibilization developments include:

- associated with the emergence of the joint stock corporate form of business enterprise in the late sixteenth century was the *separation of ownership from management* (as opposed to the "partnership" form of business enterprise, where the partners provide the funding and operate the partnership) -- with this ownership-management separation in the corporation seen as conducive to corruption;[20]
- *limited liability for shareholders* (introduced in England in 1856 and over the latter half of the 19th century in the U.S.), in spite of concerns that it would "enable persons to embark in trade with a limited chance of loss, but with an unlimited chance of gain" and thus encourage "a system of vicious and improvident speculation;"[21]

[19] While not using the word "deresponsibilization", many of the key developments in the evolution of the corporation are described in D. King and R. Janda, *Background Paper: Historical Foundations of the Corporation and Literature Review of Relevant Themes* (forthcoming); Hansman et al, (2006), *Law and the Rise of the Firm* Yale Law & Economics Research Paper No. 326; and J. Bakan (2004), *The Corporation: The Pathological Pursuit of Power* (Penguin: Toronto).

[20] Bakan writes: "Unlike the prevailing partnership form, in which relatively small groups of men, bonded together by personal loyalties and mutual trust, pooled their resources to set up businesses they ran as well as owned, the corporation separated ownership from management – one group of people, directors and managers, ran the firm, while another group, shareholders, owned it. That unique design was believed by many to be a recipe for corruption and scandal. " (p. 6).

[21] Bakan, p. 13.

- *loosening of restrictions on mergers and acquisitions* and the rule that one company could not own the stock of another (beginning in the 1890s), with the effect that very large corporations could be formed that rivaled and even surpassed the economic power of some nation states, and limiting the ability of individual shareholders to control the activity of corporations (corporate capitalism); [22]
- by the end of the 19th century, the *judicial transformation of corporations into "legal persons"* with the capacity to act as an individual, taking and granting property, contracting obligations, suing and being sued, enjoying privileges and immunities (e.g., commercial freedom of expression) and thereby shielding to some extent the liability of individual officers within corporations from liability.[23] In effect, there is a shifting of the gaze of the law from the individuals owning and operating the business enterprise (as is the case with the partnership form) to the corporation as a separate legal person in its own right;[24]
- related to the above, *a shift by the end of the 19th century from the centuries-old "grant theory"* which had conceived of corporations as instruments of government policy and as dependent on government bodies to create them and enable them to function, to an approach whereby individuals can apply for and register as corporations in a pro forma way for basically any business purpose without being subjected to any

[22] Bakan, p. 14.

[23] Bakan, p. 16.

[24] Bakan, p. 16.

significant pre-scrutiny by government in terms of their ability to further government policy;[25]

- interpretation by the courts that *business corporations are organized and carried on primarily for the profit of stockholders*, so that it is not within the lawful powers of a board of directors to shape and conduct the affairs of a corporation for the merely incidental benefit of shareholders and for the primary benefit of others;[26]
- the *lowering of trade barriers* between countries (especially in the latter years of the 20th century), thus facilitating the ability of corporations to operate in multiple jurisdictions,[27] and the provision in trade agreements of rights for investors to sue governments that put in place laws or practices that could be characterized as being discriminatory to those investments, or amounting to expropriation.[28]

Throughout this extended period of de-responsibilization of corporations (and concomitant empowerment of corporations to act with minimal restrictions in the economic sphere), control of corporate excess was largely in the form of top-down, command and control regulation imposed by organs of the state (e.g., environmental laws through government environmental protection agencies, worker health and safety laws administered by government occupational health and safety agencies,

[25] Bakan, p. 16.

[26] In the U.S., see: *Dodge v. Ford Motor Co*. 204 Mich. 459, 170 N.W. 668. (Mich. 1919); see in the UK a similar ruling: *Parke v. Daily News Ltd*. [1962] Ch 927.

[27] Bakan, p. 22.

[28] E.g., see L. Dhooge (2001), "The North American Free Trade Agreement and the Environment: The Lessons of Metalclad Corporation v. United Mexican States, 10 Minn. J. Global Trade 209 (2001).

consumer protection by government consumer protection agencies, etc.).

3.2 Corporate Re-Responsibilization

Analysis undertaken here suggests that we are now moving to a new period of corporate *re-responsibilization*, in which corporations and officers within corporations are (among other things) expected by law and through private market-based regulatory mechanisms and stakeholder pressure to address their social responsibilities, through techniques that give leeway or discretion to corporations in terms of exactly how they will address those responsibilities. Some of the key re-responsibilization developments include:

- requirements that corporations develop and publicly disclose ethics codes or explain why such codes are not in place;[29]
- laws that attach liability for environmental and other harm directly to corporate directors,[30] effectively "piercing the corporate veil" that had largely shielded them from individual/personal liability;
- the introduction and widespread use of regulatory offences requiring that corporations demonstrate to courts that they are exercising due diligence or face penal liability,[31] thus effectively compelling them to develop and implement elaborate management systems,

[29] E.g., section 406 of the U.S. Sarbanes-Oxley Act.

