

# Corporate Social Responsibility In a Global Economy After September 11: Profits, Freedom, and Human Rights

by Frank René López\*

## I. INTRODUCTION

The world economy is now more integrated than ever before. With improved technology in communications and transportation and the explosion of new trade markets, such as the North American Free Trade Agreement (“NAFTA”), the United States has expanded its economic grip to countries all over the world. The United States is at the forefront of the ever-expanding global economy.

Globalization<sup>1</sup> has enabled many U.S. companies to achieve incredible

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1. The term globalization cannot be fully defined or explained in a short writing such as this. However, for discussion purposes, the term globalization refers to the modern day worldwide economic revolution which is rapidly extending to all parts of the world. It includes multinational corporation activity, foreign investment, international loans, and the flow of financial capital from country to country. The process of globalization is complex and involves many actors, including the World Trade Organization, the World Bank, and the International Monetary Fund. *Id.* at 139, 264. A good metaphor describing globalization can be found in William Greider’s book. WILLIAM GREIDER, ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM 21-26, 139, 264 (1997). Greider describes globalization as follows:

financial success. In fact, many global corporations are now enormous economic giants with economies that rival those of many developing countries. For example, in 2000 Exxon-Mobil's gross sales were \$210.3 billion while Indonesia's Gross Domestic Product ("GDP") was \$153 million.<sup>2</sup> Today, Exxon-Mobil's sales are greater than the GDP of most countries in the world. But Exxon-Mobil is one of many major corporations in the world. Of the largest economies in the world, more than half are corporations.<sup>3</sup>

The United States, via U.S. corporations, has a physical presence in all parts of the world. Countries throughout the world are influenced on a daily basis by activities of these large companies. Multinational corporations play a significant role in shaping the world economy and, to some degree, the political landscape.

Because global corporations are powerful players in the world economy, they wield considerable political power both within the United States and in foreign countries. Their economic power enables them to dictate where they will establish manufacturing plants and literally which laws they will, and *will not*, obey. To a great extent, these mega-corporations dictate where they will be located, how much they will pay their workers, the conditions in which workers will work, and how they will dispose of dangerous byproducts.

Many U.S. corporations have moved operations to other countries to reduce costs and increase profits. The rush to other countries to seek cheaper labor and materials is often called the "race to the bottom."<sup>4</sup> This race to the bottom has serious consequences. It often results in the exploitation of hundreds of thousands of impoverished people throughout the world and in the abuse of the environment where manufacturing

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Imagine a wondrous new machine, strong and supple, a machine that reaps as it destroys. It is huge and mobile, something like the machines of modern agriculture but vastly more complicated and powerful. Think of this awesome machine running over open terrain and ignoring familiar boundaries. It plows across fields and fencerows with a fierce momentum that is exhilarating to behold and also frightening. As it goes, the machine throws off enormous mows of wealth and bounty while it leaves behind great furrows of wreckage. [T]here are skillful hands on board, but no one is at the wheel. In fact, this machine has no wheel nor any internal government to control the speed and direction. It is sustained by its own forward motion, guided mainly by its own appetites. And it is accelerating.

*Id.* at 11. In the final analysis, multinational corporations and financial forces dictate how fast and far the machine of globalization will go. A well noted loser in the process of globalization is labor. *Id.* at 24.

2. See chart *infra* Part III.A.

3. *Id.*

4. Charles Kernaghan, *Behind Closed Doors*, in THE U.S. IN HAITI, NATIONAL LABOR COMMITTEE 31-49 (1996).

plants are located.<sup>5</sup> For the corporation, the race to the bottom means more profits. The race to the bottom blinds corporate managers to the human cost of producing cheaper products. Too often human rights are viewed as obstacles to free trade and profits.<sup>6</sup>

The average U.S. citizen does not think about corporate activity in foreign countries; nor does he think about the race to the bottom. Yet, given the tragic events that occurred on September 11, 2001,<sup>7</sup> and the frequently asked question, "Why do they hate us?," it is worth our time to pause and consider corporate activity abroad. Are U.S. corporations operating in other countries conveying a message of freedom and democracy, or are they conveying a message of oppression and exploitation? In these hard times, Americans must ask themselves: "Do U.S. corporations with operations in other countries in fact contribute to the resentment and hatred the United States is experiencing?"

U.S. corporations are perceived as ambassadors or representatives of the United States. Corporate executives negotiate with top foreign business and government officials as if the executives have been designated "U.S. Representatives." They bring American-style business to countries throughout the world. People who live in parts of the world

5. *Id.*

6. Human Rights may include a number of rights. The United Nations Human Freedom Index includes the following: *The right to* travel in one's own country, peacefully associate and assemble, monitor human rights violations, travel abroad, teach ideas and receive information, speak one's ethnic language; *the freedom from* forced or child labor, extrajudicial killings or "disappearances," capital punishment, unlawful detention, censorship or mail or telephone tapping, compulsory party or organization membership, compulsory religion or state ideology in schools, compulsory work permits, torture or coercion, corporal punishment arts control, political censorship of press, *the freedom for* peaceful political opposition, multiparty elections by secret and universal ballot, social and economic equality for ethnic minorities, political and legal equality for women, social and economic equality for women, independent courts and trade unions and independent newspapers, book publishing, radio and television networks, *the legal right to* being considered innocent until proven guilty, free legal aid when necessary and counsel of one's own choice, freedom from police searches of home without a warrant, freedom from arbitrary seizure of personal property, a nationality and open and prompt trial, *the personal right to* interracial, interreligious or civil marriage, equality of sexes during marriage and for divorce proceedings, homosexuality between consenting adults, practice any religion and determine the number of one's children. STEVEN L. WARTICK & DONNA J. WOOD, *INTERNATIONAL BUSINESS & SOCIETY* (1998) (citing the United Nations Freedom Index 1991); *see also* Universal Declaration of Human Rights, G.A. Res 217Am, U.N.Doc. A/810 at 71 (1948).

7. On September 11, 2001, suicide terrorists hijacked four commercial airlines. Two of the planes hit the World Trade Center Towers in New York City killing over 5000 people. A third plane hit the Pentagon in Washington, D.C., and the fourth plane crashed in an empty field in Pennsylvania.

where U.S. companies are located are subjected to American culture and greed. Some of the world's perception of the United States is certainly shaped by U.S. corporations and their activities abroad. U.S. corporations are, in a real sense, the unofficial representatives of the United States. Every year more reports surface indicating that U.S. corporations engage in child labor, deplorable work conditions, and abuse of the environment.<sup>8</sup> These activities indirectly affect the United States and its citizenry. If U.S. corporations engage in human rights violations, what message has the United States allowed corporations to convey to the world? Is it time for the government to step in?

This Article explores corporate social responsibility<sup>9</sup> as it applies to U.S. corporations operating in other countries.<sup>10</sup> The issues raised in this Article only scratch the surface. Part II provides a brief narrative on the history of the corporation and the role corporations play in today's society. Part III examines the economic and political power of corporations. Part IV takes a closer look at corporate activities, including civil and human rights violations. Part V examines the relationships among freedom and democracy and global corporations. Finally, Part VI provides comments and suggestions on how to improve the social responsibility of corporations operating in other countries.

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8. See *infra* Part IV.

9. Corporate social responsibility can have many facets. Some people believe that corporate social responsibility means corporations have a responsibility to contribute to the development of the community in which the corporation is located. Contributions could be in the form of donations to charitable organizations or the development of a local park. Others believe corporate social responsibility goes beyond making charitable contributions. It requires self-regulation so that the environment and workers are not exploited. Under this perspective, corporations must ensure that all constituents are taken into consideration when engaging in corporate activity. In other words, in all corporate activities workers should not be exploited, the environment should not be abused, and consumers should not be sold unsafe or hazardous products.

Although more states are enacting "constituency statutes," which allow boards to consider constituents other than shareholders, the statutes were not created with corporate social responsibility in mind. Most statutes were enacted in the 1980s as a response to the takeover movement. The statutes were designed to give boards more power. However, constituency status may provide an avenue for improving corporate social responsibility.

10. For purposes of this Article, the term "global corporation" will be used to refer to U.S. corporations with manufacturing or assembly operations in other countries. Global corporations include large corporations incorporated in the United States, with headquarters in the United States or whose significant consumer base is in the United States.

## II. HISTORICAL SKETCH OF THE CORPORATION

A. *Early Corporations*

Some scholars trace the origins of the corporation to Roman law.<sup>11</sup> In those early days, the forerunner of the corporation was nothing like a corporation today; it was more like a trust than the modern corporation.<sup>12</sup> With increased desire for trade and governmental needs, the forerunner corporation experienced a gradual but profound transformation.<sup>13</sup>

The first corporations were created to serve the public.<sup>14</sup> Corporations were created as an extension of either the church or the state. "Ecclesiastical" corporations, for example, were created as a device for the church to hold property.<sup>15</sup> Most early corporations, however, were created to serve the sovereignty of kings and queens.<sup>16</sup> For example, the Dutch West India Company's charter<sup>17</sup> authorized the corporation to "make contracts, engagements and alliances with princes and natives of the countries . . . to appoint and discharge Governors, people for war, and officers of justice, and other public officers, for the preservation of the places, keeping good order, police and justice."<sup>18</sup>

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11. According to Blackstone, Numa Pompilius is said to have invented corporate bodies in an effort to subdivide factions of Sabines and Romans into separate entities to prevent continued civil strife. The idea was that if the two groups could view themselves as separate and independent they might stop killing each other. Douglas Arner, *Development of the American Law of Corporations to 1832*, 55 SMU L. REV. 23 (2002); see also Samuel Williston, *History of the Law of Business Corporations Before 1800* (pt. 2), 2 HARV. L. REV. 149 (1888); see also W.W. BUCKLAND & ARNOLD D. MCNAIR, ROMAN LAW AND COMMON LAW 54-59 (1965); see also Eric Enlow, *The Corporate Conception of the State and the Origins of Limited Constitutional Government*, 6 WASH. U. J.L. & POL'Y 1 (2001).

12. Williston, *supra* note 11, at 149-50.

13. Arner, *supra* note 11, at 25-26.

14. A *Short History of Corporations*, NEW INTERNATIONALIST (July 2002), at <http://www.newint.org/issue347/history.htm>; JAMES D. COX ET AL, CORPORATIONS 2 (1995).

15. LEWIS D. SOLOMON, DONALD E. SCHWARTZ, JEFFREY D. BAUMAN & ELLIOTT J. WEISS, CORPORATIONS LAW AND POLICY: MATERIALS AND PROBLEMS 89-90 (4th ed. 1998); see also COX, *supra* note 14, at 2.2.

16. Joel Bleifuss, *Know Thine Enemy, A Brief History of Corporations*, IN THESE TIMES MAG. (Feb. 1998), at [http://www.thirdworldtraveler.com/Corporations/KnowEnemy\\_ITT.html](http://www.thirdworldtraveler.com/Corporations/KnowEnemy_ITT.html).

