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# Collective bargaining and transnational corporations in the global economy

*Some theoretical considerations*

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## Introduction

While the global economy does not constitute an institutional vacuum, the institutions that populate it are weighted heavily towards the interests of the private firm. Workers have often looked to states to protect their interests in their highly unbalanced relations as small human beings with large employing organizations. At national level in democracies this has often been a partly successful strategy, as democratic governments have to pay attention to mass demands, even though corporations will also have major influence with governments because of the dependence of the latter on them for economic success. But global society is far from being democratic. With the exception of the International Labour Organization (ILO), few international agencies even have the condition of labour within their responsibilities. In this context workers need to look to that other force that has safeguarded their interests in various political contexts: representation by trade unions within relations of collective bargaining with employers. This too is, however, extremely weak at the transnational level. Even where labour can organize (which is by no means the case in all parts of the world), it can only with great difficulty achieve links and solidarities going beyond national level.

To understand both the challenges and possibilities facing transnational collective bargaining, it is necessary to spend some time considering the place of the transnational corporation (TNC). This will be seen to be a structure that transcends both the polity and the market, presenting major problems as to how it is to be incorporated within wider society. Collective bargaining will be seen to be one of the possible answers to that problem, but only if it can be combined with other components of an infant global civil society. Within individual countries where bargaining institutions are strong, TNCs may be brought to the bargaining table like any other corporation; they might threaten to move investments elsewhere if unions make strong demands, but, as will be discussed below in relation to sunk costs, the viability of these threats varies. The main problems occur where bargaining, to be effective, needs to operate along a TNC's entire supply chain, or where some coordination is needed across the different labour markets of a firm with similar plants in a number of countries. In both these cases unions need to extend their reach, not only across national boundaries, but across labour markets with very varied conditions, often including countries where the combined efforts of TNCs and governments have prevented labour interests from organizing and expressing themselves.

While, as several other articles in this volume show, many of the problems experienced by labour in these situations relate to the practicalities of organization and bargaining rights as such, behind and prior to these difficulties stands another issue: the ambiguity of the political role of the firm in a capitalist economy and democratic polity. On the one hand, the rules of the free market require a mutual separation of economy and polity; on the

other, the individuals who constitute the leadership of firms enjoy the democratic rights of citizens to work for their political interests, which implies some engagement between the two spheres. Two potential resolutions exist. Under pluralist theory, the existence of high levels of competition in both economy and polity prevent concentrations of either economic or political power, and thereby limit or even cancel out any undue influence exercised by particular firms. Under neo-corporatist theory, firms exercise their political influence through formally constituted associations. This both maintains a level playing field among firms, at least within the sectors represented by an association, and makes transparent the way in which influence is exercised. The rise of large TNCs threatens the already imperfect solutions presented by both these approaches. No solution exists for the analysis of these firms within the terms of nation-State based democracy, as they constitute a non-democratic component of politics in advanced capitalism. Given that the dominant ideology of our period presents capitalist liberal democracy as a more or less complete political form, it is not normally considered appropriate to posit the existence of an established, accepted non-democratic component of that politics.

### The political role of the firm

While economic theory does not have much to say about politics, some implications for political behaviour can be read off from the neoclassical model.

### The firm in economic theory

First, in a pure market economy there is a strong separation between politics and economics. The State is needed to safeguard the rules necessary for the market to operate: enforcement of contracts, maintenance of currency, maintenance of rules of corporate accountability and transparency. But this role itself requires that the worlds of economy and polity do not interfere with each other. Governments should not interfere with markets, or the mathematical rationality of price-setting will be disturbed; individuals active in the market should not use their economic resources to interfere in politics to get privileged outcomes for themselves, or this too will distort the market. The vulnerable spot in this account is the puzzle specified above: there are no means to prevent individuals from using their wealth in a way that produces mutual interference by economic and political forces.

Neoclassical economics has its own answer to this, which is then paralleled by analogy in pluralist political theory: in the pure market economy, economic inequalities are limited, and therefore the influence exercised by any one individual will be quickly cancelled out by others. If larger profits or

incomes than are available elsewhere arise in a particular sector, individuals in other sectors will quickly switch their resources to the more profitable one until, as a result of competition, profit and income levels reach the mean of other sectors, at which point there is no longer an incentive to shift to it. In the long run, therefore, a pure market economy should be one without sharp inequalities. As a consequence, no-one will be able to use extreme wealth to accumulate political privileges.