[30] E.g., section 280(1) of the Canadian Environmental Protection Act, 1999.

[31] E.g, for discussion of the rise of the judicial recognition of the regulatory offence with due diligence defence, see K. Webb (1989), "Regulatory Offences, the Mental Element, and the Charter: Rough Road Ahead" Ottawa L. Rev. Vol. 21, 419 – 478.

often drawing on private environmental and occupational health and safety management system standards;[32]

- laws requiring corporations to variously disclose their social and environmental impacts, [33] thus providing other societal actors with information that would allow them to bring pressure for change as appropriate;[34]
- laws requiring corporations to establish joint health and safety management committees with workers, thus

[32] For discussion of the connection between regulatory offences with due diligence defences and private environmental and health and safety management systems standards, see K. Webb and A. Morrison, (2004) "Voluntary Codes and the Law: Examining the 'Tangled Web'," in K. Webb, Voluntary Codes: Private Governance, the Public Interest and Innovation, (Ottawa: Carleton University Research Unit for Innovation, Science and Environment).

[33] There are many examples of such laws. The UK Company Law reporting requirements are well described in R. Mares, (2010), "Global Corporate Social Responsibility, Human Rights, and the Law: An Interactive Regulatory Perspective on the Voluntary-Mandatory Dichotomy," *Transnational Legal Theory*, Volume 1, Issue 2, pp. 221-285. The Danish CSR reporting law is described in P. Hohnen (2009), "Non-financial reporting: Denmark ups the ante" *Ethical Corporation*, January 13, 2009. Requirements for disclosure of toxic substances are described in K. Harrison and Antweiler, W. (2003), "Incentives for pollution abatement: Regulation, regulatory threats, and non-governmental pressures," *Journal of Policy Analysis and Management*, 22: 361–382. For discussion of security law requirements that firms disclose "material" environmental and social risks, see: A. Dhir (2009), "Shadows and Light: Addressing Information Asymmetries through Enhanced Social Disclosure in Canadian Securities Law," *Canadian Business Law Journal*, Vol. 47, p. 435.

[34] For an example of how communities are using data re: use of toxics that is disclosed to the public due to mandatory "toxics release inventory" laws, to address environmental issues in their communities, see: J. Foti and Ll Conlon (2011), Growing the Grassroots: Integrating environmental justice into the toxics release inventory program, Washington: World Resources Institute.

distributing governance of health and safety issues within the corporation;[35]

- laws facilitating the ability of shareholders to bring shareholder proposals on social and environmental matters;[36]
- judicial pronouncements that corporate directors, in the course of meeting their fiduciary duties, are obliged to protect the long-term best interests of the corporation and to consider a broad set of stakeholder interests, including those of shareholders, employees, creditors, consumers, government and the environment; [37]
- the increasing prevalence of laws stimulating pension fund managers to explain how they are taking into

[35] See, e.g., Hall , A. , Forrest , A. , Sears , A. and Carlan , N. (2006), ' Making a Difference: Knowledge Activism and Worker Representation in Joint OHS Committees ' , Industrial Relations, 61 : 408 – 34 .

[36] See discussion of the reformed Canadian federal law re: shareholder proposals in A. van Duzer, *The Law of Partnerships and Corporations* (Toronto: Irwin Law, 2003).

[37] *BCE Inc. v. 1976 Debentureholders et al*, [2008] 3 S.C.R. 560, 2008 SCC 69, re: s. 122(1)(a) of the *Canada Business Corporations Act* (*CBCA*). Note that shareholders are here lumped together with a diversity of other stakeholders and interests. The Court held that directors 'need to treat affected stakeholders in a fair manner, commensurate with the corporation's duties as a responsible corporate citizen.' While the exact meaning and extent of corporate duties associated with acting as a 'responsible corporate citizen' is unclear at this point, it is significant that the Supreme Court of Canada in this decision is explicitly linking the 'fiduciary duties of directors' with stakeholder engagement, the long term best interests of corporations and corporate duties to be responsible corporate citizens. The Court also stressed the need to be deferential to board decisions; if the board is properly informed and acts in good faith, courts will generally defer to the decisions of directors so long as the decisions lie within a range of reasonableness.

consideration the environmental and social practices of companies they choose to invest in;[38]

- the rise to prominence of rating agencies such as DJSI and FTSE4Good that rank corporations on the basis of their social and environmental practices;[39]
- the rise to prominence of the social responsibility investment industry, accompanied by international standards concerning socially responsible investment;[40]
- the development and application of social and environmental criteria by public and private lenders for large scale industrial projects;[41]
- the increasing prevalence of product certification standards and schemes that evaluate products on their social and environmental impacts throughout the supply chain (bananas, apparel, chocolate, forest products, seafood, diamonds);[42]