17. A "charter" is the organic document granted by a government authorizing the creation of a corporation.

18. Marina Ottaway, *Reluctant Missionaries*, FOREIGN POL'Y, July/Aug. 2001, at 44, 45.

England may have been the first country to grant charters to corporations.<sup>19</sup> To develop foreign trade, England granted charters to various trading companies, including the Russia Company (chartered in 1554), the East India Company (chartered in 1600), the African Company (chartered in 1619), and the South Sea Company (chartered in 1711).<sup>20</sup> A number of these early chartered companies played significant roles in shaping world history.<sup>21</sup> For example, England used charter corporations to extend their political and commercial power throughout the world.<sup>22</sup> The Virginia Company, chartered in 1609, founded the Virginia Colony in America, and the Massachusetts Bay Company founded the Massachusetts Bay Colony in 1629.

In the early stages of the corporation, no private ownership of a corporation existed. The corporation eventually evolved into two types of entities: (1) overseas trading companies, also known as “regulated companies,” and (2) joint stock companies.<sup>23</sup> Regulated companies were state chartered monopolies specifically created to serve the state. Joint stock companies, on the other hand, were usually unincorporated entities designed as a vehicle of investment for people with limited financial resources who wanted to invest in large profit making ventures.<sup>24</sup> Joint stock companies resembled today’s corporation in that the joint stock company allowed people to invest small amounts of money in a larger financial enterprise.<sup>25</sup> Eventually the unincorporated joint stock company would evolve into today’s corporation.<sup>26</sup>

In the late 1700s, only about forty corporations existed in the United States.<sup>27</sup> But the popularity of the corporation soon mushroomed, and by 1800, there were more than 334.<sup>28</sup> Prior to the 1800s, most corpora-

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19. Arner, *supra* note 11, at 25. England, Spain, and Holland chartered a number of corporations during the seventeenth Century. Bleifuss, *supra* note 16.

20. HARRY G. HENN, HANDBOOK OF THE LAW OF CORPORATIONS 13 (2d ed. 1970); see also *A Short History of Corporations*, NEW INTERNATIONALIST (July 2002), at <http://www.newint.org/issue347/history.htm>. The East India Company was first chartered in 1600 by Queen Elizabeth I and became the world’s first commercial corporation. *Id.*

21. Bleifuss, *supra* note 16; see also Richard Heinberg, *A History of Corporate Rule and Popular Protest*, NEXUS MAG., Oct.-Nov. 2002, at <http://www.nexusmagazine.com/corporations.html>.

22. Bleifuss, *supra* note 16.

23. Arner, *supra* note 11, at 25.

24. The joint stock company allowed people to invest in ventures that would otherwise not be possible for one individual. The concept was limited to a one time venture. Arner, *supra* note 11, at 25.

25. *Id.*

26. COX, *supra* note 14, at 2.4.

27. Bleifuss, *supra* note 16.

28. *Id.*

tions served a pseudo-public purpose, i.e., churches, banks, canal operations, and constructing bridges and roads.<sup>29</sup> In the late 1700s and early 1800s, the idea of private ownership of corporate stock became well accepted.<sup>30</sup>

Today the vast majority of corporations are privately owned. The evolution of corporations has taken the corporation from an entity created by the government for a specific *public* purpose to one in which *private* ownership is the norm. Today many types of business entities exist, including corporations, partnerships, limited liability companies, and sole proprietorships. The corporation is distinguished from other entities by the following combination of characteristics: (1) separate and perpetual existence, (2) limited liability, (3) centralized management, and (4) transferability of ownership interests.<sup>31</sup>

29. *Id.*

30. In 1844 the Joint Stock Companies Registration Act enabled "joint stock companies" to become "corporations."

31. The following brief explanation of each characteristic may assist the reader in understanding the components of today's corporation. *Separate and Perpetual Existence.* A corporation allows people to invest in the company by purchasing shares of stock of the corporation. The concept of a "separate existence" means that although the corporation is owned by one or more shareholders, it remains separate and apart from its owners. The corporation is literally its own person. The corporation may enter into agreements, sue, and be sued, just as if it was a natural human being. Moreover, a corporation has perpetual existence. It does not cease to exist once the owner dies; the corporation continues to exist. Unlike other entities, such as the sole proprietorship where the business terminates if the owner dies, the corporation continues to exist regardless of the death of a shareholder. *Limited Liability.* "Limited Liability" means that a shareholder's liability is limited up to the amount of the shareholder's investment. If a shareholder invests \$10,000 into the business, then her liability is limited to \$10,000. In other words, if the corporation were sued and found liable in the amount of \$200,000, a shareholder who invested \$10,000 would be subject to losing only \$10,000. The personal assets of the shareholder could not be subject to the corporation's law suit. *Centralized Management.* "Centralized management" means that the corporation is governed by a concentrated group of people known as the "board of directors." *Transferability of Ownership.* "Transferability of ownership" means that a shareholder can sell or transfer her stock in the corporation to another party with few if any restrictions. Compared with other entities, these characteristics make the corporation an appealing investment instrument. People can sell and trade stock without cumbersome transactions. See also COX, *supra* note 14, at 2.6.

In *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819), Chief Justice Marshall described the corporation as follows:

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and

Today most U.S. corporations are privately owned and serve no governmental purpose. Shareholders own the corporation by owning stock, and they indirectly control the corporation by electing directors who manage the corporation for the benefit of its owners.<sup>32</sup> The dominant belief regarding today's corporation is that it should serve its shareholders and maximize profits.

*B. The Role of Today's Corporation: Public Service or Profit Maximization*

In the 1920s, legal scholars began to probe the role of corporations in society. Professors Adolf A. Berle and Gardiner C. Means noted the escalating power of corporations.<sup>33</sup> Means's research indicated that there were "some two hundred corporations, controlled by less than eighteen hundred men, [who] administered over one-third of the national wealth"<sup>34</sup> and that the "power of the modern corporation resembled the power of the sovereign state both in form and in substance."<sup>35</sup> With amazing insight, Berle and Means speculated that the corporation could surpass government in size and strength.<sup>36</sup> Later, Berle engaged in a debate with E. Merrick Dodd, Jr. of Harvard Law School on the role of the corporation.<sup>37</sup> One major issue in the debate was whether the corporation's role was limited to serving only its shareholders or whether it had a greater responsibility to a larger constituency.<sup>38</sup>

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may act as a single individual. They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created. Its immortality no more confers on it political power, or a political character, than immortality would confer such power or character on a natural person. It is no more a state instrument, than a natural person exercising the same powers would be.

*Id.* at 636.

32. "Shareholder" is the term used to describe the owner of the corporation.

33. Dalia Tsuk, *Corporations without Labor: The Politics of Progressive Corporate Law*, 151 U. PA. L. REV. 1861, 1885 (2003).

34. *Id.*

35. *Id.* at 1886.

36. *Id.*

37. *Id.*

38. *Id.* at 1887.

A debate continues as to the role of the corporation in today's society. Two distinct theories remain regarding the role of the modern corporation.<sup>39</sup> One theory contends that the corporation is the private property of shareholders and that the sole purpose of the corporation is to maximize profits.<sup>40</sup> This theory has been embraced by business people and economists, such as the Dodge brothers<sup>41</sup> and Milton Friedman.<sup>42</sup> Milton Friedman, for example, argues that corporate officials' sole obligation is to "make as much money for their stockholders as possible."<sup>43</sup> Friedman also argues that corporate social responsibility "undermine[s] the very foundations of our free society."<sup>44</sup>

The opposing theory takes the position that the corporation is not just the private property of stockholders but is a social institution that is "tinged with a public purpose."<sup>45</sup> Under this theory, the corporation comes into existence with the permission of the state and "continues as a legal entity only with governmental concurrence."<sup>46</sup> Therefore, the corporate purpose includes the state's interest of promoting the general welfare.<sup>47</sup> Under this theory, the board of directors must not only advance a financial return to shareholders, but the board also has a duty to consider the impact of corporate activity on all those affected by the corporation, such as employees and consumers.<sup>48</sup>

This view embraces the idea that corporations have a social responsibility to constituents other than shareholders.<sup>49</sup> In other words, making a profit should be balanced with the corporate impact on

39. William T. Allen, *Our Schizophrenic Conception of the Business Corporation*, 14 CARDOZO L. REV. 261, 263-65, 274-77, 279-80 (1992); see also Adolf A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049 (1931); see also *Dodge v. Ford*, 170 N.W. 668 (Mich. 1919); *Shlensky v. Wrigley*, 237 N.E.2d 776 (Ill. App. Ct. 1968).

40. Allen, *supra* note 39, at 263-65, 272-73. Allen believes that this model could be considered a "contract model" because "in its most radical form, the corporation tends to disappear, transformed from a substantial institution into just a relatively stable corner of the market in which autonomous property owners freely contract." *Id.* at 265.

41. *Dodge*, 170 N.W. 668.

42. MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 133, 135 (1962).

43. *Id.* at 133.

44. *Id.*

45. Allen, *supra* note 39, at 265.

46. *Id.* This view has also been identified as the "managerialist conception," the "institutionalist conception," or the "social entity conception." *Id.*

47. *Id.*

48. *Id.*; see also John Haddock, *Twin-Plants and Corporate Responsibilities*, in *PROFIT AND RESPONSIBILITY* 223-25 (Patricia Werhane & Kendall D'Andrade eds., 1985).

49. Haddock, *supra* note 48, at 224. Haddock also refers to corporate social responsibility as corporate ethics. *Id.*

society.<sup>50</sup> Scholars, such as Robert Dahl, have argued that a corporation is a political entity with the power to impose its will on citizens who have no voice in its policies.<sup>51</sup> A growing sentiment exists in the United States that corporations have a greater responsibility to society than simply making a profit for their shareholders.

In 1919 *Dodge v. Ford Motor Co.*<sup>52</sup> once again raised the issue of corporate social responsibility. The Dodge brothers sued Henry Ford and other board members for failure to distribute a greater distribution of profits. The Dodge brothers argued that the role of the corporation was to increase and distribute profits to its shareholders. Henry Ford argued that making a large profit was not the primary goal.<sup>53</sup> In cross examination, Ford responded to a question about profits by saying that he believed the purpose of the company was to do as much as possible for everyone concerned,<sup>54</sup> emphasizing the importance of paying employees well and providing affordable cars to consumers.<sup>55</sup> Ford advocated corporate responsibility to a broad scope of constituents that went far beyond the company's shareholders.

Ford's philosophy of serving a wide range of constituents and making profits at the same time is becoming more accepted. Conversely, economist Milton Friedman's view that corporate social responsibility

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50. Elliott J. Weiss, *Social Regulation of Business Activity: Reforming the Corporate Governance System to Resolve an Institutional Impasse*, 28 UCLA L. REV. 343, 418-32 (1981). Professor Weiss believes there should be a standard he calls "altruistic capitalism" under which corporations "temper" their quest for profits and strike a balance between public and private authority. *Id.* at 345, 422-34. According to Weiss, the standard would require corporate directors to exercise reasonable care to ensure that management operates the business: (1) as if the firm were a pure competitor concerned with long-term profitability; (2) as if the firm paid all the external costs and captured all the external benefits of its operation; (3) as if the firm's customers and competitors shared all relevant information that the firm possessed; and (4) as if the firm were liable for all acts of its employees and agents.

*Id.* at 422.

51. Bauman, *supra* note 15, at 114. Dahl also believes that all affected constituents should be allowed to serve on the boards of those corporations. See LEWIS D. SOLOMON, ET AL., *CORPORATIONS LAW AND POLICY: MATERIALS AND PROBLEMS* 89-90 (4th ed. 1998).

52. 170 N.W. 668 (Mich. 1919).

53. *Id.* at 669.