In practice, actually existing capitalist economies do not conform to the pure neoclassical model. Barriers to entry can be high and irremediable, as where vast investment is required for research and development or where extensive distribution networks have to be developed before a firm can establish itself. Also, information, a resource fundamental to the operation of market rationality, is itself unequally distributed. To operate efficiently in capital markets in particular it is necessary to have kinds of information that can be provided only by highly skilled teams of experts; and it takes a high level of existing resources to be able to construct such teams in the first place. Therefore, those firms and individuals with the resources to acquire professional advice are able to make better use of information concerning capital markets than those who lack them, leading to a spiralling exacerbation of inequalities rather than a tendency for them to diminish.

To understand what is happening in these situations it is necessary to abandon the artificial view that firms are individuals, referred to above. The fact that the firm is an organization, and therefore capable of strategy, and not just a nexus of markets was first recognized in economic theory in the 1930s, in the theory of the firm. The main use that orthodox economics makes of this theory is in considering the trade-off between market and organization that confronts companies. It has been left to unconventional (“institutional”) economists and organization theorists to consider some of the wider implications of the idea of the firm as an organization, in particular the political implications. The larger a firm becomes, the stronger and better informed will be the organizational hierarchy that it can establish, and the existence of organization thereby becomes a source of entry barriers. True, in the long run this growing size can present problems, as the enterprise becomes top-heavy. But a firm that is sufficiently well constructed that it has reflexive capacity can even anticipate these problems. We should therefore anticipate a growing role for giant firms with extensive organizational resources within the economy.

Competition law, especially in the United States, has accommodated itself to the inevitability of the domination of large firms and limited competition. Classical US anti-trust law, developed in the first part of the twentieth century, aimed at breaking up major accumulations of corporate power, so that there was a limit to how far any one firm or group of firms could go in dominating a particular set of markets. One of the strongest examples of this was US banking law, that for many decades prevented US banks from

having branches outside an individual State. It is no coincidence that US pluralist political theory (see below) developed from exactly this intellectual environment. It was as essential for democracy as it was for economic efficiency that there should not be concentrations of power so strong that they faced no effective competition. To the extent that economic power could be a major source of political power too, anti-trust policy served the purpose of protecting democratic pluralism as much as it did market competition.

It proved impossible to maintain all markets with low entry barriers and full competition, and by the late twentieth century American law and political practice had changed. Economic theorists, principally at the University of Chicago, and corporate lawyers defending anti-trust suits for large corporations developed a new set of principles that abandoned earlier perspectives that had insisted on the need for actual competition and numbers of competitors if the liberal capitalist model was to work (Bork, 1978; Posner, 2001). The doctrine of consumer welfare was developed, which argued that, if it could be shown that economies of scale resulting from the existence of a small number of firms meant lower prices than if there was a large number of competing firms, then consumers' welfare could be considered to be better protected by the domination of markets by a small number of giant enterprises. Such arguments were used successfully to roll back the anti-trust bias of US corporate law (Schmidt and Rittaler, 1989). European Union competition policy, paradoxically trying harder to hold on to the earlier US model than the US itself, has developed a kind of second-best policy under which market-dominant firms are required to maintain the possibility of survival for competitors in some aspects of their operations. This can be seen in such measures as the European Union's insistence that Microsoft maintain access to its platforms so that competitors can produce software that is compatible with them.

It is not our task here to examine the economic efficacy of these different approaches to grappling with monopoly and imperfect competition, but to assess the political implications. Economic and political power can be translated into each other; this is why it is so difficult in practice to maintain the separateness alongside interdependence required by liberal capitalism. Giant firms generate very high concentrations of wealth. Not only can they convert this wealth into political influence, but they can use the capacity for strategy given to them by their organizational hierarchies to pursue political purposes and to become political actors. Seeing the firm as an organization and not just as a nexus of markets enables us to perceive the implications of this for political theory. Doctrines of consumer welfare and regulatory agencies may check the economic implications of corporate gigantism, but they cannot address these political implications. This becomes particularly important when firms operate transnationally – which virtually all large firms do today, and can exercise some choice of the political regimes within which they develop their strategies.