[38] See, e.g.,discussion of laws to this effect in several countries, in OECD (2007), Recent Trends and Regulatory Implications in Socially Responsibility Responsible Investment for Pension Funds (Paris: OECD), accessible at: http://www.oecd.org/dataoecd/3/0/38550550.pdf

[39] See, e.g., discussion of the role of such agencies as forms of regulation in O. Perez (forthcoming), "Private Environmental Governance as Ensemble Regulation: A Critical Exploration of Sustainability Indexes and the New Ensemble Politics," T*heoretical Inquiries in Law, Forthcoming* Bar Illan Univ. Pub. Law Working Paper.

[40] See, e.g., discussion of the industry in D. Bourghelle et al (2008), "The Integration of ESG Information into Investment Processes: Toward an Emerging Collective Belief?" EABIS Working Paper.

[41] See, e.g., discussion in Mares, op cit..

[42] See, e.g., D. Vogel (2006), "The Private Regulation of Global Corporate Conduct," Working Paper Series, Center for Responsible Business, UC Berkeley.

- the increasingly common practice of companies developing, applying and publicly disclosing social responsibility/sustainability policies or codes of conduct concerning their operations;[43]
- the increasingly common practice of MNCs regulating their supply chain partners on social and environmental issues through contractual mechanisms;[44]
- the increasing development and implementation of international social responsibility standards.[45]

Notable in these various re-responsibility developments is a distinct "pushing back" onto corporations and to officers within corporations of the obligation to address social and environmental impacts, although typically there is considerable leeway or discretion provided concerning exactly how issues are addressed, and it is not uncommon that other actors play key "regulatory" or "governance" roles (e.g., pension fund managers, lenders, SR investment organizations, shareholders, consumers, standards bodies). As with the de-responsibility developments described above, none of the re-responsibility developments on

[43] E.g., a 2009 study indicated that of 124 Canadian mining companies with publicly available annual reports and websites, 78% had some sort of CSR policy. Per: Canadian Centre for the Study of Resource Conflict (2009), *Corporate Social Responsibility: Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World*, accessible at: http://www.freespeechatrisk.ca/wp-content/uploads/2011/01/CSR_Movements_and_Footprints.pdf

[44] See, e.g., M. Vandenbergh (2007), "The New Wal-Mart Effect: The Role of Private Contracting in Global Governance," 54 UCLA Law Rev. 913.

[45] See, e.g., discussion of this phenomenon in K. Webb, forthcoming, "ISO 26000: the Emergence of a Global Norm of Social Responsibility Custom," Paper presented at Florence Workshop on Transnational Governance Interactions: Theoretical Approaches, Empirical Contexts and Practitioners' Perspectives (May, 2011).

their own is particularly significant, but cumulatively, they can be seen as representing a virtual 360 degree surrounding of stakeholder pressure on corporations to address social and environmental responsibilities, through innovative processes and instruments. The conclusion that there is an emerging complex arrangement of government and market-based regulatory instruments and actors addressing MNC behaviour is keeping with the observation of Robé that there has been a global redistribution of powers from public to private actors, and that the nature of of the re-distribution is still being reconceptualized.[46] The emerging multi-instrument regulation of MNCs by a combination of public, private and civil society actors reflects recognition that MNCs are not just profit making mechanism for shareholders, but rather a specialized organization for wealth creation, wealth distribution and for the carrying out of work, in keeping with insights made by Saussois[47].

The position taken in this paper is these type of developments are evidence of a significant transformation taking place: namely, the global institutionalization of the social responsibility norm. This subject is discussed further in the next sections of the paper.

[46] Robé, Jean-Philippe, et al (2011). L'entreprise et la constitutionnalisation du systeme-monde de pouvoir (Paris: Collège des Bernardins, 2011).

[47] Saussois, J.M. (2011). La grande entreprise : un objet dont la sociologie reste à faire (Paris: Collège des Bernardins, 2011).

4 Institutionalization

Institutionalization has been described as involving activities "by which social processes, obligations or actualities come to take on a rule-like status in social thought and action."[48] Institutionalzation operates to produce common understandings about what is appropriate and, fundamentally, meaningful behaviour for a particular organization,[49] and is a process "by which individual actors transmit what is socially defined as real, and at the same time, at any point in the process the meaning of an act can be defined as more or less a taken-for-granted part of this social reality."[50]

Leading institutional theorists suggest that that the process of institutionalization is characterized by four elements:

- an increase in interaction among organizations with a given field;
- the development of inter-organizational structures for control and relational patterns;
- an increase in the amount of information that organizations within the field must process; and
- the development of mutual awareness by members of the organizational field.[51]

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[48] Per: J. Meyer and B. Rowan (1977), "Institutionalized Organizations: Formal Structure as Myth and Ceremony," American Journal of Sociology, 83, pp. 340 – 363.