54. Bauman *supra* note 15, at 89-90 (citing ALLAN NEVINS & FRANK E. HILL, *FORD: EXPANSION AND CHALLENGE 1915-1933* (1957)).

55. In cross-examination, the attorney for the Dodge brothers, Ellicott G. Stevenson, asked Ford about making "awful profits." Ford responded by stating that he believed the purpose of the company was "to do as much as possible for everybody concerned . . . to make money and use it, give employment, and send out the car where the people can use it. . . . And incidently to make money." *Id.*

undermines “the very foundations of our free society”<sup>56</sup> is losing ground. Yet now more than ever the strong force of globalization invites us to ask: Should corporations be required to adhere to certain principles of “fairness and decency” once they relocate factories and plants to other countries?<sup>57</sup> Given recent events, it appears the United States and its people should seriously consider the impact of corporate activity on developing countries.

III. ECONOMIC AND POLITICAL POWER OF GLOBAL CORPORATIONS

A. *Comparing the Top Global Economies in the World*

Today many U.S. corporations are economic giants.<sup>58</sup> The size of corporations, measured by sales and the number of employees, is staggering. For example, Wal-Mart’s workforce has grown from 62,000 employees in 1983 to 1,140,000 in 1999, making it the largest employer in the world.<sup>59</sup> In terms of sales, it is the second largest company in the world with over \$193 billion in sales in the year 2000.<sup>60</sup> The size of global corporations puts them in a class of their own. These large companies simply do not compare with the average business. They maintain large accounting, marketing, and production departments, and their financial data is beyond comparison. Global corporations can literally squash most of their competition. The average business cannot compete with these corporate giants and cannot be compared in any meaningful way. To fully grasp the size and magnitude of these global corporations, compare their sales with the Gross Domestic Product (“GDP”) of the top countries in the world. The following is a list of the largest economies in the world.

**TOP 100 ECONOMIES (2000)  
(Corporations in italics)**

	<b>COUNTRY/CORPORATION</b>	<b>GDP/SALES (\$ MIL)</b>
1	United States	9,882,842
2	Japan	4,677,099
3	Germany	2,870,136

56. *Id.*

57. See generally Haddox, *supra* note 48, at 224. Professor Haddox argues that corporations should adhere to fundamental principles of ethical behavior regardless of national boundaries. *Id.* at 224-25.

58. SARAH ANDERSON & JOHN CAVANAGH, THE TOP 200: THE RISE OF GLOBAL CORPORATE POWER i (2000).

59. *Id.* at 6.

60. See *infra* Part III.A.

4	United Kingdom	1,413,432
5	France	1,286,252
6	China	1,079,954
7	Italy	1,068,518
8	Canada	689,549
9	Brazil	587,553
10	Mexico	574,512
11	Spain	555,004
12	India	479,404
13	Australia	394,023
14	Netherlands	364,948
15	Argentina	285,473
16	Russian Federation	251,092
17	Switzerland	240,323
18	Belgium	231,016
19	Sweden	227,369
20	<i>Exxon-Mobil</i>	210,392
21	Turkey	199,902
22	<i>Wal-Mart Stores</i>	193,295
23	Austria	190,957
24	<i>General Motors</i>	184,632
25	<i>Ford Motor</i>	180,598
26	Hong Kong, China	163,261
27	Denmark	160,780
28	Poland	158,839
29	Indonesia	153,255
30	<i>DaimlerChrysler</i>	150,070
31	Norway	149,349
32	<i>Royal Dutch / Shell Group</i>	149,146
33	British Petroleum (BP)	148,062
34	<i>General Electric</i>	129,853
35	<i>Mitsubishi</i>	126,579
36	South Africa	125,887
37	Thailand	121,927
38	<i>Toyota Motor</i>	121,416
39	Venezuela, R.B.	120,484
40	Finland	119,823
41	<i>Mitsui</i>	118,013
42	Greece	111,955
43	<i>Citigroup</i>	111,826
44	Israel	110,332
45	<i>Itochu</i>	109,757
46	<i>Total Fina Elf</i>	105,870

47	Portugal	103,871
48	Nippon Telegraph & Telephone	103,235
49	<i>Enron</i>	100,789
50	Iran	98,990
51	Egypt, Arab Rep.	98,333
52	Ireland	94,388
53	AXA	92,782
54	Singapore	92,252
55	<i>Sumitomo</i>	91,168
56	Malaysia	89,321
57	<i>Intl. Business Machines</i>	88,396
58	<i>Marubeni</i>	85,852
59	Columbia	82,849
60	<i>Volkswagen</i>	78,852
61	<i>Hitachi</i>	76,127
62	<i>Siemens</i>	74,858
63	Philippines	75,186
64	<i>ING Group</i>	71,196
65	<i>Allianz</i>	71,022
66	Chile	70,710
67	<i>Matsushita Electric</i>	69,475
68	<i>Industrial E. ON</i>	68,433
69	<i>Nippon Life Insurance</i>	68,055
70	<i>Deutsche Bank</i>	67,133
71	<i>Sony</i>	66,158
72	<i>AT&amp;T</i>	65,981
73	<i>Verizon Communications</i>	64,707
74	<i>U.S. Postal Service</i>	64,540
75	<i>Philip Morris</i>	63,276
76	Pakistan	61,673
77	<i>CGNU</i>	61,499
78	<i>J.P. Morgan Chase</i>	60,065
79	<i>Carrefour</i>	59,888
80	<i>Credit Swisse</i>	59,316
81	<i>Nissho Iwai</i>	58,557
82	<i>Honda Motor</i>	58,462
83	<i>Bank of America Corp.</i>	57,747
84	<i>PNP Paribas</i>	57,612
85	<i>Nissan Motor</i>	55,077
86	Peru	53,882
87	<i>Toshiba</i>	53,827
88	Albania	53,817
89	<i>PDVSA</i>	53,827

90	<i>Assicurazioni Generali</i>	53,333
91	<i>Fiat</i>	53,190
92	<i>Mizuho Holdings</i>	52,069
93	<i>SBC Communications</i>	51,476
94	<i>Boeing</i>	51,321
95	<i>Texaco</i>	51,130
96	New Zealand	49,983
97	<i>Fujitsu</i>	49,604
98	Czech Republic	49,510
99	<i>Duke Energy</i>	49,318
100	<i>Kroger</i>	49,000

Of the top 100 economies in the world, 51 are corporations.<sup>61</sup> If the economies of the 10 most powerful countries were excluded, the combined sales of the top 200 corporations are greater than the combined economies of *all* the countries in the world.<sup>62</sup> Of the 200 largest corporations in the world, 82 are based in the United States.<sup>63</sup> Thus, U.S. corporations—and indirectly, the United States—play a significant role in the global economy.

At times it is hard to believe that a single corporation's sales could be greater than the GDP of a whole country. But this is the reality. Comparing GDP and sales, General Motors is now bigger than Denmark, Wal-Mart is bigger than Poland, and Exxon-Mobil is bigger than South Africa.<sup>64</sup> The combined sales of the top five corporations—General Motors, Wal-Mart, Exxon-Mobil, Ford Motor and DaimlerChrysler—are greater than the combined GDP of 182 countries.<sup>65</sup> Multinational corporations are players in the world economy, just like any other country. There is no question that the economic power possessed by global corporations provides them with tremendous political power.

#### *B. Corporate Influence on U.S. and Foreign Governments*

Global companies are not only economic powers; they are heavy political players in the world economy.<sup>66</sup> They maintain tremendous

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61. See ANDERSON & CAVANAGH, *supra* note 58, at i; *Global 500*, FORTUNE, available at <http://www.fortune.com/indexw.jhtml?channel=list.ihtml&list frag=list global500.ihtml&list=19> (2001); GDP: World Bank, WORLD BANK GROUP, available at <http://www.worldbank.org/data/dataquery.html> (2001).

62. ANDERSON & CAVANAGH, *supra* note 58, at 3.

63. *Id.* at i.

64. *Id.* at 10.

65. *Id.* at 3.

66. Eyal Benvenisti, *Exit and Voice in the Age of Globalization*, 98 MICH. L. REV. 167 (1999).

political clout.<sup>67</sup> In the United States, 82 of the largest U.S. corporations made political contributions in the 2000 election campaigns through Political Action Committees (“PACs”) totaling \$33 million.<sup>68</sup> This is significant because the candidate that outspends his opponent usually wins. In the 2000 election, this was the case for the U.S. House of Representatives in 94 percent of the races.<sup>69</sup> In addition to political contributions, lobbying is also a major part of the agendas of global corporations. The top 200 corporations spend significant amounts of money on lobbying activities and 94 of the top 200 companies maintain “government relations” offices in Washington D.C. for that purpose.<sup>70</sup> Global corporations are strong political players, but the average U.S. business is not. The average U.S. business neither has those type of resources, nor has an office in Washington for government relations.<sup>71</sup> Large global corporations are not typical businesses; they are powerful economic and political entities that wield substantial influence over elected officials in the United States.

But corporate political clout is not limited to the United States. In fact, given the vulnerability of developing countries, large global corporations exert even more control over foreign countries—especially underdeveloped countries.<sup>72</sup> Underdeveloped countries often lack the power to negotiate or make demands of large global corporations seeking

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67. Professor Benvenisti argues in *Exit and Voice in the Age of Globalization*, 98 MICH. L. REV. 167 (1999), that globalization has ushered in a new era that requires a different paradigm of international relations. He believes that the old “Westphalian paradigm” that views global conflicts solely in terms of 200 sovereign states in the global arena is outdated and inaccurate. He contends that domestic interest groups—such as multinational corporations—are more efficient and better organized and thus more politically effective to exploit less organized groups such as consumers, employees, and the environment. He refers to this new paradigm as the “transnational conflict paradigm.” He describes government states as inefficient bureaucracies controlled by domestic interest groups. He provides several examples of how special interest groups, i.e., corporations, are able to manipulate governments and jump from jurisdiction to jurisdiction to achieve their goals. *Id.* at 167; see also RICHARD WELFORD, CORPORATE ENVIRONMENTAL MANAGEMENT 3: TOWARDS SUSTAINABLE DEVELOPMENT 47-48 (2000).

68. ANDERSON & CAVANAGH, *supra* note 58, at 4. In the 1995-96 elections, corporations and corporate PACs contributed \$147 million to candidates running for federal office. In 1978, in *First National Bank v. Bellotti*, the Supreme Court affirmed the right of corporations to contribute to electoral campaigns. 435 U.S. 765 (1978); see also Bleifuss, *supra* note 16.

69. ANDERSON & CAVANAGH, *supra* note 58, at 4.

70. *Id.*

71. *Id.*

72. Sara Larrain, *The Case of Chile: Dictatorship and Neoliberalism*, in VIEWS FROM THE SOUTH 156 (2000); see also WELFORD, *supra* note 67, at 47-48.

cheap labor.<sup>73</sup> Developing countries are disadvantaged in trade negotiations with global corporations. For example, developing countries often lack resources and negotiating experience, and have very little to offer in complex deal making.<sup>74</sup> Even if a country has labor laws on the books that protect children and workers, government officials often do not enforce them due to corruption, weak bargaining power, or fear that the corporation will relocate to another country.<sup>75</sup>

Some global corporations are so large they can establish their own foreign policy independent of U.S. foreign policy.<sup>76</sup> Years ago, a director of Nestlé Corporation commented that Nestlé was neither a Swiss Corporation nor a multinational corporation but rather had its own nationality, “a Nestlé nationality.”<sup>77</sup> There is much truth to the comment that global corporations have their own nationality. If they can influence both the United States and other countries, in a very real sense, large global corporations do have their own nationality and can create their own foreign policy.