## The firm in pluralist theory

The theory of political pluralism comes from the same intellectual stable as neoclassical economics. It holds that, to prevent major inequalities of political power arising, it is important that power resources are scattered around a society in autonomous centres, and not aggregated into large blocks. In such a situation, all decision-making requires the assembly of numbers of these centres. As with economic theory, protection against the abuses that might flow from powerful concentrations of resources is found in large numbers of separate participants in the system. Also as with economic theory, a more or less egalitarian economy is one of the conditions for political pluralism, as a polity in which economic resources were very unequally shared would be likely to be one in which political power was also concentrated, economic resources being so easily capable of conversion into political ones.

The rise of TNCs clearly challenges the balance implied here, in ways that current purely economic regulatory approaches, which leave the “giants” in place, do not address. Political scientists have not ignored this problem. As long ago as the late 1970s two of the most prominent exponents of both the analytical and normative concepts of American political pluralism – Robert Dahl (1982) and Charles Lindblom (1977) – both warned that the large corporation was becoming a threat to the balance of democratic pluralism. Lindblom based his analysis, not so much on the implications of the size of individual firms, as on the absolute dependence of governments for their popularity and legitimacy on economic success, and their perception that they depended for that success on the business community. Governments were therefore likely to listen intently and uncritically to whatever that community said it wanted from public policy.

Dahl and Lindblom were writing when the current trend towards economic globalization following the international deregulation of financial markets was just beginning. This has further enhanced the capacity of giant firms to translate their economic strength into political power in two ways. First, they have some capacity to “regime shop”, that is to direct their investments to countries where they find the most favourable rules. Second, the global economy itself constitutes a space where governmental actors are (compared with the national level within stable nation states) relatively weak and corporations therefore have more autonomy.

The first of these arguments seems straightforward: if firms have a choice between two countries for maintaining their investments, they should be predicted to choose that which presents better opportunities for profit maximization, which will mean lower costs, and therefore lower levels of corporate taxation, lower labour protection and social standards, lower levels of environmental and other regulation. In the short run we should therefore expect a shift of investments from the more costly to the cheaper country. In the longer run the former should be expected to adjust its own standards

downwards in order to be able to compete for investments with the cheaper country. The result would be a general lowering of standards to meet the preferences of multi-national enterprises – a process often known as “the race to the bottom”. Given that, as argued here, large firms are political as well as economic actors, this race is not purely a market phenomenon: firms often lobby governments to ensure that labour standards are kept low or even lowered.

In practice, matters are not as clear-cut as this. Existing investments in plant, distribution and supplier networks, as well as social links are not so easily moved. Firms have what are called “sunk costs” in their existing locations, and in order to move existing investments from one jurisdiction to another they need confidence that profits in the new location will be sufficient to outweigh these costs. The more likely threat is not so much a transfer of existing investments as a preference in favour of the cheaper country for future new investments being planned by the firm. Even here, there is not necessarily a consistent preference among firms for the cheapest locations. Firms capable of strategy choose in which market niches to locate themselves, and this does not always mean a preference for the cheapest. High quality of the good or service being produced is often a criterion, and this may require highly paid staff with good working conditions, or a strong social infrastructure, requiring high taxation. It is therefore not the case that high-wage, high-tax economies have lost out in competition for direct inward investment, as the strong performance of the Nordic countries shows.

Nevertheless, this argument still places the initiative with the firms: it is their market strategy that determines (or at least strongly affects) whether particular government policies will be “rewarded” with investment or not. Globalization does not necessarily mean a race to the bottom, but it does increase the power of firms in designing the rules for the races that public policy must run.

The second argument maintains that, there being no government at global level, TNCs are left fairly free to make what rules they like, including deals they make between each other for setting standards or rules of trade. There appears to be no higher level than deals among firms for making regulations at the global level; and since this is the level at which there is currently most economic dynamism, this global level of firm-determined regulation feeds back into national levels, undermining government authority.

