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Corporate Social Responsibility and the Law

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Earl Warren, a former Chief Justice of the US Supreme Court, once said, 'In civilized life, law floats in a sea of ethics.' He went on to state, 'Not only does law in civilized society presuppose ethical commitment, it presupposes the existence of a broad area of human conduct controlled only by ethical norms and not subject to law at all.' These two quotation are important for understanding the role of the law in creating socially responsible corporations. Most important, there are significant limits on what we can hope to accomplish by regulating business. Many areas of corporate behaviour are simply beyond the ability of the law to control, and we must rely on managers' ethical decision-making to achieve societal objectives. In addition, for the law to have any meaningful effect, managers must be motivated and committed to following not only the letter of the law, but also the spirit of the law. In this way, the law expresses important social values that act as a guide for ethical decision-making. Traditionally, however, governments relied on the law as a blunt and intrusive instrument to control managerial behaviour. Where the market failed to direct corporations to behave in a responsible manner, the law was used to restrict corporations' freedom of action. In recognition of the limits of this approach, regulators are experimenting with systems that give managers flexibility in meeting social objectives and seek to provide positive incentives for firms to comply with the law and the values embodied in it.

To begin our discussion of the role of the law in ensuring socially responsible behaviour by corporations, we consider the different managerial views of the relationship between law and ethics, and the common view that 'if it's legal, then it's ethical'. Management's position on this relationship has a significant impact on how the firm views its legal obligations and the ability of any regulatory system to meet its objectives. The next section examines the ability of private actions through tort to control corporate behaviour. The following sections review the different approaches available to government regulators, including the traditional legal mechanisms of command and control regulation, as well as newer regulatory

systems that utilize the market, require the disclosure of information or require self-regulation. Finally, we consider the additional challenges of regulating the behaviour of multinational corporations through international law.

The relationship between the law and ethics

Although the law is a necessary condition for creating socially responsible corporations, it is not a sufficient condition (Steinmann and Scherer, 2000). Society's conception of social responsibility must guide the law (Dunfee, 1996), but the law also must be complemented with sound ethical management (Steinmann and Scherer, 2000). Milton Friedman famously stated, 'There is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game' (Friedman, 1970). Managers who follow the Friedman position on social responsibility view the law as not only the floor level of responsible behaviour but also the ceiling. Just as violating the law would be socially irresponsible, so would going beyond the requirements of the law. For example, Friedman argued that a manager who spends money on environmental protection beyond what the law requires is wrongly spending the shareholders' money.

This view of the law is consistent with what Paine (1994a) termed the 'correspondence view' of law and ethics. Under the correspondence view, managers follow the maxim: 'If it's legal, it's ethical.' Thus, managers following this theory believe they should focus only on the law and not on matters of ethics (Paine, 1994a). Paine argued that this view is severely deficient, even though quite common among managers. Although some of the most public demands for greater attention to business ethics by corporations and business schools are fuelled by clearly illegal activities, such as the scandals involving Enron and Parmalat, it would be wrong to assume that a corporation can behave socially responsibly by simply focusing on the law. Paine (1994a: 194–5) stated: 'Attention to law, as an important source of managers' rights and responsibilities, is integral to, but not a substitute for, the ethical point of view – a point of view that is attentive to rights, responsibilities, relationships, opportunities to improve and enhance human well-being, virtue and moral excellence.'

At the other extreme of the correspondence view, many managers follow the 'separate realms' view (Paine, 1994a). Under this view, law and ethics are two distinct matters, with matters of law being obligatory and matters of ethics being optional and aspirational. Managers following the separate realms view often consider issues of law to be rigorous and objective, while issues of ethics are soft and subjective. Interestingly, the separate realms view leads to the same management priorities as the correspondence view, which

is that the firm should focus only on legal compliance and that matters of ethics are either not of concern, or, at most, a personal matter.

The failings of these views are perhaps most easily seen in international business situations, where the legal standards of the host country fall well below the ethical standards of the home country or generally accepted standards of the world. For example, when a group of investors decided to restore the USS *United States* ocean liner, they took bids for the cost of the project that included the removal of asbestos (Donaldson, 1996). Due to the dangers associated with asbestos removal and the US standards for ensuring worker safety, a US company priced the project at US$100 million. By contrast, a Ukrainian company priced the job at merely US$2 million. Even though it would be legally permissible to have the Ukrainian company do the restoration, Donaldson (1996) argued that because it would be impossible for the contracting company to protect the workers from known health risks at that cost it would be unethical. Donaldson bases his decision not on his own personal values, but on 'fundamental values that cross cultures', including respect for basic human rights (Donaldson, 1996: 49). As this example shows, law and ethics are not always in correspondence. In addition, this decision should not be a subjective, personal matter for the managers making the decision (dependent only on those managers' consciences), as the separate realms view would suggest, but one of central importance to the firm and the values it stands for. In this way, it is important to distinguish between law and ethics, not to treat ethics as a personal matter, but so that we can critically evaluate the morality of the law (Paine, 1994a).

Instead of the two views described above, Paine argued that managers should view ethics and law as interrelated, as well as recognize their dynamic nature. Ethics is interrelated to the law in several ways. First, ethics drive the development of new legal theories seeking to hold businesses responsible for the harm they cause. When someone is wronged, they feel an injustice has been done and seek retribution, regardless of their understanding of whether a law has been broken (Paine, 1994a). Lawyers then seek to make the claim actionable by developing theories on the proper interpretation of a relevant statute or regulation, or extending common law principles in countries with such a legal system. Second, ethical concerns about business practices are the drivers behind the development of new laws and regulations. Third, the law often relies on standards that are guided by ethics. In the United States, contract law often requires the parties to act in 'good faith' in fulfilling their contractual duties, and punishes acts of 'bad faith'. State laws regulating business make 'unfair methods of competition' and 'unfair or deceptive acts or practices' illegal (Shell, 1988). Thus, law itself is not a sufficient guide to determine what is legally permissible; instead a solid understanding of what ethics requires is also needed since that determines if an action was 'unfair' or done in 'bad faith'.

Tort law

Tort law involves wrongs between two private parties. The basic goal of tort law is to provide compensation to the innocent, injured party and deter others from engaging in potentially harmful behaviour. The government's only role is in setting the standards for recovery for an actionable claim and adjudicating the dispute. Torts include both intentional wrongs against a person and merely negligent acts that cause harm to another.