Although countries attempt to establish strong social safety nets to take care of their workers and children, it is difficult to integrate a developing country's economy into the global economy and to simultaneously protect the people.<sup>78</sup> The policies and practices of the World Trade Organization (“WTO”) and financial institutions, such as the World Bank and the International Monetary Fund (“IMF”), facilitate international commerce and marginalize human welfare, equity, and social justice.<sup>79</sup> With the pressure of competition stemming from the race to the bottom, developing countries often lower their regulatory requirements for global corporations, ignoring or eliminating laws that

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73. Benvenisti, *supra* note 66, at 181-82; *see also* Dot Keet, *Implications for Developing and Least Developing Countries*, in VIEWS FROM THE SOUTH 126-50 (2000).

74. Keet, *supra* note 73, at 126-58.

75. Jennifer Bol, *Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter-American System*, 13 AM. U. INT'L L. REV. 1135, 1176 (1998).

76. John Haddox, *Twin Plants and Corporate Responsibilities*, in PROFIT & RESPONSIBILITY 223, 227 (1985).

77. *Id.* at 227 (quoting Max Gloor, a director of Nestlé Corporation).

78. Vito Tanzi, *Globalization Without a Net*, FOREIGN POL'Y, July/Aug. 2001, at 78.

79. It is clear that international financial institutions, such as the World Bank and the IMF, have adversely affected the lives of people living in developing countries. It is also clear that they are an integral part of globalization and have influenced legal systems in many developing countries. Much more can be said about these institutions. However, the scope of this writing is limited to global corporations. *See generally* Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 N.Y.U. J. INT'L L. & POL. 244, 247-55 (2000) (providing additional information on globalization and financial institutions).

protect children or laws that make it difficult to terminate workers.<sup>80</sup> In the final analysis, developing countries remain at the mercy of large global corporations whose primary objective is maximizing profits at any price.

#### IV. GLOBAL CORPORATIONS AND EXPLOITATION

A number of reports suggest that U.S. corporations engage in human rights violations on a regular basis.<sup>81</sup> Although some corporations are now recognizing they have a social responsibility to workers and the environment, many U.S. corporations continue to exploit impoverished people and environments throughout the world.<sup>82</sup> Corporate social responsibility is considered an obstacle to increased profits.<sup>83</sup> The race to the bottom is a powerful force.<sup>84</sup> In testimony provided by Michael Rothbaum, Chairman of the Board of the American Apparel Manufacturing Association for the United States International Trade Commission, Rothbaum provided insight as to what factors a corporation looks for when looking to relocate a manufacturing plant. “[T]he single most important factor in deciding where to locate a plant is low wages.”<sup>85</sup> “Wage rates would be at the top.”<sup>86</sup> “[Y]ou will find your lowest wage rates naturally where the greatest pool of available labor is.”<sup>87</sup> According to Rothbaum, the key is to look for third world countries with high unemployment, poverty, malnutrition, and misery.<sup>88</sup> These factors “naturally” generate low wages.<sup>89</sup> According to Rothbaum, “a good example of such favorable conditions would be Haiti, where the legal

80. Tanzi, *supra* note 78.

81. NATIONAL LABOR COMMITTEE, MIL COLORES COMPANY (Apr. 2000); Junya Yimprasert, *Taiwan shoes' makers: Thai Workers*, CLEAN CLOTHES CAMPAIGN (Nov. 2000), at <http://www.cleanclothes.org/publications/00-11-thai.htm>. (reporting occurrences of human rights violations); see also Bob Herbert, *A Good Start*, N.Y. TIMES, Apr. 14, 1997, reprinted at <http://www.nclnet.org/press/newsclips/scan7.htm> (discussing sweatshops); Bill Varner, *Defense Dept., 5 Firms Cited for Exploitation*, THE COMMERCIAL APPEAL, Dec. 22, 2000, at C6, at 2000 WL 27946490 (discussing child labor and exploitation, sweatshops, and reports of occurrences of human rights violations).

82. STEVEN L. WARTICK & DONNA J. WOOD, INTERNATIONAL BUSINESS & SOCIETY (1998). Wartick and Wood provide business managers with ideas on how to address corporate social responsibility issues.

83. FRIEDMAN, *supra* note 42, at 133, 135.

84. Charles Kernaghan, *Behind Closed Doors*, in THE U.S. IN HAITI, NATIONAL LABOR COMMITTEE REPORT 31, 31-49 (1996) available at <http://www.nclnet.org/Haiti11.htm>.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

minimum wage is 30 cents an hour, or Honduras where the wage is 37 cents an hour.<sup>90</sup>

Free-market advocates argue that global corporations benefit developing countries by bringing new jobs to the country. Logically, an influx of new jobs would help any economy. Yet, in this new era of globalization, that does not appear to be the case. Despite the increase in the number of jobs in developing countries, poverty and the number of poor countries continue to grow.<sup>91</sup> It appears that the price of new jobs requires developing countries to relax or to remove certain labor laws for multinational corporations.<sup>92</sup> In the final analysis, the race to the bottom continues, and workers throughout the world are worse, or no better off, than they were before.

*C. Human Rights Violations, Mistreatment of Workers, Low Wages, Forced Labor, and Child Labor*

On April 29, 1996, a congressional committee heard testimony about the conditions of Global Fashions, a Honduran factory that employed five-year-old girls and paid them thirty-one cents an hour during a seventy-five-hour week.<sup>93</sup> This is not an isolated incident. Honduras is not the only country where child labor is a problem; nor is Global Fashions the only company engaged in child labor. Unfortunately, children are exploited by global corporations in several countries.<sup>94</sup> Between 120 and 250 million children ages five to fourteen are working

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90. *Id.*

91. Clyde Summers, *The Battle in Seattle: Free Trade, Labor Rights, and Societal Values*, 22 U. PA. J. INT'L ECON. L. 61, 69 (2001).

92. *Id.*

93. Steven Greenhouse, *A Crusader Makes Celebrities Tremble*, N.Y. TIMES, June 18, 1996, reprinted at <http://www.nlcnet.org/press/newslips/greenhou.htm> (last visited June 12, 2001); see also Bol, *supra* note 75, at 1137; see also NATIONAL LABOR COMMITTEE, MIL COLORES COMPANY (Apr. 2000); Eric Verhoogen, *How to Get Rich on 11 Cents an Hour*, in THE U.S. IN HAITI, NATIONAL LABOR COMMITTEE REPORT 1-29 (1996); Kernaghan, *supra* note 4, at 31-49.

94. Bill Varner, *Defense Dept., 5 Firms Cited for Exploitation*, THE COMMERCIAL APPEAL, Dec. 22, 2000, at C6, at 2000 WL 27946490; see also Katia Hetter, *Fifth Avenue March Protests Labor Abuse*, NEWSDAY, Dec. 7, 2000, at 2000 WL 10047911; Madeleine Grey Bullard, *Child Labor Prohibitions are Universal, Binding, and Obligatory Law: The Evolving State of Customary International Law Concerning the Unempowered Child Laborer*, 24 HOUS. J. INT'L L. 139 (2001); Ryan P. Toftoy, Note, *Now Playing: Corporate Codes of Conduct in the Global Theater. Is Nike Just Doing It?*, 15 ARIZ. J. INT'L & COMP. L. 905 (1998); Christopher M. Kern, *Child Labor: The International Law and Corporate Impact*, 27 SYRACUSE J. INT'L L. & COM. 177 (2000).

in developing countries.<sup>95</sup> Approximately 120 million of these children work full-time, and tens of millions of these children work under oppressive, exploitative, and hazardous conditions.<sup>96</sup> Most of these children live and work in developing countries.<sup>97</sup> Determining accurate data on the exact numbers is difficult because most developing countries do not record illegal activity, and no accepted definition of “child labor” exists.<sup>98</sup> Some countries view child labor as occurring at a certain biological stage instead of a chronological stage in a person’s life.<sup>99</sup> In some cultures, a child may be considered an adult upon reaching a certain biological stage rather than reaching a specific age.<sup>100</sup> The International Labour Organization (“ILO”) defines “child labor” as:

[W]ork that places too heavy a burden on the child; work that endangers his safety, health or welfare; work that takes advantage of the defenselessness of the child; work that exploits the child as a cheap substitute for adult labour; work that uses the child’s effort but does nothing for his development; work that impedes the child’s education and training and thus prejudices his future.<sup>101</sup>

The physical effects of work can affect children in numerous ways, including physical harm, susceptibility to disease, and social and emotional developmental harm.<sup>102</sup> Quantifying the harm children suffer is difficult but child labor has a profound effect on society.<sup>103</sup> Adult workers are displaced, and the vicious cycle of poverty is perpetuated.

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95. Kebebew Ashagrie, *Statistics on Working Children and Hazardous Child Labor in Brief* (1998) at <http://www.ilo.org/public/english/comp/child/stat.html> (3/9/03); see also Bol, *supra* note 75.

96. Bullard, *supra* note 94, at 139; see Ashagrie, *supra* note 95, at 1; see also Paul Kenyon, *Gap and Nike: No Sweat?*, BBC NEWS PANORAMA (Oct. 15, 2000), at <http://news.bbc.co.uk/1/hi/programmes/panorama/archive/970385.stm> (last visited Sept. 30, 2003) (discussing child labor and exploitation, working conditions, and sweatshops); Kern, *supra* note 94, at 191-93; Toftoy, *supra* note 94; Hetter, *supra* note 94; Varner, *supra* note 94.

97. Bol, *supra* note 75, at 1137 (citing BUREAU OF INT’L LAB. AFF., U.S. DEP’T OF LAB., *BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN AMERICAN IMPORTS* 2 (1994)).

98. *Id.* at 1139.

99. *Id.*

100. *Id.*

101. *Id.* at 1142.

102. *Id.* at 1144.

103. Moreover, employers can manipulate children in an easier fashion than adults, including paying them an outrageously low wage. *Id.* at 1148.

In addition to the exploitation of children, global corporations pay their workers outrageously low wages.<sup>104</sup> In the United States, people take for granted the idea that employers must pay their employees a minimum wage. Many companies operating in other countries do not even pay their workers a livable wage.<sup>105</sup> For example, workers at Quality Garments, S.A. (located in Haiti), which produces garments for Wal-Mart, Sears, and J.C. Penney, are paid as little as twelve cents an hour;<sup>106</sup> Ventura, Ltd., a subcontractor for K-mart and J.C. Penney paid its workers eleven cents an hour.<sup>107</sup> A Honduran factory, manufacturing Kathie Lee Gifford apparel for a Wal-Mart subcontractor, forced fifteen-year-old girls to work seventy-five-hour weeks at thirty-one cents per hour.<sup>108</sup>

To exacerbate the problem, working conditions in factories across the globe are deplorable.<sup>109</sup> Nike and Wal-Mart own factories in Asia and

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104. *Id.* at 1166; see also Verhoogen, *supra* note 93; NATIONAL LABOR COMMITTEE, ARE HUMAN RIGHTS CAMPAIGNS NECESSARY? (July 28, 1997), available at <http://www.nlcnet.org/DISNEY/Discut2.html>; Douglas S. Morrin, *People Before Profits: Pursuing Corporate Accountability for Labor Rights Violations Abroad Through the Alien Tort Claims Act*, 20 B.C. THIRD WORLD L.J. 427, 441 (2000).