This argument too is exaggerated. Alongside the growth of the global economy has come a growth of regulatory activity by international regulatory agencies whose members comprise national governments and which therefore constitute a kind of delegated governmental authority. Since the post-war period some (but not much) of the work of the United Nations, and the activities of the World Bank and International Monetary Fund (IMF) have had some authority of this kind. The Organisation for Economic Co-operation and Development (OECD), for long mainly a source of data and statistics on national economies, has gradually acquired more of an

international policy-coordinating role – for example, in the field of corruption in governments' business deals with TNCs. Within the field of labour the ILO provides a forum within which member states, employers' organizations and trade unions agree on conventions for labour rights. Most recently, the World Trade Organization has begun to regulate terms of international trade, though its authority extends more over governments than over corporations, and it is very reluctant to include social issues within its general free trade mandate. Finally, at a level between the nation State and the global level itself there has been a growth of inter-governmental organizations regulating economic affairs in a more detailed way across world regions: the European Union (EU), the Association of South-East Asian Nations (ASEAN), the North American Free Trade Area (NAFTA), and the Organization of South American States (MERCOSUR). However, of these only the EU has developed extensive policies across a wide range of fields.

Global economic space is therefore not entirely without regulation, but individual giant firms occupy a more directly regulatory role at this level than at national level in a number of areas. An important example is standardization (Mattli, 2001; Schepel, 2005). The standardization of products and components is essential for the conduct of a market economy, as it is a major means for lowering entry barriers. In many instances standardization is a matter for governments and inter-governmental agreements through (in Europe) the EU or, more globally, the International Standards Organization (ISO), which comprises representatives of governments and trade associations. However, there are important areas of the economy where individual giant firms set their own standards with little reference to international or national authorities, and doing so in a manner deliberately intended to raise entry barriers against competitors. This is particularly likely to happen in high-technology areas where product innovation is so rapid that there is no time to secure agreement on a standard among a wide range of different governments. For this reason this form of standard-setting has become accepted, though from a strict neoclassical point of view it threatens market competition. It is clear that classical pluralist theory cannot cope with these developments.

### The firm in neo-corporatist theory

More relevant to collective bargaining than pluralist theory is neo-corporatism. When Dahl considered the inability of pluralist theory to deal adequately with the political role of firms in the modern US economy, he looked for potential solutions in the organized capitalism of the Nordic economies. Here, firms exercised political influence mainly through business associations, partly at the sectoral level, but partly through peak associations representing the whole private sector. Because this representation was formal and open, it could be used to have associations impose some kind of social



responsibility on member firms in exchange for any success of their lobbying activities. In addition, lobbying through associations maintained a level playing field among firms, at least within a sector, and could not be used to secure anti-competitive privileges for individual companies.

Dahl was here moving from US pluralist theory to the more European approach of neo-corporatist analysis, most often used for the analysis of industrial relations (e.g. Crouch, 1993; Traxler, Blaschke and Kittel, 2004), though its concept of interest representation through organizations that simultaneously lobbied and imposed codes of behaviour on members can also be used more generally. While neo-corporatism might avoid some of the political problems presented by single-firm political action, it presents a new one that whole sectors might become privileged at the expense of others, or functional economic interests privileged over other kinds of interest (for example, the environment). As Mancur Olson (1982) argued, in a market economy organizations of particular interests operate by means of rent-seeking behaviour: extracting gains for their members from the general public. They would abstain from this only if their membership was so extensive within the society concerned (“encompassing” in Olson’s term) that they must internalize any negative consequences of their action: there is not enough of the society outside the group’s membership on to which negative consequences can be dumped. This tended to be the case where neo-corporatist structures operated most successfully (Crouch, 2006a).

Olson’s concept of “encompassingness” assumes a manageable and definable universe across which organizations can be said to be encompassing. His theory, and all others that concern the logic of neo-corporatist stability, hold only to the extent that there is a relatively bounded universe linking fiscal and monetary policy, and the scope of firms. Throughout most of the history of industrial societies the nation State has provided such a universe; but in the global economy it no longer does so. Neo-corporatism is therefore severely challenged by the rise of the global economy and in particular the global firm.