In the simple tort case, there is clear causation and an understanding of the injuries suffered by the victim. For example, suppose that the driver of a car accidentally hits a pedestrian crossing the street. Assuming the driver was negligent, the pedestrian will be able to recover under traditional tort law because he or she can easily show: (1) the fact of the injury, (2) the extent of those injuries and (3) that the driver caused those injuries with his or her car. In contrast, Stone (1975) provided the example of a consumer eating food that contains harmful chemicals. To get this food to the consumer, various corporations have handled it in the growing, processing, packaging and distribution stages. In this case, the consumer may not easily be able to demonstrate that he or she has in fact been injured, or even be aware that of being injured. In addition, the exact source of the chemical causing the harm may be difficult to identify, as well as the amount attributable to various corporations that may be the source. Thus, in contrast to the car accident example where it is easy to show how the driver caused the alleged injuries, it may be very difficult technically to show how the harm is occurring and who the responsible actors are.

As another example, consider the case of harmful levels of mercury in some food products. Mercury is released into the air from industrial facilities, falls to the earth through precipitation, works its way into large bodies of water, interacts with bacteria to form methylmercury and then finds its way through the food chain into large fish, such as tuna. If someone consumes the contaminated fish in sufficient levels, then it can cause significant health problems, especially in pregnant women where the harm is passed on to the foetus. Ideally, tort law would allow the injured consumer to sue the industrial facilities causing the pollution that led to the harm. Going forward, the threat of additional lawsuits would force these organizations to consider that cost and, if sufficiently large, to invest resources in preventing the release of mercury into the environment. However, evidentiary problems with proving that specific companies were the cause of the consumer's harm prevent tort law from effectively controlling corporate behaviour. Overall, the conclusion to be drawn from these simple examples is that many harmful activities will not be controlled by civil actions (Stone, 1975). This suggests the need for more direct government involvement, to which we turn in the next section.

The traditional approach to regulation: command and control regulation

The traditional approach to regulating corporate behaviour is often referred to as command and control regulation. This is a top-down approach where the government commands certain behaviours from corporations, such as the use of specified technologies, and controls those behaviours with sanctions. The traditional approach is the most intrusive form of regulation since the government is removing managerial discretion in certain defined circumstances (Parker, 2002). Examples of this approach include environmental laws that require all industrial facilities of a certain classification to use the same specified pollution-reduction technologies (or to use the 'best available technology') and occupational safety laws requiring that certain safety precautions be used in the workplace. These are both examples of technology-based standards.

Command and control regulation is grounded in the belief that firms are rational profit maximizers that will violate the law whenever it is in their best interests to do so. Firms view the law as a restraint and are continually weighing the costs of noncompliance – any fines discounted by the chances of being caught – *versus* the benefits of not following the law (Malloy, 2003). Such an approach stands in stark contrast to a belief that firms are making good-faith attempts to comply with the law, but face difficulties due to the increasingly complex and demanding regulations (Malloy, 2003).

Based on this view of firms, the government adopts a deterrence model approach to regulation. This model places a focus on improving monitoring and enforcement, and greater penalties for firms that are caught. Working under this model, law and economics scholars have focused on discovering the optimal level of enforcement and penalties (Malloy, 2003). The optimal level of enforcement is that where the marginal benefit to society from the reduction in the illegal activity equals the marginal costs. The optimal penalty level is that which does not over- or under-deter corporate behaviour. Overall, this approach is generally adversarial and punitive (Ruhnka and Boerstler, 1998).

Another approach, performance-based regulation, is often included in the category of command and control regulation and may be combined with technology-based standards, or implemented as an alternative. This approach focuses on the final results or outcome of firm activity, rather than prescribe that certain methods be used to achieve those results. For example, a regulation may set a maximum limit on a worker's exposure to hazardous fumes, but it will leave it up to the firm to decide how to achieve that goal (Coglianese and Lazer, 2003). By focusing on the ends rather than the means, performance-based regulation promotes flexibility and innovation, and hopes to improve efficiency by reducing a corporation's compliance costs (May, 2003). On the other hand, enforcement costs can increase, depending on the ability of government to measure performance.

The traditional approach to regulation has provided significant benefits to society. Due to an increasing use of law, the environment is cleaner, automobiles are safer and there is less racial discrimination, for example (Sunstein, 1990). There are concerns, however, that command and control laws have reached their limits. For example, a United States Environmental Protection Agency officer stated: 'Most observers would agree that we are at a point of diminishing returns; whatever we have achieved so far with the current model of environmental regulation, we will achieve less for the level of effort expended from here forward' (Fiorino, 1999: 442). Others argue that the approach has failed and, in some cases, even made matters worse, which Sunstein (1990) referred to as the 'paradoxes of the regulatory state'. Regulators' continued use of a deterrence approach, some argue, is motivated more by concerns of 'ensuring accountability to the legislature, the public and industry than with its ability to achieve compliance' (Aalders and Wilthagen, 1997: 416).

Problems with the traditional approach

Criticisms of the traditional approach are based on both economic and socio-political analysis (Parker, 2002). Arguments from economic analysis focus on the costs and benefits of the law, while socio-political arguments focus on the various factors that prevent regulations from achieving their objectives. The criticisms below show that even if corporations are making good faith efforts to follow the law, there are still significant shortcomings with the traditional law approach in creating socially responsible companies (Stone, 1975). These criticisms do not suggest the end of command and control law, but show its limits and the need for alternative or complementary regulatory approaches in many situations.

Inefficiency

A primary criticism of command and control approaches is that they lead to inefficiencies due to either under- or over-deterrence. For example, setting one performance standard for a wide variety of firms does not take into account contextual factors, such as a firm's cost of compliance with that standard. This can require firms with high compliance costs to over-invest in preventing the harm, causing those costs to exceed the benefits of compliance. On the other hand, firms with low compliance costs may under-invest even though those additional costs would be justified by the benefits they would create (Orts, 1995a; Coglianese and Lazer, 2003). Inefficiencies also result when laws that are inflexible become unreasonable when applied to a firm's unique situation. For example, regulations on smokestacks required Amoco Corporation to spend over US$30 million to install filters for the pollutant benzene even though unregulated components of the facility produced significantly greater emissions (May, 2003). Such regulations also are believed to stifle innovation, as there are few incentives for firms to attempt

to develop new technologies. Over the long term, this prevents society from benefiting from lower costs of compliance. In addition to a firm's compliance costs, there is a long-standing complaint that the government's enforcement costs may not be justified by the benefits they provide (Stone, 1975).