105. See *supra* note 79; see also Laura Hol, Catherine Powell & Leti Volpp, *(Dis)assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry*, 31 HARV. C.R.-C.L. L. REV. 383 (1996); Verhoogen, *supra* note 93.

106. Verhoogen, *supra* note 93.

107. *Id.*

108. Greenhouse, *supra* note 93.

109. Bol, *supra* note 75, at 1166; see also Kernaghan, *supra* note 84; Paul Kenyon, *Gap and Nike: No Sweat?*, BBC NEWS PANORAMA (Oct. 15, 2000), available at <http://news.bbc.co.uk/1/hi/programmes/panorama/archive/970385.stm> (discussing child labor and exploitation, working conditions, and sweatshops); Kern, *supra* note 94; Toftoy, *supra* note 94; Hetter, *supra* note 94; Letter from Charles Kernaghan, Director, National Labor Committee in Support of Worker and Human Rights, to David Glass, President and CEO, Wal-Mart (June 17, 1999), available at <http://www.nlcnet.org/WALMART/bangwal.html> (regarding forced labor, low wages, working conditions, and sweatshops); Letter from Charles Kernaghan, Executive Director, National Labor Committee in Support of Worker and Human Rights, to Michael Eisner, Chief Executive Officer, Walt Disney Company (March 4, 1999), available at <http://www.nlcnet.org/DISNEY/Letmar.htm> (regarding forced labor, low wages, working conditions, and sweatshops); NATIONAL LABOR COMMITTEE, HERMOSA FACTORY EL SALVADOR, NBA, NIKE (OHIO STATE, DUKE, NORTH CAROLINA, MICHIGAN, ARIZONA AND GEORGETOWN UNIVERSITIES) ADIDAS, PUMA, available at <http://www.nlcnet.org/elsalvado/0401/hermosa.htm> (regarding forced labor, low wages, working conditions, and sweatshops); NATIONAL LABOR COMMITTEE, WAL-MART'S SHIRTS OF MISERY, available at <http://www.nlcnet.org/WALMART/bangwal.html> (regarding forced labor, low wages, working conditions, and sweatshops); Press Release, National Labor Committee in Support of Worker and Human Rights, National Basketball Association Uses Salvadoran Sweatshops (2001), available at <http://www.cleanclothes.org/publications/01-05-16.htm> (discussing forced labor, low wages, and working conditions); Dana O'Rourke, *Comments on the Vietnam Section of the Tuck School Report: "Nike, Inc.: Survey of*

Central America with unbelievable working conditions.<sup>110</sup> Examples of poor conditions that violate local legal standards include exposure to petroleum-based solvents, which cost more than the use of water-based solvents,<sup>111</sup> and poor air quality, causing exposure of workers to carcinogens such as toluene, which can cause liver, kidney, and central nervous system damage.<sup>112</sup> Employees in Guatemala have reported working eleven hours per day for six days per week while receiving only half of a livable wage.<sup>113</sup> Employees have also reported being locked up at the work site until shipments were complete.<sup>114</sup> Verbal abuse and sexual assault are also common,<sup>115</sup> and when women workers become pregnant, they are fired.<sup>116</sup>

#### D. Corporations and the Environment

Exploitation of the environment can take many forms. This section will briefly consider only the following two forms of exploitation: (1) exporting natural resources to the point that the ecosystem and life in developing countries is significantly altered, and (2) dumping toxic and dangerous byproducts into the environment without proper clean up.

**1. Exportation of Natural Resources.** Corporations, such as Exxon-Mobil, have been major participants in affecting world events. While few people associate oil with war, the desire for oil has been the impetus for violence in a number of countries. Global corporations who

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*Vietnamese and Indonesian Domestic Expenditure Levels*," CORPWATCH (Feb. 17, 1998), available at <http://www.igc.apc.org/trac/nike/tuck.html>. (low wages; working conditions); Steven Van Yoder, *Beware the Coming Corporate Backlash*, INDUS. WEEK, Apr. 2, 2001, at 38, at OCLC FirstSearch, WilsonSelect, Accession No. BBPI01031718 (working conditions); Letter from Clean Clothes Campaign to Levi's (Feb. 17, 2000), available at <http://www.cleanclothes.org/companies/levi00-02-17.htm> (commenting on Levi's poor working conditions); (abuse of employees) Paul Nuki, David Leppard, Gareth Walsh, and John Phillips, *Production in Eastern Europe: Top Shops Use Europe's 'Gulag' Labour*, SUNDAY TIMES (Sept. 27, 1999), at <http://www.cleanclothes.org/news/99-9-27.htm>; Junya Yimprasert, *Taiwan shoes' Makers: Thai Workers*, CLEAN CLOTHES CAMPAIGN (Nov. 2000), at <http://www.cleanclothes.org/publications/00-11-thai.htm> (reporting of occurrences of human rights violations).

110. Varner, *supra* note 94.

111. *Nike Reports Use of Safer Solvents*, N.Y. TIMES, Nov. 17, 1998, at 6, LEXIS, News & Business Library.

112. Steven Greenhouse, *Nike Shoe Plant in Vietnam Is Called Unsafe for Workers*, N.Y. TIMES, Nov. 8, 1997, at A1, (referring to internal inspection report prepared by Ernst & Young).

113. Bol, *supra* note 75, at 1166.

114. *Id.*

115. *Id.*; see also Verhoogen, *supra* note 93.

116. Verhoogen, *supra* note 93.

reap the benefits of access to oil have played a role in wars in many countries including Nigeria,<sup>117</sup> Kuwait-Iraq in the 1990s, and in recent times there is evidence to suggest that the U.S.-Iraq war of 2003 is actually a war for oil.<sup>118</sup> Moreover, global corporations have a tremendous impact on people in developing countries due to the extraction of natural resources.<sup>119</sup>

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117. Oronto Douglas, *The Case of Nigeria: Corporate Oil and Tribal Blood Neoliberalism*, in VIEWS FROM THE SOUTH 159-63 (2000).

118. Steven R. Weisman, *Truth Is The First Casualty. Is Credibility the Second?*, N.Y. TIMES, June 8, 2003, available at <http://www.nytimes.com/2003/06/08/weekinreview/08WEIS.html?>; see also Timothy L. O'Brien, *Just What Does America Want to Do With Iraq's Oil?*, N.Y. TIMES, June 8, 2003, at 5, available at <http://www.nytimes.com/2003/06/08/weekinreview/08OBRI.html>.

119. Beth Stephens, *The Amoralty of Profit: Transnational Corporations and Human Rights*, 20 BERKELEY J. INT'L L. 45 (2002) (examples of multinational corporations ("MNCs") extracting natural resources of other countries; examples of MNCs environmental abuses in other countries); see also *Doe I v. Unocal Corp.*, 2002 U.S. App. LEXIS 19263 (9th Cir. Sept. 18, 2002) (providing extensive factual background), *reh'g en banc granted and vacated by* 2003 U.S. App. LEXIS 2716, at \*3 (9th Cir. Feb. 14, 2003). This case provides examples of MNCs extracting natural resources of other countries. Plaintiffs, villagers from Myanmar (formerly Burma), brought suit against Unocal, Total (a foreign corporation), and individual officers of Unocal, under the Alien Tort Claims Act ("ATCA"), 28 U.S.C. § 1350, for allegedly subjecting plaintiffs to forced labor, murder, rape, and torture in connection with the building of an oil pipeline owned by Unocal and Total. See also *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161 (5th Cir. 1999) (examples of MNCs extracting natural resources of other countries and of MNCs environmental abuses in other countries). Plaintiff, a resident of Tamika, Irian Jaya within the Republic of Indonesia, brought suit against Freeport-McMaron, a Delaware corporation headquartered in Louisiana, under the ATCA and the Torture Victim Protection Act of 1991, 28 U.S.C. § 1350, alleging that the company, through its mining operation in Indonesia, committed environmental abuses, human rights violations, and cultural genocide. *Id.* at 163. The court of appeals upheld the district court's dismissal of Beanal's claims under FED. R. CIV. P. 12(b)(6). *Id.* at 169; *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88 (2d Cir. 2000) (examples of MNCs extracting natural resources of other countries; shell oil exploration activities and the death of Ken Saro-Wiwa); see also Press Release, Human Rights Watch, *Corporations and Human Rights: Recent Human Rights Violations in Nigeria's Oil Producing Region* (Feb. 23, 1999), available at <http://www.hrw.org/advocacy/corporations/nige-update.htm> (examples of MNCs extracting natural resources of other countries and of MNCs environmental abuses in other countries, and accusations of human rights abuses and environmental damage by Chevron, Mobil (US corporations), Royal Dutch/Shell (Dutch-British corporation), Elf Aquitaine (French corporation), and Agip (Italian corporation)); HUMAN RIGHTS WATCH, *THE PRICE OF OIL: CORPORATE RESPONSIBILITY AND HUMAN RIGHTS VIOLATIONS IN NIGERIA'S OIL PRODUCING COMMUNITIES* (1999), available at <http://www.hrw.org/reports/1999/nigeria/> (examples of MNCs extracting natural resources of other countries and of MNCs environmental abuses in other countries; Shell, Chevron, Mobil, oil spills in Nigeria; Death of Ken Saro-Wiwa); Press Release, Human Rights Watch, *Enron Defense of Human Rights Abuse Rejected* (Jan. 28, 1999), available at <http://www.hrw.org/press/1999/jan/enron0129.htm> (examples of MNCs extracting natural resources of other

**2. Dumping Toxic and Dangerous Byproducts Without Clean-up.** Examples of environmental damage in other countries by U.S. corporations include spilling 2.5 million barrels of oil in the Niger delta from 1986 to 1996,<sup>120</sup> and dumping oil, plastic wastes, nuclear radioactive wastes, and other toxic materials in Mexico, Latin American countries, and the Arctic.<sup>121</sup>

## V. FREEDOM AND DEMOCRACY

All U.S. citizens associate freedom and democracy with the United States. Some believe that no other country embraces freedom and democracy like this beloved country. These ideals become part of how Americans think. Interestingly they become part of the rhetoric of every political speech. For example, in foreign policy, and when the country is engaged in war, the United States's purpose is to "spread democracy," the soldiers are called "freedom fighters," and the wars, at least the recent ones, are to "defend our freedom."

But what do people outside U.S. borders think?

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countries, allegations of human rights abuses, and environmental abuses by Enron in connection with a power plant in Maharashtra, India).