Neo-corporatist organizations can respond positively to this kind of situation in two ways (Crouch, 2006a). First, they might shift their point of activity to a higher level, such as the EU, to recapture encompassingness. Second, the shift to levels above the nation State of many elements of economic regulation paradoxically increases the incentive of nationally rooted institutions to find new powers for themselves. Governments, trade unions and smaller firms remain organized primarily at national levels, and governments and unions have to respond to national constituencies. For various reasons both these types of initiative have been weak, and are insufficient to meet the challenge of TNCs, who have little incentive to participate, as they already operate at the global level. It is difficult for any system of organized interests that is not itself global to achieve encompassingness.

A further problem with neo-corporatism – and collective bargaining institutions whether in neo-corporatist settings or not – is that, being based

on associations representing existing industries and sectors, it loses effectiveness at times of rapid economic and technical change. During such times the old, organized sectors of the economy become less important – or, worse, their organizations try to slow down a decline that will be inevitable. Meanwhile, new sectors are not yet organized, and may not even see themselves as sectors. For example, what we now see as a biotechnical industry existed for several years before its distinctiveness was noted. Now, it and other new industries, such as information technology, have acquired self-awareness and have developed organizations. But it remains the case that, at any moment during a period of high change and innovation, old, declining sectors will be better represented than new, dynamic ones. In such a situation, individual firms, rather than associations, become the main representatives of business interests – as demonstrated above with the case of standardization. This reduces the level playing field among firms and gives individual TNCs a strong incentive to act politically.<sup>1</sup>

There can therefore be no formal guarantees that extremely skewed influence will be excluded from a democratic political system through either pluralism or neo-corporatism. The problem of entry barriers blocking access to resources and capacity to be heard apply to both. These problems become particularly severe when we move to the transnational level, where there is not even much of a “political system”.

### The giant firm as a part of the polity

From the perspective of pluralist political theory, firms constitute “lobbies”, and the kind of role that giant firms are able to play in the global economy makes them disturbingly powerful lobbies, threatening the balance of both democracy and pluralism. This was the burden of the critique of Dahl and Lindblom, and of a large number of subsequent critics. The main alternative view is that: (i) provided the economy remains a market one, these firms are still constrained to accept consumer sovereignty in their economic activities; (ii) provided the political system is transparent, firms’ lobbying activities will be subject to criticism and public debate; and (iii) the activities of firms bring jobs and new consumer products, and so public welfare is enhanced by even their political lobbying activities.

The relative merits of these arguments are subject to considerable political debate. However, both sides share the perspective that the concept of the lobby is adequate to analyse the phenomenon of giant firms’ political

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1. Paradoxically, while neoclassical economists normally see neo-corporatism as more hostile to the free market than a pluralist arrangement, in practice neo-corporatist associational representation is better able to restrain market distortions stemming from unequal size among firms than is a pluralist system.

role. Disagreement is empirical – over how dominant that role is in relation to other lobbies (such as labour or environmental interests); and normative – over whether the level of lobbying power is acceptable. However, the concept of lobbying is inadequate, and we need instead to reconceptualize the large firm as a political entity, which in turn requires rethinking the scope of the political and its characteristic institutions.

The standard model of a polity in political science, constitutional law, and the assumptions of everyday political discussion take the following form. At the peak is the sovereign entity, the State. These States recognize no authority above them; that is what defines them as the units of the global system and as the peaks of their own subsystems. It is taken for granted today that these States are “nation States”, i.e. they constitute a large area of usually coterminous territory, both open country and urban centres, with a population that recognizes that it is joined by certain ties to form a “nation”, even if these are sometimes little more than being part of the same territorial State. These States do make treaties with each other, and sometimes these treaties can be very demanding in the terms they impose and strict in enforcing sanctions in the case of disobedience of the terms. They may even construct organizations charged with the task of enforcing their terms and charting the common tasks that should be confronted by the treaty’s members. These treaties therefore constitute important *de facto* compromises with the concept of “sovereignty”, but because they are treaties (contracts among equals) rather than constitutions (implying subordination within an organizational hierarchy) they are held not to make *de jure* compromises. Within each nation State there will be regional and local levels of political authority; these are subordinate within the organizational hierarchy of the State and are bound together through its structures, not through treaties.