Over-regulation

The use of command and control regulation encourages the constant adoption of more laws to solve society's problems or attempt to achieve desired outcomes. Instances of corporate irresponsibility are met with new laws to prevent that behaviour in the future or to close loopholes. Thus, existing laws are continually improved through a process that makes them more technical and adds an additional layer of complexity (Parker, 2002). In addition, these attempts to solve a problem through regulation may occur at any level of government, from national to local. This results in a body of law that is beyond any manager's ability to comprehend and creates significant difficulties in compliance, as well as enforcement by government agencies. In the United States, for example, environmental statutes fill up thousands of pages. Faced with such a mass of laws, one survey found that over two-thirds of corporate general counsels believed that it was not possible to be in full compliance with the law (Orts, 1995a). In addition, increasing compliance costs may force many firms to prioritize which laws they will comply with (Parker, 2002).

On the other hand, there are complaints that the law is not sufficiently complex to treat firms fairly. Attempts by government agents to enforce laws uniformly may lead to a failure to consider exceptions when it may be sensible to do so. In addition, inflexible enforcement leads firms to focus their efforts on strict compliance with the letter of the law, and refuse to put forth effort to comply with the intent of the law (Parker, 2002). Thus, firms that may have been inclined to go beyond minimum legal requirements will be less likely to do so in the face of regulators that apply the law in a strict manner (Parker, 2002).

Normative legitimacy

The problems of over-regulation and agency enforcement practices also create a threat to the law's legitimacy. As the size of our body of laws grows, greater discretion must be given to agencies to enforce and interpret the laws, which creates several potential problems. First, increasing the discretionary authority of regulators may cause inconsistency in the enforcement of regulations. This raises procedural justice concerns, which can have a negative effect on a firm's willingness to comply with the law (May, 2004). Second, the enforcement of command and control regulation will probably be heavily influenced by changes in the ruling political party and their control over the regulators (Orts, 1995a). Third, decisions by agencies may

have a significant effect on the substance of the law, but these substantive changes will be made outside the public eye. In many countries, regulatory agencies are required to go through a public 'notice and comment' period before adopting a rule that changes a party's rights under the regulation. Agencies, however, are finding ways to avoid those requirements. Commenting on the situation in the United States, Freeman (1997: 9–10) stated:

> Perhaps even more troubling is the appearance that agencies increasingly rely upon regulatory instruments, such as interpretive rules, policy statements, guidance documents, enforcement discretion and even press releases, which do not require notice and comment, as a way of avoiding the relatively demanding procedural requirements of informal rule-making. Such practices threaten to further undermine the legitimacy of the rules produced by removing even the pretense of public access and participation.

Finally, considering the amount of laws required by the command and control approach, the different levels of government involved in their creation, and the number of persons involved in their interpretation and enforcement, it is not surprising that different laws and regulatory actions may end up contradicting each other (D. Hess, 2001). In addition, intrusive laws that remove managerial discretion can have unintended consequences that cause the law to work against its social objective. For example, a law that prohibits that any use of carcinogenic additives in foods may actually increase health risks by forcing companies to use more dangerous substitute substances that happen not to be carcinogenic (Sunstein, 1990).

All these factors contribute to undermining the legitimacy of the law, which can negatively influence a person's willingness to comply with the law. If the law is perceived as being fair, both in its design and implementation, then managers are more likely to view it as legitimate and something that should be followed (Malloy, 2003). On the other hand, if managers view a regulation as illegitimate, then they are less likely to comply with it (May, 2004). One study came to the following conclusions:

> Corporations that are generally disposed to obey the law may adopt a strategy of selective noncompliance when regulations ... impose unreasonable burdens. Corporate officials we interviewed, and many scholarly studies as well, repeatedly referred to instances of government arbitrariness: ill-conceived and conflicting regulations; officious and poorly trained government inspectors; unreasonable paperwork requirements; bureaucratic delay; governmental indifference to the disruption or inefficiencies ... caused by literal enforcement of regulations ... They ask why they should waste time and money complying with regulations that might seem to make sense in theory but that are impractical or unduly

costly in particular cases. (Kagan and Scholz, 1984, quoted in Michael, 1996: 543).

Reactive

Traditional regulatory approaches face the problem of being reactive. The fact that the law is centrally administered prevents it from easily adapting to changes in our knowledge and the business environment (Orts, 1995a). Before a law can be passed to correct a problem, society must first recognize that a problem exists. This creates an inevitable time lag during which corporations are legally permitted to engage the undesirable behaviour. In some cases, this is corporate behaviour that may have an irreversible impact (Stone, 1975). Furthermore, this is a continually recurring problem, especially in the current technological age. For example, issues of privacy in the workplace have changed with each new development of technology, including electronic databases of personal information, video surveillance and monitoring of e-mails. Managers using only the law as their only guide may create significant problems for society before the government can act (Stone, 1975).

Monitoring and enforcement

New command and control laws will do little to improve corporate behaviour if they are not also rigorously monitored and enforced. Although the law is clearly effective in pronouncing social policy (Stone, 1975), without effective enforcement firms may not comply with it. Consistent with the deterrence model, proponents of the traditional approach believe there must be frequent and thorough inspections with strict sanctioning for violations. Although empirical studies support the importance of inspections for improving compliance, there is only limited support for the effectiveness of sanctions (May, 2004). The size of the threatened sanction apparently has little effect on compliance motivations. Thus, without consistent, effective monitoring, which requires significant use of government resources, the regulations may have little effect. Due to the large number of facilities to be monitored, however, frequent and thorough inspections are not possible. This is especially true in countries with increased regulatory mandates, but reduced budgets for agencies (Potoski and Prakash, 2004). For example, in the United States there are more than 120,000 facilities regulated by at least one of the major environmental laws. However, between 1996 and 1998, fewer than 1 per cent of those facilities were inspected for air, water and solid waste violations (Potoski and Prakash, 2004).

Duties versus aspirational goals

Command and control laws can only set a minimum level of behaviour rather than encourage firms and managers to engage in exemplary behaviour.

That is, the law can establish duties (for example, 'don't discriminate') but it cannot easily set aspirational goals (for example, 'do justice') (Stone, 1975). Firms are only provided incentives to meet minimum standards, rather than find new ways in which they can help solve society's problems. As Paine (1994a: 198) stated, 'There is no legal sanction for failing to be the best we can be or for failing to make a positive contribution to society.'

This is especially problematic in the area of social responsibility, where we want corporations to fulfil their end of the social contract with society (Stone, 1975). To the extent that the law does push corporations to engage in socially responsible behaviour, it treats all corporations the same. Although product safety and environmental laws may force corporations to create high-quality and environmentally friendly products, it does not require nor necessarily encourage companies that can easily exceed those standards to do so (Stone, 1975). By treating all individuals and corporations the same and setting a standard that they all have a reasonable chance of meeting, the traditional approaches to regulation 'cannot demand more than mediocrity' (Paine, 1994a: 198 (quoting Frederic G. Corneel)).