120. Marina Ottaway, *Reluctant Missionaries*, FOREIGN POL'Y, July/Aug. 2001, at 44, 48.

121. Judith Kimerling, *Rights, Responsibilities, and Realities: Environmental Protection Law in Ecuador's Amazon Oil Fields*, 2 SW. J. L. & TRADE AM. 293 (1995) (discussing examples of MNCs environmental abuses in other countries and Texaco dumping oil in Ecuador); see also AMAZON WATCH, CHEVRON/TEXACO OPERATIONS IN ECUADOR, available at [http://www.amazonwatch.org/megaprojects/ec\\_chevttox/legal/ecuador\\_chevtex\\_facts.html](http://www.amazonwatch.org/megaprojects/ec_chevttox/legal/ecuador_chevtex_facts.html) (examples of MNCs environmental abuses in other countries and Texaco dumping oil in Ecuador); Scott Holwick, Note & Comment, *Transnational Corporate Behavior and Its Disparate and Unjust Effects on the Indigenous Cultures and the Environment of Developing Nations: Jota v. Texaco, A Case Study*, 11 COLO. J. INT'L ENV'T'L L & POL'Y 183 (2000) (discussing examples of MNCs environmental abuses in other countries and Texaco dumping oil in Ecuador); Ann Leonard, *Dumping Pepsi's Plastic*, MULTINATIONAL MONITOR, available at [http://multinationalmonitor.org/hyper/issues/1994/09/mm0994\\_06.html](http://multinationalmonitor.org/hyper/issues/1994/09/mm0994_06.html) (examples of MNCs environmental abuses in other countries and Pepsi dumping plastic waste in India); Ann Leonard, *South Asia: The New Target of International Waste Traders*, MULTINATIONAL MONITOR, at [http://www.multinationalmonitor.org/hyper/issues/1993/12/mm1293\\_08.html](http://www.multinationalmonitor.org/hyper/issues/1993/12/mm1293_08.html) (examples of MNCs environmental abuses in other countries and Gaston Copper Recycling, Hy-Tex Marketing, Stoller Chemical, and Southwire (South Carolina companies) secretly mixing hazardous waste in fertilizer purchased by Bangladesh government); Russell Mokhiber & Robert Weissman, *Bad Apples in a Rotten System: The 10 Worst Corporations of 2002*, MULTINATIONAL MONITOR, Dec. 2002, available at <http://www.multinationamonitor.org/mm2002/02december/dec02corp1.html> (examples of MNCs environmental abuses in other countries, Shell attempting to dispose of offshore oil storage facility in North Sea, and oil spill by Shell-chartered bunker south of Singapore).

After the terrorist attack on September 11, 2001, the shock and disbelief that something of that magnitude could happen in the United States caused Americans to ask: “Why would someone do this?” and “Why do they hate us?” While no American can answer these questions with certainty, Americans should pause and consider the role U.S. corporations play abroad.

A. *A Message of Freedom and Democracy*

Do global corporations convey a message of freedom and democracy to the world, or is the message the exact opposite?<sup>122</sup> If global corporations engage in human rights violations, the message conveyed cannot be one of freedom and democracy. The message is one of American greed and exploitation. Some scholars argue that U.S. corporations exploit the world’s population and resources in ways that deprive people of their freedom.<sup>123</sup>

The very nature of the corporation is far from democratic. Corporations are hierarchical and do not operate under a democratic system. The individuals who manage and control corporations are not elected “by the people.” In theory, shareholders elect a board of directors who in turn manages the business. In reality, the board of directors, i.e., management through proxies, selects its own people.<sup>124</sup> Directors and their chief executive officers are paid enormous salaries to take the corporation as far as it will go. The board of directors dictates how the company will operate, where it will operate, and how employees and resources are used. The corporate structure is hierarchical where the bottom level employee has little if any power on how the business operates. This bottom-level employee is expendable—like fungible materials. Most employees have absolutely no say or vote in how the business operates. If bottom level employees complain or do not follow company rules, they are fired. Corporations are governed and controlled by a relatively small group of people. The corporate world is very competitive, very cut-throat, and very nondemocratic. The corporation is structured like no democracy anywhere.

A democracy, by definition, is a system run “by the people;” people have the option and the opportunity to voice their opinions and have the freedom to choose. This is hardly the case within a corporate structure and hardly the case with corporations operating in developing countries.

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122. Vandana Shiva, *War Against Nature and the People of the South*, in VIEWS FROM THE SOUTH 123 (2000); see also Sara Larrain, *The Case of Chile: Dictatorship and Neoliberalism*, in VIEWS FROM THE SOUTH 156-59 (2000).

123. Shiva, *supra* note 122.

124. This is often the case with publically traded corporations.

Corporations often close assembly plants and factories in the United States to relocate to other countries despite the objection of their U.S. employees. Similarly, workers in developing countries where corporations relocate have few to no options. If the choice is between starving or working in a factory for twelve hours a day, there is no real choice, and the worker will avoid starvation. If the choice is between feeding the family or working in an assembly plant for six to seven days per week, there is no real choice, and the worker will feed his family. On the other hand, people born in the United States have options. Besides labor regulations that ensure a minimal level of safe working conditions, people can choose to move from one job to another and still be certain they will be paid at least a minimum wage. Corporate executives have options. People living in developing countries do not have similar options.

Global corporations, on the other hand, do have the freedom and the option to provide safe working conditions and livable wages. Moreover, corporations also have the option to pay adults a reasonable salary so that children do not have to work. Corporate executives may argue that global corporations are creating jobs that developing countries would not normally have. But who benefits in developing countries when a global corporation comes to town? Is it a small percentage of wealthy people or the vast number of workers? Do the people in developing countries have improved qualities of life, or are the countries in fact becoming poorer and more enslaved?<sup>125</sup>

Corporations have the option to provide safe working conditions, livable wages, and safe environments. Corporations have freedom, but the same cannot be said of their employees. While it is certain that top government officials and the corporate bottom lines are better off because of globalization, the number of poor countries continues to increase despite the increase in jobs.<sup>126</sup>

### *B. Corporations as U.S. Ambassadors*

Because of their dominant presence in developing countries, U.S. corporations are essentially American business ambassadors. Corporate executives negotiate with leaders of foreign countries just as if they were heads of state.<sup>127</sup> In an indirect way, they represent the United States and its people. Their actions in foreign countries, while not binding on

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125. Larrain, *supra* note 122, at 156.

126. Summers, *supra* note 91, at 85-86.

127. Comment on meeting between Bill Gates, chairman of Microsoft and Jiang Zemin, President of China in 1995. THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* 195 (1999).

the United States, provide the people in those countries with a perspective of American policies and beliefs. People living in countries where U.S. corporations exist view these companies' practices and policies as if they were American practices and policies. Contributing to this problem of perception is the U.S. government doing nothing to stop civil and human rights violations by U.S. corporations. When the U.S. government allows a U.S. corporation to venture to another country, establish factories, and exploit that country's people, the U.S. government has essentially approved of that exploitative practice.

### C. *The Message We Convey*

Every business conveys a message to its suppliers, consumers, and employees. Global corporations are no different. Consumers living in the United States benefit from low-priced products. To a great extent, the American image of Wal-Mart, Kohls, and Nike is determined by what Americans see on television and in newspaper ads. But these companies certainly convey messages to their employees as well. What do the people working in Wal-Mart's factory plants think of Wal-Mart? What do they think of the United States as a result of Wal-Mart's activities in those countries? Do the countries where global corporations operate benefit from the presence of global corporations?

Part of the message of democracy is the advocacy of freedom, but there is a stark paradox in American rhetoric. On one hand, Americans embrace principles of freedom and believe a business should be free to conduct business as it pleases. On the other hand, Americans close their eyes to corporate activity in other countries and fail to see the human cost of depriving other people of their freedom. When a person is forced to work countless hours under deplorable conditions, the rhetoric of freedom and democracy falls apart. Many forms of slavery and indentured servitude exist.<sup>128</sup> Forced labor is essentially another form of slavery.<sup>129</sup> As long as free trade is coupled with child labor or forced

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128. Summers, *supra* note 91, at 77.

129. Letter from Charles Kernaghan, Director, National Labor Committee in Support of Worker and Human Rights, to David Glass, President and Chief Executive Officer, Wal-Mart (June 17, 1999), available at <http://www.nlcnet.org/WALMART/bangwal.html> (regarding forced labor, low wages, working conditions, and sweatshops); see also Letter from Charles Kernaghan, Executive Director, National Labor Committee in Support of Worker and Human Rights, to Michael Eisner, Chief Executive Officer, Walt Disney Company (Mar. 4, 1999), at <http://www.nlcnet.org/DISNEY/Letmar.htm> (regarding forced labor, low wages, working conditions, and sweatshops); NATIONAL LABOR COMMITTEE, HERMOSA FACTORY EL SALVADOR, NBA, NIKE (OHIO STATE, DUKE, NORTH CAROLINA, MICHIGAN, ARIZONA AND GEORGETOWN UNIVERSITIES) ADIDAS, PUMA, available at <http://www.nlcnet.org/elsalvado/0401/hermosa.htm> (regarding forced labor, low wages,

labor, no one can claim freedom and democracy are at work.<sup>130</sup> If the United States truly embraces the principles of freedom and democracy, it cannot allow U.S. corporations to engage in any form of indentured servitude or slavery.

Allowing forced labor and child labor certainly creates resentment and tension within the developing countries. The United States pays a price when the message conveyed by its “business ambassadors” is not one of freedom and democracy but rather one of exploitation and greed. The price the United States pays is a damaged reputation and the belief that the rhetoric of freedom and democracy is, in reality, empty words.

#### *D. Corporations Creating Foreign Policy and Delivering a Message of Democracy*

Although global corporations maintain significant economic and political power, they do not have the capacity to create U.S. foreign policy. First, as mentioned, the corporation itself is not governed “by the people.” The structure of the corporation is such that the few individuals who manage and control the company are quite removed from the people that the corporation affects. Second, the primary motivation of the corporation is to maximize profit at whatever cost. Historically, corporations have pushed the limit as to their activities as long as there is no regulation.<sup>131</sup> With little or no guidance and the selfish objective of increasing profits, corporate boards lack the capacity to develop foreign policy, much less assist countries in developing systems of peace, democracy, and freedom.<sup>132</sup>

Marina Ottaway, a senior associate at the Carnegie Endowment for International Peace, argues convincingly that corporations cannot preach

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working conditions, and sweatshops); NATIONAL LABOR COMMITTEE, WAL-MART'S SHIRTS OF MISERY, at <http://www.nlcnet.org/WALMART/bangwal.html> (regarding forced labor, low wages, working conditions, and sweatshops); Press Release, National Labor Committee in Support of Worker and Human Rights, National Basketball Association Uses Salvadoran Sweatshops, available at <http://www.cleanclothes.org/publications/01-05-16.htm> (discussing forced labor, low wages, and working conditions); Symposium, *Controlling Corporate Wrongs: The Liability of Multinational Corporations*, Report of the International IRENE Seminar on Corporate Liability and Workers' Rights Held at the University of Warwick, Coventry, U.K. (Mar. 20-21, 2000), available at <http://www.cleanclothes.org/publications/corp3.htm> (discussing forced labor); Kimberly Gregalis Granatino, *Corporate Responsibility Now: Profit at the Expense of Human Rights with Exemption from Liability*, 23 SUFFOLK TRANSNAT'L L. REV. 191, 192 (1999).