[49] Per: L. Zucker (1983), Organizations as Institutions, in S. B. Bacharach, ed., *Research in the Sociology of Organizations* (Greenwich, Conn: JAI Press), pp. 1 – 42.

[50] Per: L. Zucker (1977), "The role of institutionalization in cultural persistence," American Sociological Review, 42: 726 – 743.

[51] Per: P. DiMaggio and W. Powell (1983), "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," American Sociological Review, Vol. 48, No. 2, pp. 147 – 160.

Organizations within a highly structured field exhibit convergence towards normative practices, thereby lessening the diversity of practices and organizational forms within the field so that in the long term, organizations tend to adopt similar and homogenous practices (isomorphism).[52]

According to leading institutional theorists, organizations converge towards normative practices as a result of coercive, mimetic and normative pressures or influences.[53] Coercive pressures or influences are said to originate from political influence and problems of legitimacy. These pressures can emanate from government actors or other actors on which the organizations depend for resources (societal pressures). Mimetic pressures or influences result from an organization's attempt to address uncertainty. When faced with situations of uncertainty or ambiguity (for example, on how to behave in a particular situation), organizations may look to the actions and practices of peers they perceive as successful and attempt to mimic them. Normative pressures or influences refers to the professional standards of entities relevant to the organizations (e.g., the norms of standards organizations and industry associations).

These three influence or pressure mechanisms can work together to stimulate organizations to conform to norms, traditions, and social expectations in an institutional environment and expedite the process of homogenization at the inter-organizational level.[54] With this background, we are now in a

[52] Ibid..

[53] The following discussion of isomorphism and the three key pressures or influences of institutionalization is based on the work of DiMaggio and Powell.

[54] Per: C. Oliver (1991), "Strategic responses to institutional processes," Acad.Management Rev. 16(1) 145–179; and C. Oliver (1997), "Sustainable competitive advantage: Combining institutional and resource-based views," Strategic Management J. 18(9) 697–713.

position to explore the proposition that the social responsibility norm is being institutionalized.

5 The Global Institutionalization of the Social Responsibility Norm

Earlier in this paper, the paper concluded that an evolution from de-responsibilization to re-responsibilization is currently taking place, vis-à-vis the social obligations being imposed on MNCs. The purpose of this section is to review that process through the lens of institituionalization, and suggest that the re-responsibilization process represents evidence of the global institutionalization of the social responsibility norm. A key point to note is that this process of re-responsibilization is taking the form of a diversity of public and private regulatory actors using a diversity of regulatory approaches, with market-based approaches playing a key role. Analysis in this part of the paper is undertaken in three stages. First, an examination of how the various examples of "re-responsibilization" described above can be variously characterized as elements of coercive, mimetic or normative institutionalized pressure. Second, an examination of ISO 26000 as representing a significant paradigm-shifting moment in the global institutionalization of the SR norm. Third, an illustration of how such SR institutionalization "plays out" for a particular MNC.

5.1 Re-Responsibilization and SR Norm Institutionalization

Earlier in the paper it was noted how in their increasing power and global penetration, MNCs have in effect outgrown the ability of individual nation-states to exclusively and effectively regulate them through conventional, top down command and control approaches. Shamir has put forward the proposition that the moralization of markets is a product of neo-liberal conceptions of governance, with the effect that the regulation of market actors is not a matter for governments alone.[55] He states that

> …market players are being called upon to perform tasks that were once considered to reside within the civic domain of moral entrepreneurship and the political

[55] Shamir, op cit., at p. 371.

> domain of the caring welfare state. Commercial enterprises are increasingly expected to proactively prevent harms previously treated…as "externalities" for which they were not accountable. [56]

The position taken here is that the examples of "re-responsibilization" provided earlier in this paper are consistent with Shamir's observation concerning the moralization of markets, and that these examples are evidence of the institutionalization of the SR norm. Examined here are the roles of governments, commercial actors other than MNCs, MNCs, and others in SR norm institutionalization.