Affirmative motivations and regulatory reform approaches

In response to the problems of the traditional approach, regulators are experimenting with various new regulatory schemes. Although some of these regulatory schemes have existed for some time, they are new in the sense of their recently increased acceptance as a viable regulatory strategy. Proponents of these programmes recognize that in attempting to improve compliance, the deterrence model is not always the best answer and, at times, may even be counter-productive. For example, some research has shown that a heavy-handed approach to applying the law can actually encourage firms that had a predilection to follow the law to resist and adopt a more adversarial approach (Malloy, 2003).

Many of these new approaches take a significantly different view of firms than deterrence theory. Under deterrence theory, firms are motivated to comply with the law because of their fear of the consequences of being found in violation of the law (May, 2004). Positive or affirmative motivations for compliance, on the other hand, are rooted in the regulated entity's sense of obligation. This perspective believes that most firms choose to follow the law and believe in a social contract between firms and regulators to share responsibility for meeting regulatory objectives (May, 2004). As a result, the government regulator can take on more of a consultant role than a policing role (May, 2004). This is in stark contrast to the idea that firms are disinclined to comply with the law and therefore must be coerced into doing so.

Corporate compliance programmes are one example of an approach that uses positive incentives. Compliance programmes recognize that illegal and unethical behaviour is not simply an individual problem but an organizational

one (Paine, 1994b). The culture a firm develops has significant influence on the behaviour of its employees, but it is also something the firm can manage to prevent misbehaviour. Initially, compliance programmes were only beneficial to the firm if they actually prevented a violation of the law (Kaplan and Walker, 1999). Later, regulators began to provide various incentives for firms to adopt such programmes voluntarily, including flexibility in how firms meet regulatory requirements, consulting and technical assistance, and leniency for regulatory violations (Parker 2003; Potoski and Prakash, 2004).

In the United States, the single strongest driver of the adoption of corporate compliance programmes was the Federal Sentencing Guidelines in 1991. The guidelines were enacted to create a more uniform application of penalties by judges. For each type of violation, the judge is given a specified range of penalties to select from. The guidelines also specify the factors judges must consider when determining where within that range the penalty should be. One important factor is the presence of a functional corporate compliance programme. If a firm has a compliance programme in place, then it will receive a significantly lower penalty.

The guidelines set out seven steps necessary for a firm to establish an effective compliance programme. First, the compliance programme's policies and procedures should be appropriate for reducing misconduct for that firm's particular situation. Thus, firms must consider such factors as the types of violations that occur in that industry and that particular firm's history of violations, rather than the wholesale adoption of a generic programme. Second, specific, high-level officials within the organization must be assigned responsibility for the programme. Third, the programme should ensure that discretionary authority is not given to those individuals who have a propensity to commit illegal acts. In application, this means that firms should conduct background checks on individuals placed in positions of high responsibility. Fourth, the company's standards and procedures must be communicated to all employees and independent agents. This is typically done through the company's code of conduct, and through formal training programmes on the code (Kaplan and Walker, 1999). Fifth, in addition to having standards, the company must take reasonable steps to ensure compliance with its standards. This includes monitoring and auditing systems, as well as a reporting system that allows employees to report misconduct. Sixth, the company must consistently enforce its ethics programme by punishing offenders. Seventh, the company must continuously update its programme to prevent future violations. A company must learn from its past violations and update its programme to prevent those violations from occurring again.

The success of a compliance programme – both for the firm in avoiding legal liability and for the government in achieving its regulatory goals – depends on the approach the company takes toward its programme.

Paine (1994b) categorized these approaches as either compliance-based or integrity-based. Under a compliance-based programme, the firm essentially adopts a deterrence model approach. Such an approach causes the firm to over-emphasize threat of detection and punishment, which can be counterproductive if employees are not involved in the development of the programme and view it simply as liability insurance for the company (Paine, 1994b). An integrity-based approach, on the other hand, focuses on internally developed organizational values and self-governance to establish legitimacy. With this approach, obeying the law 'is viewed as a positive aspect of organizational life, rather than an unwelcome constraint imposed by external authorities' (Paine, 1994b: 111).

Most programmes are a combination of both approaches, but the most successful programmes are those where the characteristics of an integrity-based approach dominate. A key characteristic is the role of leadership. When the leadership of the corporation, including supervisors further down the hierarchy, demonstrate a commitment to ethics, then all employees are more likely to view ethics as a key organizational value and take legal compliance initiatives more seriously. Other factors include fair treatment of employees (which further demonstrates that the organizational values are legitimate), open discussions of ethics and rewarding ethical behaviour (such as reporting unethical behaviour) (Trevino *et al.*, 1999).

Compliance programmes have achieved many of their goals of ensuring compliance with the law and encouraging corporations to cooperate with the government in its attempts to investigate and prevent crimes. Under traditional regulatory approaches, a significant problem was getting information from the regulated entity to the regulator (Laufer, 2002). Under the compliance programme system, however, firms are willingly turning over information from their own investigations to the government in exchange for leniency. This creates problems of its own, however, since senior management may be pressured to provide information that implicates lower-level managers in a manner that infringes on those employees' rights, prevents a complete investigation of the incident (including the discovery of any exculpatory evidence for those employees) and protects the senior-level managers from liability (Laufer, 2002). Although 'reverse whistle blowing' (that is, the corporation turning in an employee for wrongdoing, as opposed to standard 'whistle blowing' where the employee turns in the company for wrongdoing) is appropriate and fair in otherwise compliant organizations, it is not fair in the more common situation where the organization's deviance is rooted in the firm's culture, structure and processes (Laufer, 2002). For example, it may not be uncommon for senior managers to pressure employees to bend the rules to meet unreasonably high goals, and reward them for doing so. If the company is found in violation of the law, however, management may offer those employees as a scapegoat in exchange for a mitigated sentence for the corporation from prosecutors (Laufer, 2002).

Self-regulation and management-based regulation

Self-regulation is generally proposed as an alternative to the direct governmental intervention of command and control regulation. In reality, self-regulation can have various degrees of government involvement. For example, voluntary self-regulation involves a firm or industry organization developing its own standards of conduct and enforcing them without any role for government (Gunningham and Rees, 1997). On the other hand, mandatory self-regulation involves private rule-making and enforcement, but the government plays a role in monitoring the effectiveness of the programme. In some cases, either rule-making or enforcement is privatized, but not both. The government then takes responsibility for the other (Gunningham and Rees, 1997). Thus, self-regulation exists on a continuum between 'pure' self-regulation on one end and traditional command-and-control approaches on the other (Sinclair, 1997).