130. Summers, *supra* note 91, at 67.

131. WELFORD, *supra* note 67, at 48.

132. *Id.*

the “gospel of human rights and democracy.”<sup>133</sup> Corporations tend to “pass the buck,” and it is not in their nature to further “moral causes.”<sup>134</sup> Ottaway contends that “the concept of oil-company executives lecturing developing-country officials on human rights and democratic governance is jarring because it evokes an image from a past that should not be restored: charter-company officials who saw themselves as agents of civilizations in distant countries ‘not ruled by Christian kings.’”<sup>135</sup> Corporations simply do not have the capacity to carry messages of freedom and democracy.<sup>136</sup>

If the United States desires to further freedom and democracy, it must require corporations to embrace these principles when doing business throughout the world. The idea is not to forbid companies from doing business in developing countries, but rather to require that the business relationship respect the impact of corporate activities on employees, suppliers, and the environment of the host country.<sup>137</sup> In this way, the United States’s presence will be welcomed in countries, and its message will be one of democracy, freedom, and mutual benefit, rather than exploitation and oppression.

Democracy and freedom require that people be treated with dignity and respect. While some nongovernmental organizations (“NGOs”) encourage corporations to exert pressure on foreign countries where they do business to become more democratic and to eliminate human rights violations,<sup>138</sup> global corporations must do more.

## VI. IMPROVING CORPORATE SOCIAL RESPONSIBILITY ON A GLOBAL SCALE

Improving corporate social responsibility on a global scale is an enormous task. Resolving isolated incidents of employee exploitation is difficult enough without trying to improve conditions in many countries at the same time. The task is overwhelming. The problems of working

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133. Marina Ottaway, *Reluctant Missionaries*, FOREIGN POL’Y, July/Aug. 2001, at 44, 53.

134. *Id.* at 53

135. *Id.*

136. WELFORD, *supra* note 67, at 46-49.

137. In *Corporate Environmental Management 3*, Professor Richard Welford states:

Business has yet to realize that if the international economic order continues and that if the demands of sustainable development are ignored, then they are bringing about their own demise. There is an environmental crises in the world, but perhaps it is not yet of the magnitude which will force business (and government) to face up to their real responsibilities.

*Id.*

138. Ottaway, *supra* note 120, at 46.

conditions, child labor, and the environment should not be ignored. It is in the best interest of the United States and the people around the globe to explore solutions to the problem of human rights violations. If the United States truly believes in the ideals of freedom and democracy, it must practice what it preaches. The United States must take a close look at the phenomenon of the race to the bottom and the role that global corporations play in world economics and politics.<sup>139</sup> If U.S. global corporations are in fact nurturing a world of resentment towards the United States, then all Americans are indirectly affected by global company activities and their foreign policies. It may now be time for new legislation.

Historically, corporations have been relatively unregulated. Not until the 1930s, following the stock market crash of 1929, did corporate activity enter the spotlight in Congress. Congress determined that corporate fraud and greed played a significant role in the stock market crash and passed the Securities Act of 1933<sup>140</sup> and the Securities Exchange Act of 1934.<sup>141</sup> The Securities Act of 1933 essentially requires companies selling securities to the public to register with the Securities and Exchange Commission ("SEC") and disclose specific information to potential investors.<sup>142</sup> The Securities Exchange Act of 1934 created the SEC<sup>143</sup> and includes provisions addressing fraud and

139. Richard Heinberg, *A History of Corporate Rule and Popular Protest*, NEXUS MAG., Oct.-Nov. 2002, available at <http://www.nexusmagazine.com/corporations.html>.

140. Securities Act of 1933, 15 U.S.C. §§ 77a-77aa (2000).

141. Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78mm (2000).

142. 15 U.S.C. §§ 77a-77aa (2000).

143. Securities Exchange Act of 1934, section 78d reads as follows:

There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this chapter. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after June 6, 1934, shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one

insider trading.<sup>144</sup> Both Acts were designed to protect potential investors from overzealous corporations.<sup>145</sup> By passing both the 1933 Act and the 1934 Act, Congress recognized that large corporations do, in fact, have significant power over the economy. Moreover, if large businesses are left unchecked, they may engage in activities that harm innocent people. Although initially corporate executives complained that the disclosure requirements imposed by the Securities Act of 1933 would disrupt commerce, the burden placed on corporations has been reasonable, and America is better due to the regulations. Seventy years have passed since the Securities Act of 1933 was adopted. Clearly, government intervention and legislation have strengthened the economy. Beginning with securities regulation, legislation that protects investors, workers, consumers, and the environment has made the country safer and stronger, and has resulted in a better quality of life.<sup>146</sup>

Recognizing the limitations of passing new legislation, the following suggestions are put forth as ideas for dialog on the possibilities of addressing corporate social responsibilities regarding working conditions and wages of global employees and human rights. Advocates for free trade will certainly disagree with the following, but solutions must be explored if people are ever to live in a fair, just, and peaceful world.

*A. Disclosure Requirement to Make Global Corporations Transparent*

The greatest obstacle to improving working conditions in other countries or addressing environmental issues is corporate operations that exist miles from the United States and are literally “out of sight and out of mind.” People simply do not know what is happening throughout the world and, therefore, do not care. A person living in the United States has difficulty conceiving of a seven-year-old child working sixty-hour weeks to produce shirts that can be purchased at Wal-Mart for twelve dollars. A student in a Business Entities course once argued that a “CEO of a U.S. corporation would never allow sweat shops to be part of his company.”<sup>147</sup> United States citizens simply want to believe Ameri-

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at the end of three years, one at the end of four years, and one at the end of five years, after June 6, 1934.

15 U.S.C. § 78d.

144. 15 U.S.C. §§ 78a-78mm.

145. Securities Act of 1933, 15 U.S.C. §§ 77a-77aa; Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78mm.

146. *A Short History of Corporations*, NEW INTERNATIONALIST (July 2002), available at <http://www.newint.org/issue347/history.htm>.

147. This statement was made by a student in the author's Business Entities course at Texas Tech University in the fall of 2002 during a discussion on corporate social responsibility.

cans are good people, so they convince themselves that U.S. corporations do not exploit other human beings. Anything else "is simply not possible."<sup>148</sup>

**1. Corporate Transparency.** To effectively address the problems caused by corporate activity abroad, global corporations must become transparent. In other words, corporate activities must be visible for the world to see. Information regarding the activities of global corporations must be made available to the public. The simple act of making corporations more transparent to the public would likely have the effect of improving work conditions, employee wages, and the environment where global corporations operate. If a company is exploiting children or the environment, the fear of what bad press would do to the corporation's image and, ultimately, its profits would likely encourage the company to change its practices.<sup>149</sup> Such openness would allow market forces and public outcry at inhumane company practices to drive companies to account for their activities. When a corporation's exploitive activities are exposed to the public, the company will change its behavior.<sup>150</sup>

**2. Disclosure Statement.** That corporations have relocated to other countries to avoid higher wages and labor regulations is no secret. That corporations have enjoyed the secrecy that comes with operating in another country is certain. However, some activities and practices should not be secret. To make corporations more transparent, a disclosure statement should be required of global corporations. The statement could be called a "Foreign Operations Disclosure Statement." The idea is not new. Today all companies seeking to sell securities to the public must file a disclosure statement with the SEC.<sup>151</sup> The disclosure statement filed with the SEC is called a "Registration Statement" and requires extensive information about the company and

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148. *Id.*

149. Barry Bearak, *Kathie Lee and The Sweatshop Crusade*, L.A. TIMES, June 14, 1996, at A1.

150. Jim Sessions, *Cross Border Blues*, FORUM FOR APPLIED RESEARCH & PUBLIC POL'Y (Spring 1999); see also Bearak, *supra* note 149; *Kathie Lee's Clothing Label; Child labor; Bad Publicity for Celebrity Endorsement Illuminates Plight of Young Workers*, BALTIMORE SUN, Aug. 12, 1996, at 10A.

151. Securities Act of 1933, 15 U.S.C. § 77c. Under certain circumstances, smaller companies may be exempt from filing with the SEC but may still be required to file disclosure statements in the state where they conduct business. *Id.*

its securities.<sup>152</sup> For example, under the Securities Act of 1933, a company wishing to sell stock to the public must disclose detailed information about its company, including information on management, the names of shareholders owning more than ten percent of the company, the nature and type of business, its capital structure, the names and addresses of its attorneys, and extensive financial information.<sup>153</sup> Only after the SEC approves the Registration Statement may a company sell securities to the public.<sup>154</sup>

In the case of global companies doing business abroad, a Foreign Operations Disclosure Statement ("Disclosure Statement") could require certain information about employee wages, working conditions, and the environment. The statement could include some of the same basic information that is currently required by the SEC, such as names, addresses, and information about management. But the key part of the Disclosure Statement would be extensive information about the company's employees and the environment. For example, the information required could include a periodic report on wages paid to its workers, employee hours worked per day and week, and the ages of its workers. The objective would be to make the corporation transparent regarding its operations in other countries.

Developing a Disclosure Statement would not be easy. The exact contents of the report would have to be well researched in order to make the Disclosure Statement useful. Ambiguity should be avoided to achieve full disclosure. Data is easily manipulated if the information requested is not specific and well defined. For example, the definition of a "child" varies from country to country.<sup>155</sup> Poorly defined terms can create loopholes and allow for manipulation of the truth. The statement would also need to address issues of companies working with subcontractors located in foreign countries. Global corporations now attempt to shift responsibility by hiring subcontractors who then hire the employ-

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152. See Securities Act of 1933, 15 U.S.C. § 77g and the related Schedule A, 15 U.S.C. § 77aa.

153. 15 U.S.C. § 77aa.

154. For a company to sell securities to the public, it must also provide potential investors with a "prospectus," which is an abridged version of the Registration Statement.

155. Moreover, even definitions established by international organizations may vary. According to the United Nations Convention on Rights of the Child, a child is someone under eighteen years old unless domestic law provides otherwise; the International Labor Organization's convention No. 138, states that "the minimum age of work must not be less than the age of completion of compulsory schooling and, in any case, cannot be less than fifteen years old." Jennifer Bol, *Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter-American System*, 13 AM. U. INT'L L. REV. 1135, 1140 (1998).

ees. These partnerships or subcontractor relationships make disclosure reporting more difficult. A company can easily hide information by contracting with a subcontractor. The Disclosure Statement would need to include subcontractor information, or at a minimum, a list of the partnerships or subcontractors associated with the corporation.

In addition, requiring a filing with the government at least twice annually may be necessary. This should include information not only about workers currently employed, but also about those employed since the date of the last report. This would insure that the workforce has not changed just for the reporting day. The Disclosure Statement could also require certification from top management that the company is not engaged in any human rights violations.<sup>156</sup> Finally, the report should require top management's signature to ensure that top management is aware of the contents of the report.

That global corporations will oppose such a requirement is almost certain. They will argue that a Disclosure Statement would be an overwhelming burden. But it would not be different from the complaints launched by corporate officials in the 1930s regarding the requirements of the Securities Act of 1933. Moreover, if corporate scandals, such as those involving Enron, Worldcom, and Tyco, continue, then the mistrust of corporate America may open a window of opportunity for new legislation. Recent scandals like the Enron implosion have made the public more aware of corporate activities and their impact on investors, employees, and the general public.

**3. Sanctions.** Just as companies who fail to file with the SEC are subject to sanctions,<sup>157</sup> corporations who fail to file a Disclosure Statement could be subject to sanctions. Similarly, companies that provide false or misleading information should also be sanctioned. Sanctions could include financial penalties and a visit from a "monitoring commission."

#### *B. Monitoring Corporate Activity Abroad*

Toward the goal of making global corporations more transparent, an independent monitoring commission should be established that would be responsible for monitoring U.S. global, corporate activities in other countries. While the SEC may not provide the best model in the wake of Enron, Worldcom, and the like, it is an example of a government

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156. There should also be a process by which companies must post a notice (similar to employment laws in U.S.) that employees can report complaints to the Monitoring Commission without fear of losing their jobs.

157. Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78mm.

entity that provides some oversight of corporate behavior. The ideal monitoring commission model may well come from a combination of existing organizations. The Fair Labor Association ("FLA") is a coalition that grew out of the Kathy Lee Gifford controversy in the late 1990s.<sup>158</sup> The FLA and major global apparel companies have agreed on a uniform system of monitoring using external monitors that can make surprise visits.<sup>159</sup> If a company satisfies certain standards, the company may attach an FLA label to its products.

In addition, a monitoring commission could have the power to review the Disclosure Statement to check its accuracy. Yet the primary function of the commission would be to monitor and investigate corporate activities such as whether (1) liveable wages are paid to employees, (2) employees are forced to work overtime without compensation, (3) workers are exploited or abused, (4) employees are provided with protective gear when working with dangerous chemicals, (5) corporations are engaged in human rights violations, (6) children are employed, and (7) corporations are complying with environmental laws. Only unannounced investigations will find the companies that engage in exploitive or illegal behavior, such as child labor.<sup>160</sup>

The ideal monitoring commission would have an enforcement branch. The enforcement branch would have the power to investigate and sanction companies that violated U.S. laws and regulations, engaged in illegal activities, or violated human rights. In addition, it would have the power to sanction companies for failure to submit a Disclosure Statement or rendering false or misleading information.

Establishing a commission to oversee corporate activity would require that the members of the commission be carefully qualified. Unlike the SEC, which consists of five members, two of whom are Democrat and two of whom are Republican,<sup>161</sup> the monitoring commission must include representatives from human rights organizations. Ideally, members should come from organizations from all parts of the world. Given the immense size of the task, the ideal commission would have the power to draft rules. This would be similar to the power the SEC has

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158. THOMAS FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* 207 (1999).

159. *Id.* at 208.

160. Only with unannounced visits by a Commission could certain activities be detected. For example, child labor may go unnoticed if not investigated. But there are a slew of other activities, such as labeling garments with a tag that reads, "Made in USA." Classic Apparel, located in Haiti and producing clothes for H.H. Cutler and Wal-Mart, attached the label, "Made in USA." Charles Kernaghan, *Behind Closed Doors, in THE U.S. IN HAITI*, NATIONAL LABOR COMMITTEE REPORT 31-49 (1996).

161. Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78mm.

to develop and implement rules.<sup>162</sup> A monitoring commission could have a great impact on making global corporations more transparent.

### C. Open Information Requests of Global Corporations

Another proposal to curtail human rights violations and make the corporations more transparent would be to allow “open information” requests of global corporations. Currently, the open information laws apply to federal and state public agencies.<sup>163</sup> Publicly funded institutions, such as state governments, are subject to open information requests with certain exceptions. For example, the Freedom of Information Act (“FOIA”)<sup>164</sup> requires that the federal government provide requested information to citizens on the premise that the government is supported by taxpayers, and therefore, taxpayers are entitled to information about their governments.<sup>165</sup>

Recognizing that corporations are not governmental entities and would very likely have many advocates arguing that they should not be subject to any form of open information legislation,<sup>166</sup> a narrowly tailored law could provide the transparency needed while protecting the corporation from overzealous inquiries.

To ensure that the law was not abused by overzealous researchers, the monitoring commission could serve as the conduit for conducting open information requests. Moreover, it could review information requests for reasonableness. Requests could be limited to information that leads to discovery of human rights violations and exploitation of the environment. For example, currently no requirement exists for corporations to make public the following information: (1) a break down of the number of employees by country, (2) toxic emissions at plants located in foreign countries, (3) locations of plants and contractors located in foreign countries, (4) wage rates at foreign plants, and (5) the number of layoffs

162. *Id.*

163. Compare Freedom of Information Act, 5 U.S.C. § 552 (1996 & Supp. 2003), with Texas Open Records Act, TEX. GOV'T CODE ANN. §§ 552.001-.353 (Vernon 1994), and Legislative Open Records Act, CAL. GOV'T CODE §§ 9070-9080. (West 1992); COLO. REV. STAT. § 24-72-201 (2001) (Most states have similar laws that apply.).

164. 5 U.S.C. § 552 (1996 & Supp. 2003).

165. *Id.*

166. Kohl's shareholders overwhelmingly defeated a proposal from one of its shareholders (who owned 200 shares) requesting that “the company prepare a report on ensuring that it doesn't do business with foreign suppliers who use forced, convict or child labor.” Doris Hajewski, *Wisconsin-Based Kohl's to Pick Up Expansion Pace*, MILWAUKEE J. SENTINEL, May 28, 1998, at Business 1; see also Letter from Larry D. Lieberman, Godfrey & Kahn, S.C., to the Office of the Chief Counsel, Securities and Exchange Commission (Jan. 28, 1998).

and reasons for the layoffs.<sup>167</sup> Open information requests could open the door to the discovery of critical information that the Disclosure Statement failed to contain.

The basis for allowing such a proposal is that global corporations impact the United States with their activities and, in return, receive substantial governmental benefits and tax breaks.<sup>168</sup> Reportedly, some corporations pay no federal income taxes.<sup>169</sup> If the rest of the country bears the tax burden for government operations, then the public should have a right to know what global corporations are doing that could affect the country. Global corporations owe a duty to the citizens of the United States to adhere to certain standards of fairness.

#### D. Labor Regulations

At a minimum, U.S. corporations and their subcontractors should be required to adhere to four basic labor requirements: (1) elimination of all forms of forced labor, (2) effective abolition of child labor, (3) elimination of discrimination in employment, and (4) freedom of association and effective recognition of the right to bargain collectively.<sup>170</sup> These four labor rights are recognized as human rights in a number of human rights conventions, including the Universal Declaration of Human Rights.<sup>171</sup> Although there are several other rights in addition to those listed above, such as the right to a safe and healthy work place, the protection from excessive hours, and protection from abusive treatment and violence,<sup>172</sup> those four basic labor rights are an essential starting point. Too often labor rights are left out of the debate. The World Trade Organization ("WTO") has not been able to tie labor rights to free trade. Even the idea of a proposal to study the issue caused great debate in the meeting in Seattle.<sup>173</sup> Yet, the idea of requiring U.S. corporations to

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167. SARAH ANDERSON & JOHN CAVANAGH, *THE RISE OF CORPORATE GLOBAL POWER* (2000).

168. The oil and gas industry receives over \$500 million in tax breaks annually. RALPH NADER, *CUTTING CORPORATE WELFARE* 78 (2000).

169. *Id.*

170. The International Labor Organization ("ILO") has designated these labor rights as fundamental rights. One hundred twenty-seven countries have ratified ILO Convention No. 87 on Freedom of Association and the Right to Organize; 145 countries have ratified ILO Convention No. 98 on the Right to Bargain collectively; 141 countries have ratified ILO Convention No. 111 on Discrimination; 151 countries have ratified Convention No. 29 on Forced Labor; and 84 countries have ratified Convention No. 138 on Child Labor. See Summers, *supra* note 91, at 67.

171. Universal Declaration of Human Rights, G.A. Res 217Am, U.N.Doc. A/810 at 71 (1948); see also Summers, *supra* note 91, at 67.

172. Summers, *supra* note 91, at 81.

173. *Id.* at 65.

have these labor standards and to impose them on their subcontractors in foreign countries is a concept that many believe would work.<sup>174</sup>

Surprisingly, some developing countries oppose labor rights because the cost of supporting “core labor rights” by developing nations would reduce their cost advantage in producing certain products.<sup>175</sup> In addition, some developing countries argue that the WTO should not “condition[] free trade on recognition of labor rights,”<sup>176</sup> because it would infringe on the developing country’s sovereignty.<sup>177</sup> In other words, a developing country would be deprived of the right to regulate the work of its own citizens.<sup>178</sup> While this argument has some legitimacy, any encroachment on sovereignty would exist only to a limited degree.<sup>179</sup> Most countries that are members of the International Labor Organization (“ILO”) have already agreed to protect all labor rights.<sup>180</sup> Unfortunately, the United States has not ratified the core labor rights mentioned above.<sup>181</sup>

That people who embrace freedom and democracy could not also embrace the elimination of forced labor and child labor is interesting. Not surprisingly, corporate advocates would argue that labor standards, such as the prohibition of child labor, hurt those whom the regulations are intended to help.<sup>182</sup> The example given is that if child labor is prohibited it will deprive poor countries from receiving desperately needed income, and the children not working will resort to begging, prostitution, and crime.<sup>183</sup> But what if parents were paid a livable wage? That their children would have to continue to work is hard to believe.

#### *E. Establish a Global Minimum Wage*

The race to the bottom encourages companies to move from country to country in search of the cheapest labor and materials. For many developing countries, this means low wages are not only a reality; they are a permanent economic state of being. It may also mean that to attract more business, the country may have to depress wages even more. A global minimum wage of one dollar should be established for

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174. *Id.* at 70.

175. *Id.* at 68-69.

176. *Id.* at 70-71

177. *Id.*

178. *Id.* at 71.

179. *Id.*

180. Except for the right to a livable wage. *Id.*

181. *Id.* at 74.

182. *Id.* at 78.

183. *Id.*

employees of U.S.-based, multinational corporations. For example, Wal-Mart would have to pay all of its global employees (and subcontractor employees) a minimum wage of one dollar per hour (in U.S. currency). Although this would not cure the problem of multinational corporations paying their workers outrageously low wages, it would prevent global corporations from relocating to another country seeking cheap labor. In other words, it could potentially halt the race to the bottom, at least for U.S.-based, global companies.

Hardline economists, like Milton Friedman, would argue that a minimum wage hurts competition and ultimately hurts all the people in the countries we are trying to protect.<sup>184</sup> Moreover, if such a proposal were adopted it would provide other multinational corporations with an advantage over U.S. global corporations. Market forces would still control and place the United States at a disadvantage. No question exists that market forces would still cause corporations to race to the bottom, but at least the United States would have opened the door to the possibility of a floor. One must keep in mind that the minimum wage in the United States was established for a reason, and the country is better off with a minimum wage than without it. In time, all countries will have a minimum wage that is respected, and the world will be a better place as a result.

## VII. CONCLUSION

After September 11, 2001, life in the United States changed forever. Every U.S. citizen now perceives the world in a different light. Conversations about freedom, war, and peace are common. Yet the quest for a peaceful world, where everyone is free, is not easy. This complex puzzle has many pieces. If a solution exists, it requires that Americans explore all aspects of the puzzle. Americans must not only explore the causes of events, such as the terrorist attacks of September 11, 2001, but Americans must also take note on how the world is connected. To achieve peace and justice, we should consider the role global corporations play in the world economy and politics. Americans' activities affect not only how the United States is perceived but they also impact freedom and democracy throughout the world. The United States is not an isolated island. The world is now so well integrated, it is truly one world. Global companies and their activities exist in all aspects of the world's economy and political systems. Although global corporations cannot and do not convey a message of freedom and democracy, they do convey messages, and their activities affect American lives. If the

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184. FRIEDMAN, *supra* note 42.

United States is to promote moral leadership and human rights, it must fully embrace the concepts of freedom and democracy everywhere. Until then, they are only empty words.