Note first that the suggestion is not being made here that state-based top down command and control governmental regulation does not remain a central element in the re-responsibilization of MNCs, and in the institutionalization of the SR norm. But what is being proposed here is that a new form of state-based governmental regulation is rising to prominence. In conventional command and control regulation, prescriptions of what is acceptable and unacceptable are simply imposed on regulated actors: once a prescription has been formulated (e.g., "no more than x parts per million of a particular substance can be emitted," "workers must wear particular safety gear in when operating heavy machinery," "consumer products must conform to certain health or safety specifications," and so on). Under the conventional approach, the prescriptive rules are formulated by government (typically through a process of deliberation and consultation), and are imposed by government (e.g., through inspections by government officials, backed up by court-based sanctions). The state "holds all the cards," both in terms of the articulation of the norm and in its implementation. If it is incapable of articulating the norm, or in enforcing it, through its

[56] Ibid., p. 373.

own resources, there is considerable opportunity for problems to arise.[57]

Under the new form of state-based regulation, governments are not so much requiring a particular outcome, as they are requiring that regulated actors engage in a process of disclosure that exposes the regulated actor to the pressures of market and other actors, and through that process, the regulated actors, in conjunction with the actions of others, develop and/or agree to a particular outcome, that is then capable of enforcement through a variety of means.[58] Thus, for example, a requirement that firms develop and disclose an ethics code (or explain why they do not have such a code), leaves considerable discretion in the hands of the corporation in terms of the substance of the code, and its implementation. It is then open to investors to decide whether the actions of the firm constitute acceptable behaviour. Similarly, requirements that firms disclose their social and environmental impacts, judicial pronouncements that directors consider a broad set of stakeholder interests and not just shareholders in the process of meeting their fiduciary obligations to act in the best interests of the corporation (note: not shareholders), and liberalized shareholder proposal laws, provide investors and communities and others with opportunities and information for direct conversations with firms on the acceptability of their practices, and requirements that firms demonstrate due diligence stimulates firms to draw on private standards and private inspectors as a way of meeting open-ended due diligence requirements.

Taken together, these new forms of state-based government regulatory actions constitute examples of coercive

[57] For discussion of the limitations of conventional command and control regulations, see, e.g., E. Orts (1995), "A Reflexive Model of Environmental Regulation,**"** *Business Ethics Quarterly* Vol. 5, No. 4, pp. 779-794.

[58] This has been referred to as "reflexive regulation." See, E. Orts, ibid.

institutionalization pressure, but the "norm" that firms are ultimately supposed to meet is left somewhat undefined, and thereby compels firms to engage with stakeholders. In this sense, there is considerable uncertainty as to "what is acceptable activity," and this opens the door for mimetic pressure, the second form of institutional influence. In the face of this operational ambiguity, the actions of others are important, and there is pressure on firms to "work out" how to address the uncertainty. When firms come together to develop standards, either by themselves or with other actors, this constitutes the third form of institutionalized pressure (normative pressure).

We will return to the important role played by standards below, but for present purposes what is important to note is how the cumulative effect of the new form of state-based regulatory actions is to create a kind of cascading coercive, mimetic and normative pressure on firms to meet a particular norm. With the new form of state-based regulatory actions, the ultimate outcome in terms of behaviour of the firm cannot be understood by examining only the rule instruments and associated activity of government regulatory agencies and the courts. It is necessary to also examine the activities of other actors.

In the earlier discussion of examples of re-responsibilization, we noted the varied activities of pension fund managers, the social responsibility investment industry, lenders, rating agencies, and private standards bodies developing product certification standards and other rule instruments. These entities represent examples of private market-based regulators of MNCs. In the institutionalization literature, the sort of pressure exerted by these entities is coercive in nature, in keeping with the idea that coercive pressure need not only take the form of requirements mandated by state authorities. To the extent that MNCs are dependent on these other entities (e.g., for funding, and for legitimacy), these market entities exert a form of coercive pressure. In addition, to the extent that these entities participate in the development of standards or rules, working in conjunction with industry peers and industry associations, their activities

create instruments facilitating mimetic behaviour, and help to address the uncertainty as to exactly what is expected of firms. Finally, the standards that result from their activities are part of the social construction of the SR norm, and as a result, can be characterized as a form of normative pressure.

At the firm level, we have noted that increasing numbers of firms are creating, disclosing, and committing to comply with their own social responsibility and sustainability codes or policies, and that MNCs are imposing SR-related requirements on their supply chain partners through contractual arrangements. From the standpoint of institutionalization analysis, there a number of interesting features of these self-regulatory activities of MNCs. First, they raise a fundamental question: why would firms develop such instruments, and commit to them? Typically, there is no direct governmental requirement that firms make such commitments. Arguably, firms are making these commitments because of perceived institutionalized pressure to do so. This institutional pressure can be described as having coercive, mimetic and normative dimensions. The coercive element results from the perceived "legitimacy need" to have such codes, in light of pressure from investors, lenders, rating agencies, business partners, and so on, as well as the indirect coercive pressure from governments increasingly requiring "disclosure." In addition, mimetic pressure is in evidence in the form of the fact that "their peers" are also developing and committing to such codes. Finally, firms typically draw on the language of existing standards in their own codes, in an apparent attempt to enhance the legitimacy of their activities by aligning with "accepted" norms.[59] In effect, a firm's code represents a form of "norm

[59] See discussion of this point in K. Webb (forthcoming), "Multi-level CR and the Mining Sector: the Canadian Experience in Latin America," draft paper presented at *Business and Politics Journal* Workshop on Corporate Responsibility, Multinational Corporations, and Nation States, May, 2011.

conversation"[60] with its stakeholders. A second point to note is that, while firms are typically not required by law to make the sort of SR commitments that are found in MNC SR or sustainability codes, once such commitments are made, they may form the basis for legal actions against the firm if the firm does not meet those commitments, since such non-fulfilled commitments may be characterized as misrepresentations.[61] In this sense, the state, through its laws concerning misrepresentations, can discipline firms to provide accurate commitments, or face legal consequences for failing to do so.