Self-regulation faces a wide variety of criticisms. Most commonly, critics argue that self-regulation often allows firms to create the appearance of regulation without actually doing anything meaningful to ensure the advancement of policy goals. In addition, they view self-regulation as another means of furthering a policy of deregulation (Sinclair, 1997). There is also the potential problem of the regulator being 'captured' by the regulated entity. That is, because government has adopted more of a hands-off stance towards business to allow firms greater autonomy in decision-making, business has been able to influence regulations in their favour or forestall new standards altogether (Sullivan, 2002). For industry-wide self-regulatory efforts, there is always the possibility of some firms free-riding on the efforts of others by enjoying the benefits of self-regulation without meaningfully participating in the programme. This is problematic because the poor performance of a handful of firms may weaken the credibility of the self-regulatory approach (Sullivan, 2002).

The remainder of this section explores a few of the different types of self-regulatory practices, including regulations using management systems, market mechanisms and information. Next, however, we provide a brief description of the chemical industry's Responsible Care initiative as an example of self-regulation.

Responsible Care initiative

The chemical industry is the largest polluting industry in the United States, where it accounts for half of all toxic emissions (Rees, 1997). The American Chemistry Council (ACC, formerly known as the Chemical Manufacturers Association) started the Responsible Care initiative in the1980s in response to the loss of trust the industry was facing. In general, the public believed the industry was not taking responsibility for its actions and placed little value on safety or the environment (Rees, 1997). These concerns escalated following the tragedy at the Union Carbide plant in Bhopal, India, in 1985. The industry greatly needed both to improve its reputation and forestall new, intrusive regulations. By adopting the self-regulatory programme, the industry hoped to send a message to 'politicians and the public that the most urgent problems in [this] area have already been solved, and the effort required to address any remaining concerns would be better spent elsewhere' (Lyon, 2003: 38). By 1997, the Responsible Care programme was in 37 countries (Rees, 1997).

The main elements of the Responsible Care programme are its 10 guiding principles and six codes of practice that establish more than 100 separate management practices (Prakash, 2000). The codes include not only standards for pollution prevention and safety, but also how a firm should interact with the community and its customers (King and Lenox, 2000). The Responsible Care programme also establishes an advisory panel of community members to help guide the programme (Prakash, 2000).

Any firm wanting to be a member of the ACC had to agree to join the programme. The ACC chose an industry-wide response rather than simply assist with individual responses, because just a few poor performers can harm the entire industry's reputation and perhaps lead to regulations for all firms in the industry (King and Lenox, 2000). The hope was that through peer firm pressure and the establishment of best practices, all firms would improve their performance and free riders would be kept to a minimum.

A main problem with the initiative is the lack of enforcement mechanisms. Due to anti-trust laws in the United States, the ACC has little power over how firms implement the codes or how to punish noncompliance (King and Lenox, 2000). Essentially, the ACC's only formal penalty is to revoke a firm's membership in the programme. Although the companies must conduct a self-assessment of their implementation of the codes of practice, US firms were not required to have a third party verify that information until changes were made in the programme in 2003. In other countries, verification has been done through a process involving community representatives. In Canada, there is a three-year review to determine if the firm has fully implemented the programme, and the results of the review are publicly disclosed (Parker, 2002). In the United States, firms annually evaluated their implementation efforts and graded themselves on a six-point scale ranging from 'no action' to 'reassessing management practices' (Prakash, 2000). Even with verification, however, there are issues with respect to who decides the membership of the reviewing committee and what access to information the committee has (Prakash, 2000).

The lack of enforcement or accountability may have compromised the effectiveness of the programme. One empirical study found that the average

member of the Responsible Care programme did not improve environmental performance faster than non-members (King and Lenox, 2000). Although many firms improved their performance, others appeared to be free-riding on those efforts. In addition, the programme membership included a disproportionate number of the poor performers in the industry. The authors of the study concluded that the lack of an enforcement mechanism allowed opportunism to thrive and prevent the programme from being effective. Their conclusions support claims by critics that the Responsible Care programme helps companies clean up their image but not their actions (Rees, 1997). Another study found that firms varied significantly in their implementation practices, ranging from those firms that simply documented what they were already doing to those that claimed Responsible Care gave them a whole new way of thinking (Nash and Ehrenfeld, 2001). Firms in both categories, however, viewed themselves as conforming to the Responsible Care requirements.

Another potential shortcoming of self-regulation demonstrated by the Responsible Care programme is the setting of standards. Although the programme focuses on important regulatory objectives such as the reduction of accidents, some argue that it ignores better options for safety. One interest group claims that the Responsible Care initiative ignores the safest approach to chemical accidents, which is substituting current chemicals with safer ones whenever possible (G. Hess, 2004).

Management-based regulation

Management-based regulation moves beyond pure self-regulation, and involves government-mandated policies. The main focus of this approach is not on prescribing either the specific means or ends of regulation, but on establishing a general set of regulatory objectives and requiring firms to develop processes to work towards these objectives. Where performance-based regulations work at the output stage of production and technology-based standards work at the acting stage, management-based regulation works beforehand at the planning stage (Coglianese and Lazer, 2003). Each firm is responsible for establishing their own systems to meet the goals, with the government serving in a consulting and overseeing role.

Proponents of management-based regulation claim several potential advantages over command and control regulation. First, it gives responsibility for meeting the regulatory goals to those with the most information about risks and potential management strategies (Coglianese and Lazer, 2003). Second, by giving managers and employees the freedom to select their own methods of control, they are more likely to view those controls as reasonable and legitimate, which will increase compliance. Third, the flexibility given managers encourages them to experiment and seek out innovative solutions (Coglianese and Lazer, 2003). Fourth, as opposed to the more reactive command and control systems, this process-based approach allows for continuous and immediate improvement. Fifth, the preventive nature of this approach is more economically efficient. As one commentator stated, 'It's much easier to keep all the needles out of the barn than to find the needle in the haystack' (Fortin, 2003: 567–8).

One example of a management-based programme is the Hazards Analysis and Critical Control Points Program (HACCP), which deals with safety in the processing and distribution of food products (Michael, 1996; Coglianese and Lazer, 2003). HACCP is based on a set of principles that require firms to identify the potential hazards in their food processing systems and then determine the critical control points (CCP), which are the points in the process where hazards can be most effectively controlled or eliminated. After the organizations have identified the CCPs, they must develop methods for controlling the hazards and set minimum acceptable levels for safety. In addition, HACCP requires firms to develop systems to monitor their programme (including significant record-keeping requirements) and continually update their programme to correct for any failures.

