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The Social and Environmental Impacts of the Corporate Responsibility Movement in Mexico since NAFTA

David Barkin

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David Barkin†

ABSTRACT

In the period leading up to the promulgation of NAFTA, opposition campaigns led by environmentalists and trade unions set the stage for innovative side agreements addressing environmental and labor standards. A decade later, progress has been made in arousing awareness of the impact of economic integration and trade on the quality of life. Many large international firms have implemented policies that comply with responsibility guidelines like those set forth in the UN Compact, but the reality for most workers and communities is that foreign investment and trade have been accompanied by a substantial decline in real wages and working conditions for important segments of the Mexican population. This Article examines these issues with materials drawn from field research conducted by the author and his collaborators as well as by environmental and workers' rights organizations in Mexico and the United States.

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† Professor of Economics, Universidad Autónoma Metropolitan, Xochimilco Campus, Mexico City.
I. Introduction

The global Corporate Responsibility Movement (CRM) developed into a complex engagement of antagonistic forces in the 1980s, posing environmentalists and labor leaders against their corporate adversaries. The history of environmental damage and workplace safety and health violations in production is as old as production itself. But, with the cumulative evidence of the intensification of the problem and in the aftermath of Bhopal (in India), smaller social groups in the United States of America coalesced into broader movements for environmental justice and safer workplaces. In response, the business community began to respond more systematically as part of a broad effort to forestall growing pressures for further State regulation of business and to turn back existing governmental controls. These ideological, political, and social movements embodied a number of important new philosophical currents. While the struggle for community and labor rights had been making substantial advances in the political climate that prevailed in Europe and North America in the decades following World War II, corporate interests had been struggling to find effective channels of expression. The balance of political power was modified with the ascendancy of Christian Democratic parties on the continent and the emerging Christian Right in the United States of America. The corporate community, having been on the defensive in previous decades, found a propitious opportunity to reassert itself with the rise to power of the forces that brought Ronald Reagan to the presidency in the United States and Margaret Thatcher to the helm as Prime Minister in the United Kingdom.

Reacting to the economic crises of the 1970s, these

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1 The toxic gas leak from the Union Carbide plant in Bhopal, India in 1984 was the world's largest industrial accident. See, e.g., Bhopal Remembers Toxic Gas Leak, BBC NEWS, WORLD EDITION, Dec. 3, 2004 at http://news.bbc.co.uk/1/hi/world/south_asia/4060849.stm.

2 In this first paragraph, I use the term "United States of America," which might seem strange to readers from that country, in deference to the sensibilities of Mexicans whose country is formally called the United States of Mexico. In the rest of the Article, I shall revert to more common practice in the United States of America, referring to the colossus of the North as the United States (or U.S.) and the country to the south as Mexico. I generally use "North America" in reference to the U.S. and Canada in one expression.
philosophical and ideological currents mounted a global campaign to reduce government intervention in the economy and to legitimize business activities and private property rights that had waned with the ascendance of groups championing the primacy of the collective rights and public power. The ideological discourse of the New Right, as the disparate members of this current of reform called themselves, was pointedly aimed at undermining political support for Keynesian policies and Welfare States, replacing them with their individualist, utilitarian, and libertarian agenda, ultimately favouring global corporate interests. The "transnational capitalist class"3 was particularly concerned with weakening State corporatist practices and institutions and revitalizing the individualist character of liberal doctrine. This doctrine suffered in comparison with communitarian tendencies and the welfare responsibilities of the State. Economies were liberalised and deregulated, state enterprises were privatised, collective bargaining, the unions and labour confederations were weakened, taxes were reduced, and the institutional basis for international economic relations were reorganized.4

In this setting, an active movement emerged to defend and promote corporate social and environmental responsibility as an alternative to the multiplicity of efforts to impose national and even international standards. This is not surprising in light of the increasing stridency of grassroots groups to the problems of environmental degradation and deteriorating working conditions that have accompanied both domestic and international investment throughout the world. As a result of local, regional, national, and international pressures, these movements achieved some measure


of success in reigning in the excesses in the advanced countries. Nevertheless, the problem remains virtually unchecked in many parts of the South. One segment of the international business community, particularly active in responding to this problem, called for voluntary actions by its constituents to forestall more aggressive regulatory action by national and international bodies. In the 1992 Rio de Janeiro World Summit on Sustainable Development, this segment helped frame the final declaration, urging the business community to (1) support the "precautionary principle" to environmental matters, (2) undertake initiatives to promote greater environmental responsibility, and (3) encourage the development and diffusion of environmentally friendly technologies. An important sector of the business community, led by a small group of very large transnational corporations (TNCs), explicitly acknowledged the need for firms to clean up their act by taking a more proactive role in promoting environmental protection and sustainable development. The World Business Council for Sustainable Development (WBCSD) offered "eco-efficiency" as its own solution to the increasing environmental challenges. Eco-efficiency was defined as "a process of adding ever more value while steadily decreasing resource use, waste and pollution."