The nation States, the structures produced by treaties among them, and the States’ internal sub-structure of delegated authority constitute the only “political” entities within society. This does not mean that they can do what they like. Where the State is defined as being one within the rule of law, the things it may do and the powers it may take in relation to its citizens or others are carefully prescribed and limited. Within a liberal polity citizens have opportunities to lobby for, request, demand, beseech various actions (or abstention from action) by the State; and as we have seen, some organizations (in particular, large firms) can attain such power that governments have little practical choice than to give in to their demands. But they remain “lobbies”, as the political power to implement the demands remains in the hands of government.

This framework has become inadequate for analysing the early twenty-first century giant firm for the following reasons:

- (1) The framework assumes that those engaged in lobbying are members of the polity of the nation State concerned, or physically within it and therefore subject to its authority for the time being. This is not

the case with TNCs bargaining over the terms of their investments. International law requires firms to have a place somewhere on the planet where they have their formal location, but from that base they can deal with governments all over the world, never putting themselves into a position of subordination to its authority, unless and until they set up facilities. During the crucial period of negotiations, where they are deciding among a number of potential locations for an investment, they remain external and therefore do not “lobby” for terms, an action implying at least formal subordination. Their relations are more like those of ambassadors of other States, but they cannot be assimilated to this concept as it belongs only to the world of political entities.

- (2) It difficult to apply the concept of a lobby to the relationship of large global firms to a global polity seen as constituted by nation States and organizations formed by treaties among them. This can perhaps be seen most clearly in that autonomous role in standards setting of individual corporations, which is a kind of legislative activity. They exist out there *alongside* the international and transnational agencies, not generally subordinate to them.
- (3) When large corporations from the advanced countries invest in very poor countries, there is usually a major imbalance between the institutions of the corporations and those of the local State. The former will be well equipped and staffed, with a high level of resources, and with clear hierarchies and internal procedures. The local State is likely to have very low levels of resources and poor means of internal communications and enforcement. In such circumstances it is very difficult for the local State to live up to the legal fiction that it constitutes an “authority” and the investing firm a private entity subject to its authority. The firm is likely to be able to pick and choose which local laws it obeys and which ignores, as enforcement and inspection are likely to be poor. The firm becomes its own law enforcement agency. This imbalance can also work the other way. Within the society governed by the local State there may well be only meagre political debate, while the home base of the investing firm may have lively debate, even over affairs in the country where the firm is investing. For example, a European firm employing child labour in an African country is likely to experience more difficulties about the issue at home than it is in the country where the abuse is occurring. In response to domestic pressure the firm might become a more vigorous guardian of children’s rights than the African government. Again, the firm becomes its own law enforcement agency.
- (4) The last example raises the general issue of corporate social responsibility (CSR). This concept refers to the acceptance by firms that their responsibilities as organizations extend beyond that of immediate profit maximization and that they should recognize responsibilities for the

externalities produced by their actions (i.e., those effects of their activities that are not represented in the market forces operating on them, such as pollution caused by production processes) (Crouch, 2006b). There is much debate in the literature whether firms do or should accept social responsibilities for moral reasons, in order to pre-empt tougher government action if they do not act, or because for various reasons social responsibility will be associated with higher long-run profitability. It is not our present task to try to resolve this debate. We need only note that firms are here taking on themselves responsibility for defining public priorities, and deciding and then implementing the actions that seem to be required by those priorities. For example, some Western firms operating in African countries have decided that, because their activities lead to the concentration together of large numbers of young people as employees, they have some responsibility for education and medical treatment relating to HIV/AIDS among their workforces, and beyond in their workers' local communities. This is public-policy action going beyond the immediate remit of the firm as a profit-maximizing concern. The decisions whether or not to do anything about the issue, and if so what to do, are public-policy actions. The firm may or may not liaise with local government about the matter; that also is its decision. The example given is from a developing country, but CSR issues are also presented within the advanced economies, at the present time particularly in relation to environmental concerns and climate change.