The role of the government under the programme is limited to ensuring that firms are meeting the general HACCP principles. This requires regulators with significantly different skills from those enforcing the command and control laws. In some ways, this simplifies the task of regulators, since they can focus on the review of HACCP plans, rather than having a detailed understanding of the wide variety of production methods and food types used in the industry (Michael, 1996). On the other hand, this can be a disadvantage because the absence of effective government oversight of the production methods may allow a firm's information advantage to hide some hazards from government (Coglianese and Lazer, 2003).

Market-based approaches

Market-based approaches utilize financial incentives to achieve the most efficient use of the firm's resources directed towards the social objective. A common strategy is to place taxes or fees on the undesirable behaviour. Firms have a certain right to engage in these activities as long as they pay for that right. To be effective, the government must set the tax or fee at the correct level to achieve the desired overall outcome, which is the level that causes neither over-deterrence nor under-deterrence (Orts, 1995a). In environmental law, another approach is the use of tradable allowance schemes. Similar to performance-based regulation, the government sets a maximum limit on the amount of pollution each firm may emit. However, if a firm is able to emit less than their maximum limit, they are free to sell their 'pollution credits' to another firm. Or if the government distributes the credits through an auction, the firm simply needs to purchase fewer rights. Overall, market incentive regulation rewards companies that exceed minimum requirements and provides financial incentives to encourage poor-performing firms to improve.

Some critics of the market-based approach focus on the expression of social values made by such laws. With respect to the Kyoto Protocol that called for emissions trading permits between countries, Sandel (1997) contended:

> [T]urning pollution into a commodity to be bought and sold removes the moral stigma that is properly associated with it. If a company or a country is fined for spewing excessive pollutants into the air, the community conveys its judgment that the polluter has done something wrong. A fee, on the other hand, makes pollution just another cost of doing business, like wages, benefits and rent.

Furthermore, Sandel argued, such an approach takes away a shared sense of responsibility for solving the problem. Overall, environmentalists believe it gives corporations a licence to pollute, and does not encourage them to take responsibility for their actions.

Social certification and social label systems

Social certification systems rely on public assurances that a company has complied with an established standard. For instance, a company that meets a production standard on the use of child labour may place a label on its product indicating that. Although non-governmental organizations or industry associations are the granters of many of these labels, governments are experimenting with official, state-sanctioned labels. In contrast to most regulatory approaches, the government-sponsored labelling schemes are typically voluntary. For example, companies can apply for the European Union Eco-label 'flower', which is awarded to products that meet certain environmental criteria. The success of these schemes depends on the willingness of consumers, investors and other businesses to reward corporations for meeting the labelling requirements, which would then encourage more firms to seek certification. In some cases, social label schemes are mandatory for firms that wish to do business with the government.

Two of the oldest private certification systems include the Fairtrade Labelling Organizations International (FLO) and Social Accountability International (SAI). Both programmes have established standards and use independent third-party verification that a company has met those standards. The FLO certifies that certain products, such as coffee and tea, meet their published standards of fair trade (for example, that producers were paid a price that permits sustainable production and living). The SAI certifies that a company's products were made in conditions that comply with the SA8000 standards of labour practices (Courville, 2003). Based primarily on International Labour Organization conventions, SA8000 establishes standards on such matters as child labour, working hours, safety and discrimination.

The FLO and SAI are both voluntary systems, which means their continued existence depends on their usefulness to both the companies seeking certification and the stakeholder groups using the information. To remain useful, the organizations in charge of the programmes must constantly 'balance global consumer values with producer realities across vastly different regions of the world' (Courville, 2003: 294). The FLO and SAI both hope to accomplish this through stakeholder consultations and the use of a system that allows for continual improvement. In addition, the success of these programmes depends on the reliability of the auditing process. Without appropriate verification, these systems will have little credibility with the key stakeholder groups.

Information-based regulation

Information-based regulation is another alternative to command and control regulation. Under this approach, there are no required production methods or specified outcome levels. Instead, firms are simply required to provide stakeholders with information on the production methods used, outcomes achieved or operating policies.

The basic goal of this approach is to provide stakeholders with the information they need to ensure corporate accountability. This can occur in several different ways. First, regulators may desire the disclosure of information to improve consumer, labour and investment markets. Second, disclosure allows stakeholders, such as shareholders or special interest groups, to place political pressures on corporations to change behaviours (Sunstein, 1999). Finally, greater disclosure of social and environmental information permits peer firms to monitor each other (Karkkainen, 2001). The purported advantages of informational regulation are flexibility and efficiency (Sunstein, 1999). Of course, there are limits on the ability of people to process this information that may affect the effectiveness of such a regulatory approach. For example, the provision of information may be counter-productive if people overreact to the disclosure of a small risk, or discount the small but real risk to zero (Sunstein, 1999). For example, in 2004 the European Union began requiring all food with genetically modified ingredients to indicate that information on the label. Opponents of the law, however, argue that such labels will cause consumers to overreact to any actual health risks from consuming genetically modified food. Other potential problems include the verification of information to ensure its accuracy, if the information disclosed is an accurate indicator or proxy for a firm's complete social and environmental performance, and the timeliness of the disclosed information (Karkkainen, 2001).

One example of a successful use of information regulation is the Emergency Planning and Community Right-to-Know Act in the United States. This act requires corporations to provide information annually to the Environmental

Protection Agency (EPA) on specified pollutants stored at the company's site and the emissions released. The EPA makes this information available to the public over the internet and through other sources. In the first five years of this law's existence (from 1987 to 1991), firms in the chemical industry reduced emissions of pollutants covered under the law by one-third (D. Hess, 1999). Although some of those reductions may simply be 'paper reductions' due to the advantageous use of various loopholes (Harrison and Anweiler, 2003), Fung and O'Rourke (2000: 116) claimed, 'It is arguable that the TRI (Toxics Release Inventory) has dramatically outperformed all other EPA regulations over the last 10 years in terms of overall toxics reductions and that it has done so at a fraction of the cost of those other programs.' Similar programmes are also in effect in Canada, the European Union and Australia.