Since those days, the onus for regulating TNCs and large national firms has shifted considerably. This shift is sometimes characterized in terms of a transition from so-called state-led "command and control" regulation in the 1960s and 1970s, to corporate self-regulation in the 1980s and 1990s, to a more recent emphasis on co-regulation. In the field of corporate environmental and social responsibility (CESR), co-regulation arises when two or more actors or "stakeholders" are involved in the design and implementation of norms and instruments that attempt to improve the social and environmental performance of firms. This may

involve government and/or multilateral organizations working with industry. Increasingly, however, co-regulatory arrangements involve "civil regulation" where NGOs and other civil society organizations play a key role.\(^6\)

In reaction to this reorganized influence of the international business community and the cumulative evidence of environmental and workplace problems, civil society began to restructure itself to face the new challenges. Local groups concerned with deteriorating conditions in factories and communities around the world realized the need for "umbrella" organizations that would enable them to negotiate more effectively with their adversaries and to participate in the increasingly contentious debates about the appropriate limits on corporate activity. The complexity of these conflicts increased as production spread globally. Local communities worldwide began to realize their impotence as they suffered the harmful effects of international investment. Global corporate bureaucracies implanted new technologies and administrative structures in their undertakings. This increasing intensity of production, in turn, brought with it dramatic changes in social structures, workplace discipline, and corporate demands for resources and infrastructure. Further exacerbating these problems, international investors, in return for unspecified benefits, were able to exact significant financial and tax concessions from national and local governments who found themselves ill-equipped to meet the challenges of increasing volumes of toxic effluents and intensifying pressures for permits to expand their presence.

A new regulatory system emerged at all levels of society to attempt to reconcile the conflicting demands of some for more control and of others for limits of responsibility. The seemingly unfettered global spread of production, coupled with emerging demands for more effective responses to the growing severity of environmental damage and the intensity of problems in the workplace, posed unprecedented challenges. As the global reach and influence of the TNCs increased, the already diminished

\(^6\) For a rich analysis of the corporate responsibility movement see the numerous publications sponsored by the United Nations Research Institute for Social Development (UNRISD), available at http://www.unrisd.org. See also Peter Utting, The Greening of Business in Developing Countries: Rhetoric, Reality, and Prospects (2003). Utting's working papers are also a rich source of information and analysis.
power of national institutions (government and trade unions), which may have regulated the process, was further eroded by the political pressures described above. In response, new governmental structures, from the smallest townships to international organizations, were charged with attempting to impose some order on the globalization process.

This Article examines the issues and conflicts that emerged with the CRM as well as the manifestation of these issues in Mexico in the aftermath of NAFTA’s promulgation. At the time NAFTA was enacted, it represented a unique agreement of the international community because of the complementary environmental and labor structures that were created as part of the complex political negotiations that enabled its passage in the U.S. Congress. There was no consideration given to the possibility of creating a political and economic union, like that being forged in Europe. However, the “side agreements” that led to the establishment of the Commission for Environmental Cooperation (CEC) and the North American Agreement on Labor Cooperation (NAALC) were considered at the time to be unusual and costly concessions by the free trade community to social demands for inclusion of the CESR within the fold of the NAFTA. Rather than delving into the institutional history of the operation of these two organizations, this Article presents summaries of a series of case studies and reflections on significant issues relating to the concerns of the CRM in the context of national development during the first decade following the operation of NAFTA. This Article begins with an overview of some important institutional developments with regard to the CRM that characterized Mexican society during this period and conditioned many of the developments that are examined in the following sections. It concludes with a overall evaluation of the present state of the

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II. Institution Building in the Context of NAFTA