Communities, NGOs and individuals also play an important role in the re-responsibilization of MNCs and in SR norm institutionalization. Later in the paper an illustration of how SR norm institutionalization "plays out" for a particular MNC, and the role of communities and NGOs in that situation is very evident. For current purposes, it is sufficient to note that MNCs are increasingly engaging directly with communities and NGOs in the articulation and implementation of their SR or sustainability codes and policies, and that such engagement represents recognition of a form of coercive pressure exerted by communities and NGOs (who can express disapproval quite effectively through internet-based and other campaigns that ultimately can negatively impact on the firm through loss of sales or lower share values), and acknowledgement of the need to work with such entities to increase the normative legitimacy of their actions and to reduce uncertainty concerning whether their actions are considered "acceptable."

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[60] The idea that voluntary codes, standards and other rule instruments create an opportunity for "norm conversations" is discussed in K. Webb (2004), "Understanding the Voluntary Codes Phenomenon," in K. Webb, ed., Voluntary Codes: Private Governance, the Public Interest, and Innovation (Ottawa: Carleton University Research Unit for Innovation, Science and Environment).

[61] As discussed in K. Webb and A. Morrison, (2004) "Voluntary Codes and the Law: Examining the 'Tangled Web'," op cit..

With respect to individuals, the fact that there are now viable markets for a wide variety of certified products is evidence that increasing numbers of consumers are now assuming a responsibility to behave ethically in their purchasing decisions, to critically examine their consumption habits, and in the process to send a signal to MNCs that socially responsible behaviour in terms of the products themselves and the way products are made may be rewarded not just by investors, lenders, the SR investment industry, ratings agencies and pension fund managers, but also by the ultimate "demand side" actors.

The combined effect of this re-responsibilization activity of governments, market actors, and non-market actors is to apply significant coercive, mimetic and normative pressure on MNCs from multiple sources to meet an institutionalized SR norm. The fact that the pressure is diffused across a number of different actors and instruments means that variations in intensity and effectiveness of any one actor or instrument at any particular time is not particularly significant.[62] This contrasts sharply with the situation where state-based, conventional command and control regulatory approaches predominate. In this "conventional" regulatory context, the failure of government to fully set out the normative requirements and to implement them means that the regulated entity may escape effective regulation. This is less likely in the "re-responsibilized" regulatory context described above, since responsibilization is spread across actors and rule instruments.

In addition, the limitations of conventional state-based regulatory approaches in terms of the ability of any one state to address MNC activity that extends beyond the jurisdiction of that state is less critical, because the diffused and multiple responsibilization and SR institutionalization environment is not anchored in and

[62] This point is a basic premise underlying the concept of "sustainable governance" articulated by the author in K. Webb, "Sustainable Governance in the 21st Century: Moving Beyond Instrument Choice," op cit.

constrained by the limits of state sovereignty. Thus, for example, a Norweigian pension fund can, through its decision to divest its investments in a particular MNC, can be directed at the activities of MNCs that are headquartered in non-Norweigian countries, and with respect to activities of MNCs wherever they operate.[63]

5.2 ISO 26000 and the Global Institutionalization of the SR Norm

The position taken here is that ISO 26000, a new international standard on social responsibility developed by the International Organization of Standardization, represents a paradigm shifting event in the global institutionalization of the SR norm.[64] The fact that ISO 26000 emanates from the International Organization for Standardization (ISO), the world's pre-eminent private standards developer,[65] responsible for publication of more than 18,500 international private standards,[66] gives the standard a high profile and stature in the global business community,[67] and contributes to its characterization here as an authoritative articulation of SR global custom. It perhaps goes without saying that as emanations of a private entity, the standards that ISO develops (including ISO 26000) are by definition voluntary, and by definition ISO standards are *not* inter-governmental rule instruments. ISO is the peak, coordinating entity for the national

[63] This example is discussed in D. Bourghelle et al (2008), "The Integration of ESG Information into Investment Processes: Toward an Emerging Collective Belief?", op cit..

[64] The following discussion draws on: K. Webb, "ISO 26000: the Emergence of a Global Norm of Social Responsibility Custom," op cit.