Sustainability reporting is another significant area of information regulation. Although various laws may require disclosure of certain matters that pertain to a firm's social performance, such as the TRI described above, sustainability reports are stand-alone reports that provide all information relating to a firm's social performance and its policies in one place. These reports are intended to create accountability by providing information to stakeholders in an accessible form, as well as requiring firms to justify and explain their actions (Swift, 2001). Another argument for the use of sustainability reports is based on the idea of reflexive law (Orts, 1995a; 1995b; D. Hess, 1999; 2001). Under this theory, sustainability reports are a regulatory tool that encourages firms to self-reflect on their activities and 'to think critically, creatively and continually' about how they can improve their social performance (Orts, 1995a: 780). From this perspective, which is similar to management-based regulation, the process of creating the report is at least as important as the final product.

Although many commentators have argued for some form of mandatory environmental and social reporting system, these reports are predominantly voluntary. One exception includes a French law passed in 2002 that requires all firms listed on the stock exchange to report on their performance in the areas of human resources practices, labour standards, the community and the environment. The trend towards issuing voluntary sustainability reports is increasing. In 2001, almost one-half of the Fortune Global 250 issued a social report (Kolk, 2003).

A primary criticism of current practices in sustainability reporting is that the reports are public relations ploys where firms are simply 'self-reporting on their trustworthiness' (Swift, 2001: 23). These criticisms persist because there are no clear standards on what should be included in a report and third-party verification is rarely used. A leading attempt to remedy these problems and develop a standardized reporting format for all firms is the United Nations-sponsored Global Reporting Initiative (GRI). The GRI-promulgated guidelines on sustainability reporting construct specific performance indicators, facilitate comparability across firms including the development of benchmarks and promote stakeholder engagement.

Choosing the appropriate regulatory approach

The challenge facing regulators is to determine which regulatory approach to use to create the greatest social benefit. All regulatory approaches have their strengths and weaknesses, depending on the situation. Although the discussion below treats the regulatory approaches as mutually exclusive, there is often the need to combine these approaches and treat them as complementary rather than as substitutes (Sinclair, 1997).

To select between regulatory approaches, Mylonadis (2001) suggested focusing on what we know about the means and the ends of the social objective. If we understand the causal mechanism by which we can deploy resources to achieve the desired outcome, then we know the appropriate means. If we have a clear understanding of the outcome we wish to obtain and a way to measure that outcome, then we know the ends. Quite often, however, there will be significant policy disagreements between business, regulators and interested stakeholders, which will cast doubt on our knowledge of the appropriate means or ends. With respect to regulating environmental performance, Mylonadis stated: 'Managers and regulators could agree or disagree over ways to reduce pollution (means) as well as the polluting activities to target and the level of control necessary (objectives).'

Practical issues also limit our knowledge on these matters. With respect to the ends, the government may have a very limited capacity to assess the social output (Coglianese and Lazer, 2003). There may not be a way for regulators to accurately and cost-effectively measure the goal of the regulation, such as the amount of pollution or the risk level of a hazard. For example, there is often not an efficient way to ensure that food products are not contaminated. The tests may not be effective, require too much time (for perishable food items), destroy the food in the process or require too many resources to test for all possible contaminants (Michael, 1996; Coglianese and Lazer, 2003). In some cases, there are no output measures beyond the consequence that is attempted to be avoided, such as a chemical spill. Our understanding of the causal mechanisms to determine the best means may be complicated by the lack of homogeneity of the regulated entities (Coglianese and Lazer, 2003). If the firms are not similar in their operations and are they likely to stay that way over time, then it is not an effective policy to prescribe the same means for all firms. For example, in the food production industry, the government will need to regulate a wide range of food products that all require different production methods. Even firms that produce similar food products often source materials in different ways and use different processes (Coglianese and Lazer, 2003).

A cross-classification using the means and ends variables creates the four general regulatory categorizations shown in Figure 8.1. Notice that in addition to a cell for command and control, we have also separated out the

		Understanding of regulatory objective	
		High	***Low***
Understanding of means	***High***	Command and control	Information-based; technology-based
	Low	Market-based; performance-based	Management-based; reflexive law

Figure 8.1 The four general regulatory categorizations.

Source: Adapted from Y. Mylonadis, 'Open-Sourcing Environment Regulation: How to Make Firms Compete for the Natural Environment in Organizations' in A.J. Hoffman and M.J. Ventresca (eds) *Policy and the Natural Environment*, Stanford, CA: Stanford University Press, 2001.

technology-based and performance-based command and control approaches. In situations where the regulators have a good understanding of both the means and the ends, then simple command and control approaches may work the best. For example, we may know how certain workplace injuries occur and therefore it makes sense to command corporations to operate in a manner that prevents those injuries. On the other hand, if regulators can quantify a specific regulatory objective, but also understand that the each corporation knows the best way they can achieve that objective, then performance-based and market-based approaches may be most useful (Mylonadis, 2001; Coglianese and Lazer, 2003). These approaches allow each firm to meet the objective in the way that is most efficient for that firm, rather than requiring all firms to operate in the same manner.

Information- and technology-based approaches are of most use when we understand the means but not the ends. For example, technology-based regulations are useful when we know how to reduce the risks of contamination in the handling of food, but we do not have an efficient and effective way to determine if the food is in fact contamination-free. Information-based regulation is also included here because regulators want all firms to disclose specified information to correct market failures, but no specific performance outcome is required beyond the dissemination of information.

Management-based regulation will be most beneficial when the government has low capacity to measure outputs, and the best way to meet the regulatory objectives are either not known or vary significantly for each firm in the industry. Under these conditions, management-based regulation creates the greatest social benefit by taking advantage of firms' information advantage. The success of such programmes, however, rests on the regulator's ability to design 'regulation in a way that ensures that firms adequately internalize social goals in their planning process and then adequately implement those plans' (Coglianese and Lazer, 2003: 706).

International regulation of corporate social responsibility

The regulation of multinational corporations (MNCs) creates many challenges. Traditionally, MNCs are regulated by individual states, rather than international law (Haufler, 2001). This has created many difficulties, however, in addressing the problem of MNCs engaging in human rights abuses in developing countries. Under international law, the general obligation to ensure the protection of human rights rests with the government of the host country. Although the host country may have domestic laws that implement international law prohibitions against human rights abuses, that government may be either unable or unwilling to enforce its laws. The government may lack the resources necessary to be able to monitor and enforce its laws. In some cases, the host country government may be unwilling to enforce its laws against the MNC to prevent investment capital from leaving the country or because the government was complicit in the MNC's practices (Zia-Zarifi, 1999). In addition, due to concerns over exercising extraterritorial control, the corporation's home country government may not sanction the company either. The end result, some argue, is that the MNC is not governed by any law (Zia-Zarifi, 1999).