During the years prior to NAFTA's signing, the organizational structure of the Mexican environmental movement transformed dramatically. The NGO community reacted with unexpected vigor to the proposal for NAFTA's expansion to encompass Mexico. Even before the agreement's implementation, several national coalitions repudiated the Mexican version of the draconian structural adjustment programs (SAPs) that imposed a very repressive package of economic measures on Mexican workers. The most notable NGO was the Mexican Action Network about the Free Trade Agreement (RMALC). RMALC developed close ties with counterparts in the United States and Canada and built alliances with NGOs in other countries hard hit by the SAPs. Community groups and intermediate level NGOs joined forces to form coalitions, focusing their opposition on several different dimensions of social and economic policy: labor, nutrition, child welfare, poverty, environment, and human rights. During the first half of the 1990s, these groups initiated an increasing number of political activities and demonstrations designed to highlight the negative effects of the SAPs and the likely impacts of free trade on the welfare of the majority of people in Mexico. These individual campaigns were successful in raising important issues that might become part of a national agenda for social change.

On the day of NAFTA's passage, January 1, 1994, the Zapatista Army of National Liberation (EZLN) voiced its opposition to the agreement by mounting an armed rebellion in the state of Chiapas, Mexico. Perhaps the most significant thing

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8 This Article is one of a number of products of a research project on "Voluntary Initiatives for Corporate Social and Environmental Responsibility in Mexico" that is being conducted as part of an international collaborative effort coordinated by the UNRISD. The research in Mexico was financed by a generous grant from the John D. and Catherine T. MacArthur Foundation.

9 This Part will focus exclusively on environmental matters, since virtually no institutional changes were implemented as a result of the NAALC.


11 See Hogenboom, supra note 7.
about this uprising was its galvanizing effect on the rest of
Mexican society, either in favor of or in opposition to the demands
of the indigenous groups. Virtually every segment of the
population found itself involved in the discussion regarding
societal changes that NAFTA would inevitably require. As a
result, local programs of independent groups and official proposals
to reduce the polarizing effects of neo-liberal policies were again
on the table for debate. The country contemporaneously
rediscovered the magnitude of its indigenous populations, which
came together under the umbrella organization called the National
Indigenous Congress that burgeoned from about eight million
people in the late eighties to more than fifteen million just seven
years later. As a result, Mexico's poor recognized that it was both
safe and advantageous to reclaim, or even reinvent, their ethnic
past.

With a change in national administration at the end of 1994, the
creation of the Secretariat of Environment, Natural Resources and
Fishing (SEMARNAP) secured a place for environmental issues on
the national agenda.12 The National Institute of Ecology (INE), a
quasi-independent entity of SEMARNAP, served as a center for
reflection on policy formulation and an apparatus for its
implementation. The Attorney's Office for Environmental
Protection was granted supervisory law enforcement functions, the
execution of which varied in effectiveness, depending on the
influence of the transgressor. Developments within the Mexican
government, such as a more permissive investment climate,
increased demands for natural resources, and environmental
degradation reflected a belated official recognition of the need to
strengthen institutional capabilities in the face of growing
environmental challenges. Two particularly glaring problems were
influential in galvanizing public opinion and spurring governmental
action: (i) the incapacity to confront severe air pollution problems in
the Mexico City metropolitan area and; (ii) the focus of international
attention on the neglect of the environmental crisis in communities
on both sides of Mexico's northern border.

The pressures to attack these problems were institutionalized
with the signing of the environmental side agreement of NAFTA in

12 Now known as Secretariat of Environment and Natural Resources (SEMARNAT),
the INE is an important place for policy formulation and evaluation.
1993. This protocol created the trilateral Commission for Environmental Cooperation (CEC), an entity to be headed by the ministers of the agencies, charged with overseeing environmental affairs in Canada, the United States, and Mexico. The Commission was to handle complaints from grassroots organizations about the impact of the integration process. The new body was granted independent investigative authority to determine whether member countries were adequately enforcing domestic environmental legislation. In addition to empowering the CEC to conduct investigations, the protocol also granted the CEC authority to initiate its own studies of the overall impact of integration on environmental conditions in general.