CSR is undertaken by firms within the ambit of normal company law, the firms' directors and senior management using the capacity for strategy of their corporate hierarchies to pursue their public policy preferences. In seeking concepts by which this process might be understood, some authors have developed the idea of "corporate citizenship". This can have a banal meaning, signifying little more than that firms ought to behave like good citizens. But in the hands of Crane, Matten and Moon (2006) it has been brought to a higher pitch of analysis. Strictly speaking, firms cannot "be" citizens as in democracies this quality belongs solely to the individual human beings who possess the right to vote. But these authors see firms as administering the general rights of citizens, in so far as firms enter the field of making corporate-level public policy, which is what CSR amounts to. The idea remains deeply problematic, as citizens have no formal capacity to access the corporation (which remains governed by corporate law, recognizing only the rights of shareholders) in the way that they can in theory put political pressure on governments. On the other hand, firms can be responsive to citizens *qua* customers.

The concept of "powerful lobby" is inadequate to analyse this multifaceted role of today's TNCs: they are part of the polity, not a part of an external civil society that powerfully lobbies the polity. This is particularly

the case at the level of the global economy, where there are no truly public institutions, only intergovernmental ones. The ideal that the economic and the political can be mutually separated is always compromised in practice: their mutual dependence and their capacity to be translated into each other are too great. As a result political formulæ that depend on their separation will be false and misleading. The consequence of this is that democracy operates in relation to only part of the actual polity. If an issue arises in relation to a private firm acting in a public capacity (whether as a subcontractor, in CSR policy, or its global governance activities), it can become a political question only if it can be tracked back to government. This is guaranteed by the character of electoral politics in mass democracies, whereby a question can acquire political salience only if it can be shown to offer opportunities for mutual blaming between government and opposition. Even if firms are somehow implicated in the affair, they are secondary to the democratic politics of the issue.

We need to conceptualize firms, at least large ones operating multi-nationally, as locations of political power and authority, to be analysed alongside governments, parties and other obviously political actors. They constitute a non-democratic part of the modern polity, in that they are not formally answerable to a public. On the other hand, they are vulnerable to campaigning by social movement organizations, particularly when these can negatively affect a firm's reputation among its customers. At the international economic level and in poor countries with undeveloped institutional infrastructure, they may constitute the most important objects for political study.

### Global civil society and collective bargaining

Within the so-called advanced societies, not much importance is usually placed on a distinction between democratic and pluralistic political activity around the State on the one hand and civil society on the other. An almost seamless web of groups and activities runs from the polity out to a vast range of voluntary and campaigning bodies. It is interesting to note that the concept of civil society – which has been around since Aristotle – experienced one of its periodic returns to prominence in the late twentieth century, by thinkers (initially in central Europe and Latin America) trying to identify a realm of dialogue and human exchange *excluded by polity and market alike*.<sup>2</sup> From there the concept has crept into political discourse within many kinds of society, usually being used to denote those organizations and informal groupings that concern themselves with public affairs, but which operate without the power of either State or corporation. To some extent therefore civil society refers to “the power of the powerless”. (This phrase itself was

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2. For an excellent guide to the historical vicissitudes of the concept, see Wagner, 2006.

coined by Vaclav Havel (1985) in the 1980s to refer to the civil society outside the party-State that was being rediscovered in the then Czechoslovakia and elsewhere in central Europe.)

The concept can be applied with particular force in the transnational arena, where the main actors are firms and inter-governmental bodies largely cut off from relations with any *demos* or society. Any activity from a public outside corporate and political leaders is therefore likely to constitute the power of the powerless. And, as with the internal politics of countries in central and eastern Europe, Latin America and many other parts of the world, where this kind of gulf exists between elites and public, it becomes vital that organizations and less formal groups start to fill the empty spaces.

The main groups that one can identify are the campaigns variously labelled “international civil society organizations” (ICSOs), or rather oddly “international non-governmental organizations” (INGOs). (The fact that they are mainly identified negatively as being “not government” indicates the weak state of global society.) These organizations are very weak, depending on support from a few activists and people willing to give them some money – often the same people appearing under different group names. But the fact that they exist and are growing is a fascinating indicator of how empty spaces of the global polity are being populated. Particularly interesting from the perspective of the above discussion, these groups do not just target governments or intergovernmental organizations in the classic manner of political lobbying. They also target individual global corporations, appealing to them to remedy abuses in their treatment of the environment, their workforces, and the populations around their installations within developing societies. If CSR is the expression of firms’ own recognition that they are part of the transnational polity and not just the economy, the activities of the international civil society groups are the expression of critique and opposition directed at this new political level.