[65] Per ISO, "About ISO", where ISO is described as "the world's largest developer and publisher of International Standards," at http://www.iso.org/iso/about.htm

[66] Per ISO, "The scope of ISO's work," at: http://www.iso.org/iso/about/discover-iso_the-scope-of-isos-work.htm

[67] ISO standards are available for use by all types of organizations, but in the interests of brevity and since the primary users are businesses, references are made here to the business community.

standards institutes of 162 countries[68] -- referred to in the academic literature as a "meta-organization", or an organization of organizations[69] -- and through these national standards institutes, ISO has developed significant connections to both governments and industry.

One of the reasons why ISO has such a high global profile as a global rule instrument maker stems from the popularity of its ISO 9000 quality management series of standards and ISO 14000 environmental management series of standards. More than one million operations around the world have been certified (by third parties) as meeting the ISO quality management system standard (ISO 9001),[70] and close to one quarter million have been certified as in conformity with the ISO environmental management system standard (ISO 14001).[71]

ISO 26000 was published in November, 2010, following an extended process of exploration of the feasibility and desirability of ISO developing an SR standard that took place from 2001 – 2005, and the subsequent creation of the ISO 26000 working group, which developed the standard from 2005 to 2010.[72] The working group consisted of 450 experts and 210 observers from 99 countries, and 45 Liaison Organizations (international organizations including inter-governmental entities, as well as those from the private sector and civil society). Over the course

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[68] Per ISO, "About ISO", at http://www.iso.org/iso/about.htm

[69] Per: Ahrne, G. and N. Brunsson (2008) Meta-Organizations (Cheltenham: Edward Elgar).

[70] Per: ISO, "ISO 9001 certifications top one million mark, food safety and information security continue meteoric increase,", at http://www.iso.org/iso/pressrelease.htm?refid=Ref1363

[71] Per ISO, "New ISO/ITC handbook/CD package puts ISO 14001 within easier reach of SMEs
", at: http://www.iso.org/iso/pressrelease.htm?refid=Ref1389

[72] An excellent discussion of ISO 26000 can be found in: Capron, Quairel-Lanoizeelee, and Turcotte, ed., *ISO 26000: une Norme "hors norme"* (Paris: Economica, 2011).

of its deliberations, the working group generated 26,000 comments on a series of drafts, with meetings held around the world. The final product (ISO 26000) is some 118 pages long, it is a "guidance standard," and is incapable of third party certification. ISO 26000 applies to all organizations, everywhere, in all circumstances. ISO 26000 defines social responsibility, and other key concepts, it articulates seven principles of SR (such as accountability, transparency, ethical behaviour, and respect for the rule of law), it describes seven core SR subjects (such as human rights, labour practices, environment, consumer practices, community development), it articulates substantive expectations in each of these core subjects, and it sets out an approach to implementation.

Compared to existing international rule making processes and instruments attempting to address the social responsibility (SR) of MNCs, the position taken here is that the ISO 26000 development process and standard breaks new ground in a number of important respects, including:

- In attracting the significant participation of inter-governmental entities such as the UN Global Compact, the ILO, UNEP, and the OECD in an SR rule making process under the auspices of a private international rule maker;
- In attracting competing SR rule developers from key inter-governmental and private SR rule making entities (such as the developers of GRI, AA 1000, SA 8000), to participate in the ISO 26000 standard development process;
- In the creation and implementation of an open, publicly accessible, consensus-based deliberative process for global SR norm development that brought together for the first time key inter-governmental entities, governments, peak industry entities, consumer groups, environmental and other NGOs, as well as national

standards bodies, with particular attention being expended to balanced developed-developing country participation;

- as a result of the foregoing, in the creation of the first comprehensive and authoritative articulation of global SR custom (the expectations by the global community concerning the environmental, social and economic conduct of MNCs and other organizations), a new and hybrid form of SR rule instrument that is likely to be the basis for significant legal and extra-legal application by public and private sector entities.

From the standpoint of institutionalization analysis, the suggestion made here is that ISO 26000 provides an important "piece of the puzzle" concerning global SR norm institutionalization that reflects coercive, mimetic and especially normative elements. The fact that inter-governmental and government entities played in an important role in the development of ISO 26000 is significant in terms of coercive pressure, since inter-governmental and governments represent an important source of societal authority concerning the delineation of what constitutes acceptable and unacceptable practices. Moreover, because it is not uncommon for governments and courts to draw on ISO and related national standards in the formulation of laws and in court determinations of liability,[73] there is an additional latent coercive pressure element to ISO 26000.