At the same time, the Border Environmental Cooperation Commission (BECC) was created. The BECC and its funding agency, the North American Development Bank (NAD Bank), are not formally part of NAFTA. They were created to promote and help finance infrastructure along the U.S. border and designed to convince skeptics to support the trade pact since the infrastructural improvements would mitigate any potential environmental degradation associated with NAFTA's promised economic development.\(^{13}\)

In light of the polarization of Mexican society and the emerging environmental oversight bodies, the Mexican business community realized the importance of forging its own political capability in the area of the environment. The various business chambers, the National Manufacturers Chamber of Commerce (CANACINTRA) and the National Retailers Chamber of Commerce (CANACO), created environmental commissions to counter social sector critiques and to attempt to preempt initiatives by domestic and international environmental NGOs. By focusing on their own agendas and participating collectively in both public and legislative discussions of environmental initiatives, they aimed to provide a "greener" image of business and to forestall further public regulation of private sector activities. This activity was initially driven by a small group within the Mexican business community who had been involved with international efforts to create the World Business for Sustainable

As a result of their involvement in free trade negotiations, these members of the Mexican business community were aware of the activism of organized lobbies in the North, and they were concerned that if the process of self-regulation did not improve, general public dissatisfaction with deteriorating environmental conditions would lead to much stricter government regulation. The government warmly received these movements to reduce official intervention in the economy and promote the use of administrative and market mechanisms to induce the private sector to behave more responsibly in its use of resources and design of production.

Similarly, the Mexican academic world prepared itself for this new area of specialization. For example, the National Polytechnic Institute (IPN) became the host for the United Nations Industrial Development Organization (UNIDO) initiative to encourage responsible environmental management of production processes. IPN's Mexican Center for Clean Production forms part of a global network that is organized to promote industrial research and training, but after an initial spurt of activity into the metal plating and tanning industries, it ceased to have an important effect. Perhaps a more influential initiative of academia was the Center for Environmental Quality and the related teaching programs at the ITESM, which trained a new generation of students to staff the local corporate environmental departments and offered consultancy services to enable their clients to qualify as responsible enterprises.

On several occasions, the CEC, based in Montreal, has guided private initiatives towards greater environmental responsibility. One dramatic example is its response to a Canadian complaint arising from the massive killing of its migratory ducks near a dam in central Mexico. The resulting investigation identified the source of the problem as the shoe industry's tanning workshops in Leon, Guanajuato. The CEC boldly proposed significant changes that were promptly introduced into production and effluent recovery processes by a few of the larger enterprises and an ambitious industrial training and equipment refitting program was designed for the smaller establishments. Unfortunately, political ambitions and

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14 The Mexican chapter of the WBCSD is known as the Private Sector Center for Study of Sustainable Development (CESPEDS). Once housed in the Technological Institute of Monterrey (ITESM), CESPEDS is now located in the elite Business Coordinating Center in Mexico City.
corporate greed rapidly halted the program and poisonous runoff is now pumped into the aquifer with disastrous implications for human and ecosystem health. The CEC has taken a much less active role in implementing remedial programs to address the pressing environmental problems of the continent.

Although environmental regulation has a sizeable institutional presence, the Mexican government has shifted from activism in their efforts to solve pressing problems. Its Ministry (SEMARNAT) is supported by the National Ecology Institute and its enforcement arm, the Federal Attorney's Office for Environment Protection, as well as by a few widely scattered programs in other ministries. In response to criticisms of its regulatory and police approach, the agencies moved towards rewarding self-compliance, a method similar in philosophy to the ISO 14000 standards that dominate in the international corporate arena. The voluntary programs for CESR managed by the corporate members of the Mexican Center for Philanthropy offer a domestic version of this approach. More recently, the Secretariat has gone even further in the direction of market directed incentives by attempting to place monetary values on environmental services and rewarding privileged communities and other producers for their efforts to conserve the environment. The government’s initiatives can only be understood in light of the systematic private sector efforts to gain credibility and build capacity for corporate self-regulation, both as an acceptable method for compliance with environmental norms and as an alternative to government regulation. As government institutions are weakened by budgetary restrictions and high personnel turnover, business leaders are carefully negotiating a new relationship with the public sectors. The leaders are working to deliberately avoid conflicts between the public sector mandate of establishing a normative framework for regulation and the private sector’s objective of assuming responsibility for compliance.

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15 A critique of this approach is that it diverts scarce resources for environmental protection from the grassroots groups who are most committed to conservation. Critiques, however, are beyond the scope of this Article.

16 Although we will not delve into the case here, the recent history of legislation to permit the production and sale of agricultural products grown from transgenic seeds vividly illustrates another approach, when negotiation with other sectors is not possible. The international commercial interests and their local partners simply strong-armed the
The strategy of the Mexican business community was particularly effective in defining a restricted approach to environmental responsibility for the private sector. The strategy preempted a wide-ranging debate on the subject, limiting the analysis to a narrow definition of the production process itself and its generation of waste streams within the work center. This narrowing contrasted sharply with the attempts by grassroots community groups, labor unions, and health sector workers to expand the analysis to include the impact of production processes on national and local resource use, environmental conditions, workplace health and safety, and community health in its broadest sense. Issues relating to the "viability" of prevailing wages or the adequacy of the existing regulatory framework were successfully shunted aside. The business community also succeeded in shaping fiscal policy which shifted much of the cost for adopting environmentally responsible technologies to the public sector through tax credits.