Some of the major attempts specifically to regulate through MNCs by international organizations have been through 'soft' law. Soft law includes declarations, non-treaty agreements between countries, codes of conduct promulgated by international organizations and other standards that are not legally binding. This is in contrast to 'hard' laws, such as treaties, which are intended to have legal effect. Examples of soft law instruments with an impact on corporate social responsibility include the Universal Declaration of Human Rights, the Rio Declaration on Environment and Development, the United Nation's Global Compact, the Organisation for Economic Co-operation and Development's Guidelines for Multinational Enterprises and the International Labour Organisation's Tripartite Declaration of Principles Concerning Multinational Enterprises.

Countries often rely on soft law agreements rather than treaties for many reasons, including the need to stimulate developments on the topic, the desire for a flexible regime that develops in stages over time, avoiding domestic approval and implementation processes, avoiding a breach of international law if a country does not live up to the agreement and the greater speed at which an agreement can be reached (Hillgenberg, 1999). In addition, soft law establishes certain moral obligations that may influence the behaviour of governments and private actors and eventually may become a part of 'hard' international law. For example, the Universal Declaration of Human Rights eventually led to the adoption of treaties protecting human rights, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

A recent example of soft law is the 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights'. The norms were approved by a resolution of United Nations Sub-Commission on the Promotion and Protection of Human Rights in 2003, but, as of the time of this writing, the norms are subject to redrafting due to the concerns raised by multinational corporations. The goal of the norms is to make corporations accountable for any human rights abuses they may take part in by clarifying for corporations what their obligations are under existing international law. In addition, the norms set out implementation procedures for MNCs similar to corporate compliance programmes and state that MNCs should compensate those adversely affected by an MNC's failure to comply with the norms.

The controversial aspect of the norms is that, as currently drafted, they are intended to be mandatory obligations and not aspirational goals (Weissbrodt and Kruger, 2003). This is in contrast to the UN Global Compact, for example, which is purely voluntary. Many members of the business community argue that the norms would require them to take responsibility for human rights obligations that are typically the purview of governments. The norms provide a concise restatement of existing obligations under existing treaties and customary international law regarding human rights standards, labour law, environmental law, corruption and others (Weissbrodt and Kruger, 2003). Traditionally, most of these obligations apply only directly to states. The norms, however, present them as creating direct obligations on MNCs to protect human rights. In addition, since these human rights obligations are often very vague, the business community is concerned that it would never fully know if it was in compliance with the norms. This creates a potentially strong basis for non-governmental organizations, inter-governmental organizations, unions, trade associations, the investment community and others to place pressure on MNCs to change their behaviour. In fact, the norms specifically encourage those groups to do so (Weissbrodt and Kruger, 2003).

Although the other soft law standards of MNC conduct are voluntary, this is not to say that corporations do not face any obligations under international human rights laws. In reference to codes such as the OECD's Guidelines for Multinational Enterprises, Stephens (2002: 80) argued:

> Despite the voluntary language in these codes, it is difficult to imagine a corporation arguing that it is not obligated to respect human rights and to refrain from using forced labor. The prohibition against forced labor has been a core, obligatory feature of international law for almost fifty years, since the adoption of the Supplementary Slavery Convention. Use of forced labor violates international law – and there is nothing voluntary about a corporation's agreement to refrain from doing so. Similarly, paying a security force to commit torture violates international law; corporations do not 'voluntarily' choose to abide by this international norm. [T]he fact that such obligations are included in 'voluntary' codes should not obscure the obligatory foundation of many of the norms included in the codes.

Even for human rights obligations that are mandatory for MNCs, enforcement of those obligations remains a problem. In the United States, a 200-year-old statute – the Alien Tort Claims Act – is causing controversy because it is being used to hold US corporations liable for their actions in other countries. Because this Act allows US courts to hear claims involving violations of the 'laws of nations', a non-US citizen may sue someone in the United States for violating any rights they may have that exist under international law. In the United States, corporations are treated as persons in many respects, including being able to be sued for torts. Thus, lawsuits have been brought against US companies for violating laws that traditionally have only applied to governments.

These lawsuits have covered a wide variety of issues. The well-known case of activist Ken Saro-Wiwa's arrest and execution in Nigeria resulted in a lawsuit by the members of the Ogoni tribe against Royal Dutch Shell for its involvement. Citizens of Burma sued Unocal for its complicity in human rights abuses by the military government during the building of an oil pipeline in the country. Texaco was sued for violating international environmental laws for its operations in Ecuador. As of the time of this writing, however, the status of this law is unclear and there has not been a successful recovery against a corporation.

Instead of direct regulation through hard or soft law, MNCs have pushed for self-regulation. As with self-regulation in general, MNCs prefer it because of the advantages it provides with respect to flexibility. In addition, self-regulation provides MNCs with a uniformity of standards that cannot be achieved by each state developing its own laws. Governments also have favoured self-regulation as a way to deal with the controversial issue of including labour and environmental standards, for example, into trade agreements.

The primary – and most visible – vehicle for multinational corporations to implement self-regulation is through codes of conduct (Haufler, 2001). Governments can have different degrees of involvement in the development of these codes. For example, in 1996, the US government helped bring together business, labour and human rights groups to form the Apparel Industry Partnership to deal with the problem of sweatshops. The parties eventually agreed to a set of standards and established the Fair Labor Association (FLA) as an independent entity to certify compliance with the standards (Haufler, 2001). Indian industry officials worked with labour rights groups and the UN Children's Fund (UNICEF) to begin the Rugmark programme to certify carpets that were made without child labour. In contrast to the FLA programme where the government has no formal role, the Rugmark

programme relies on government to provide support to the children that would otherwise work in the factories. Other codes are developed by private organizations, such as SA8000 discussed earlier. Finally, corporations develop some codes individually. For example, Levi Strauss & Co. developed their *Global Sourcing and Operating Guidelines* to deal with problematic labour conditions in suppliers' factories in developing countries. Levi's guidelines then became a model for other firm's codes.

Conclusion

Using the law to create socially responsible firms continues to evolve. The current trends are towards granting corporations more flexibility in meeting social objectives. Regulatory approaches such as management-based regulation seek to capitalize on a firm's informational advantage to most efficiently and effectively meet the desired ends. It is hoped that these approaches will encourage firms to find new ways they can improve their social performance, rather than simply comply with mandated duties. The success of these experimental programmes has yet to be determined, but pressures for accountability and transparency in all forms of corporate behaviour are supporting the refinement and improvement of these programmes.

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