In addition, the fact that peak industry entities, as well as labour, consumer, and other NGOs, participated in the development of ISO 26000, adds to its coercive influence, in the sense that these other entities have a certain amount of leveraging capability over MNCs. With respect to mimetic pressure, the significant involvement of key industry entities at both the international level

[73] Discussed further in K. Webb, "ISO 26000: the Emergence of a Global Norm of Social Responsibility Custom," op cit..

and through national mirror committees in the development of ISO 26000 provides an important "modeling" dimension to the standard: that is, if an MNCs "peers" are involved in ISO 26000, then the standard represents a good "model" for MNCs to follow.

Finally, with respect to normative pressure, the fact that the standard was constructed through an open, consent-based global process, with significant involvement from all key stakeholder categories, suggests that it represents an accurate and authoritative statement of the substantive expectations of MNCs by the global community, and as such it addresses the operational uncertainty that had heretofore existed concerning "what is expected of MNCs." Earlier in the paper, it was noted that many of the re-responsibilization developments and rule instruments did not articulate a particular substantive outcome, leaving it to firms to "work out" what that outcome would be. The suggestion made here is that in light of its process of development, and the diverse participants in that process, ISO 26000 is well positioned to provide the substantive norm content that the other instruments do not provide.

5.3 SR Norm Institutionalization: A Practical Illustration

An illustration of how SR norm institutionalization plays out in practice comes from a recent analysis by the author[74] of how a Canadian mining company with a subsidiary in a developing country, in response to Canadian shareholder pressure, lender, investor community and NGO scrutiny, as well as evidence of local community unrest, conducted a human rights assessment at that developing country mining operation, that in turn led to their development of a human rights policy (a policy that directly references several international SR instruments, as do the

[74] Per Webb, K., "Multi-level CR and the Mining Sector: the Canadian Experience in Latin America," draft paper presented at Business and Politics Journal Workshop on Corporate Responsibility, Multinational Corporations, and Nation States, May, 2011.

human rights policies of other MNCs) and the creation of an ongoing roundtable process involving the company and local communities. Noteworthy here is how the response of the company was entirely in keeping with the expectations contained in ISO 26000 (e.g., greater transparency and accountability, responding to input from stakeholders concerning impacts, development of a human rights policy, and ultimately, the development of a new process of engagement involving the key affected actors which may go some way to ensuring the informed approval of the local community on a going forward basis). In effect, this MNC was in a position of operational uncertainty, and as a result of coercive, mimetic and normative pressure, the MNC developed a response which demonstrates the institutionalization of the SR norm. That is,

In effect, social processes and obligations came to take on "rule-like" status in the decisions and actions of an MNC that was seeking common understandings about what is appropriate behaviour for the organization, and the MNC did this through a "norm conversation" process in which individual actors (inter-governmental, governmental, industry, and others) and rule instruments transmitted to the MNC their expectations of acceptable behaviour.

6 Conclusions

This paper has described an evolution from de-responsibilization to re-responsibilization that has taken place, in terms of the social obligations attaching to MNCs, and the way in which those obligations are imposed. Whereas originally, MNCs were given considerable autonomy to act in the economic sphere, except as specifically constrained through top-down command and control prescriptive regulations imposed by government authorities, MNCs are now subject to a complex arrangement of government and market-based regulatory instruments, imposed by a diverse array of government and market-based actors. In the face of uncertainty, SR rule instruments such as ISO 26000 can play a key role, because they can be interpreted as representing the expectations of the global community concerning what is appropriate behaviour. Inter-governmental entities, governments, courts, rating agencies, lenders, shareholders, the investment community, worker organizations, communities, NGOs, industry associations, consumers, as well as individual MNCs can all draw on ISO 26000 and other SR rule instruments to assist them in the articulation and implementation of an MNC's social responsibilities. Taken together, the activities and instruments of this wide array of global, national, and local actors can be seen as evidence of the global institutionalization of the SR norm.

To be clear, and to avoid the reader having a different interpretation, the situation as it stands now is far from perfect. Thus, for example, the interests and activities of shareholders, including those who engage in SR-related shareholder proposals (such as a shareholder proposal that an MNC involved in mineral extraction conduct a human rights assessment concerning its activities at a particular operation), is not necessarily going to lead to an outcome that is considered acceptable by other societal actors (such as a community representative who simply wishes the MNC to go away). A market-based actor and instrument will tend to play within the rules of a market game concerning "how can business proceed?" whereas other societal

actors and instruments may start from the proposition of “should business proceed at all?” With their unique capabilities, governments and courts are in a position to create final “go” and “no go” decisions concerning acceptable and unacceptable business activities, while market actors and instruments tend more to act as signaling devices to businesses concerning profitable approaches to behaviour.

Thus, there is considerable opportunity for further innovation concerning both state-based and market-based rule activity concerning the social obligations of MNCs. The SR norm institutionalization process is ongoing and doubtless will evolve, both substantively and in form. This article represents an attempt by the author to describe the state of the process at the current time.

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