Transnational trade union activities can be seen as fitting into this same framework, just as at local and national levels collective bargaining is a part of civil society. As the article in this volume by Miller shows, links are gradually being forged between international unions and ICSOs. It is not necessarily an easy relationship. Unions are concerned to advance the interests and rights of members (and the wider categories to which their members belong); ICSOs are more concerned with altruistic general causes. International unions have to find means of uniting the interests of their first- and third-world memberships; ICSOs are likely to be oriented only towards developing countries. Some would argue that there is also a culture gap: that unions (and their associated institutions of collective bargaining) are examples of the bureaucratic structures of Fordist industrialism, while ICSOs are typical flexible structures of post-industrial society.

Against these objections stand some positive points. First, as argued above, the emerging global polity is so heavily dominated by corporate

interests that any groups that are critical of corporate behaviour have important incentives to work together.

Second, links with ICSOs can in fact be one of the means by which international unions relate their first- and third-world memberships (and potential memberships) as campaigns aimed at customers and governments in the richer countries to react to bad working conditions in developing economies are starting to build relationships between these two different kinds of society.

Third, while collective bargaining is the form of action preferred by unions, it can be very difficult to construct at the transnational level. Other forms of action, such as those pioneered by ICSOs, can therefore be used as important steps towards its construction. In turn, if bargaining relationships can be constructed, they can also be used to advance the causes of other campaigns.

Clearly, these kinds of activity, whether they involve campaigns alongside ICSOs or just trying to shame TNCs in relation to their own proclaimed CSR strategies, are not the same as collective bargaining. They are, as the idea of the “power of the powerless” shows, expressions of weakness in terms of power relations. We see this very clearly in the continuing debate over international framework agreements (IFAs) and corporate codes of conduct (see Papadakis, 2008, especially Gallin, 2008). IFAs have been the main expression of moves towards true transnational collective bargaining, usually across countries with similar levels of labour market and institutional development. Codes of conduct are an aspect of CSR, controlled entirely by managements and with no union involvement. Increasingly firms are showing a preference for the latter, which marks a step away from the establishment of international labour rights or labour citizenship, towards a new kind of paternalism. The trend is encouraged by the free-trade bias of the World Trade Organization and, in recent years, the European Court: while these are suspicious of formal trans-corporate agreements, they can say nothing about firms’ unilateral declaration of policy preferences (Bercusson, 2008).

Within the advanced countries where industrial relations institutions today are strong, campaigning for labour rights through moral appeals to employers and general public and through links with social cause organizations was characteristic of early years of trade union weakness. Real success was achieved by organized labour when it was able to move beyond such action to mustering a balance of forces at the bargaining table – though we should never lose sight of the fact that capital nearly always maintains a superior power position in such confrontations. But the reality of the situation within the global economy is that labour is weak; an analogy with the early days of national unionism may not hold at every point, but many features are similar. Early unions faced a hostile alliance of political and managerial forces, as is the case in today’s global economy; workers had no citizenship rights, as is the case at the global level; workers experienced organizational and cultural



difficulties in getting beyond local and district levels, as today similar obstacles inhibit transnational action.

In examining the scope for joint action with ICSOs, or exploitation of CSR, one is therefore not pointing the way to a bright and optimistic future for organized labour, or seeing early prospects for transnational bargaining. The comparison is with a situation in which labour can achieve almost nothing without these strategies. They are likely to be most effective where workers' labour market weakness and social distress are apparent and striking, which mainly refers to the case of supply chains. ICSOs are not likely to become involved if, say, French and German unions are unable to deal with their organizational rivalries in order to bring a TNC to the bargaining table. There are also deep ambiguities in the response of public opinion if, say, a firm is playing off well paid workers in its Dutch plant against lower paid workers in its Polish one. In the supply chain one typically finds workers with different levels of living engaged on different parts of the production chain. There is little competition among groups of workers in countries with different standards of living, and even if there might be problems of inter-union cooperation along the chain, these are considerably less important than differences in labour supply, political regime and corporate strategy. In these situations the strategy of moral appeal has potentiality, not because it is so powerful, but because it is all that there is.

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