In concluding this section, it should be noted that this voluntary approach to CESR has, in many instances, produced important results. Given a long history of inexpensive energy, unfettered access to resources that contributed to their squandering, and the irresponsible handling of residual products and other waste matter, there is a great deal of room for relatively "easy" improvements to environmental outcomes. Such possibilities include controlling regulated contaminants through "end of pipe" technology that reduces effluent streams and emissions—primarily in scrubbers in smoke stacks, vapor recuperation systems, and systems for retrieving valuable catalysts and solvents. End-of-pipe technology is now standard in an ever-increasing number of industrial sectors but is obsolete by international standards. Investments in technology to control regulated contaminatees are partially financed by tax incentives that allow for business owners to expense or accelerate depreciation of such equipment. The vast majority of investments are attributed to these tax incentives as well as the promotion of legislature into acquiescing to a new bio-safety law that clearly is at odds with Mexico's international commitments in the Cartagena Protocol on the subject.

17 Two relatively successful programs in this regard are the energy saving audits, sponsored by an agency in the Federal Electricity Company, and the imposition of effluent charges on water discharges that vary with the volume and the degree of contamination. The latter program leads many users to recycle and treat their effluents before releasing them.
more efficient use of raw materials and energy sources. More complex improvements, such as redesigning production processes and worker productivity to improve efficiency as well as make the products themselves more environmentally benign (source reduction), are still not common in Mexico, except where such designs are mandated by the home offices of local subsidiaries.

III. The Environmental and Social Outcomes of Globalization in Mexico

NAFTA has set the stage for massive increases in foreign direct investment. With the sudden elimination of tariff barriers for most trade between the three North American partners, Mexico became an extraordinary platform from which to manufacture many products requiring large amounts of labor and/or natural resources that were abundant in its borders. In response to this new advantage, an intense debate raged about the social and environmental impacts of trade. Opponents argued that a "race to the bottom" would drive pollution and labor intensive producers from high-cost and regulatory restrictive regions to areas where people were willing to assume the environmental costs of pollution and the social costs of poor working conditions. The promoters of free trade preferred to discount these potential dangers in favor of a rosier vision of improved economic conditions that would result from rising incomes that resulted from economic growth.\(^{18}\) As evident in the following pages, the real outcomes of North American style globalization are far more complex than the polarized debate on the issues suggests. In the end, however, it is clear that NAFTA has not delivered on its promise of continuing generalized improvements of well-being and the environment for the Mexican population. NAFTA's benefits have been unequally distributed and some of the people whose welfare has improved (or whose condition has deteriorated

\(^{18}\) For a rich accumulation of materials on this debate and analysis of the relative merits of the theoretical arguments, see INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, at http://www.iisd.ca. This literature includes significant evidence not only that pollution-intensive industries are not specifically drawn to Mexico and that wealthier nations are willing to spend more for environmental protection, but also that large international firms are more likely than local firms to adhere to or exceed local environmental regulations; smaller international firms tend to behave like local firms. Id.
least) during the past decade are those who have learned to remove themselves from the most intense processes of transnational integration.

Although environmental conditions in many parts of Mexico have deteriorated during the past decade, the country is now better equipped to confront its problems. A new administrative and judicial capacity has been created to face the challenges created by regional integration. This dramatic explosion in the volume of international trade and foreign direct investment pose unprecedented problems for communities throughout the country. The national government has tried to improve its institutional capabilities to respond to the demands and to redefine the responsibilities of the actors to attempt to achieve greater compliance with regulatory norms and legislative mandates. In the final analysis, though, it is uncertain whether these advances will be sufficient to counteract the deterioration created by the sheer increase in the scope of activity and the damage occasioned by transgressors.

There is no doubt that the northern border region has experienced the most intense impacts of NAFTA. Mexican society has been reoriented from its dependency on activity in the Mexico City Valley towards new, dispersed growth poles in the North. While not all of the growth in economic activity and population has been centered in the border cities, at least ten of these cities are growing faster than their local governments can manage, greatly straining urban infrastructures and the capacity of the ecosystems to support them. This is where the maquiladora industry was born and still dominates, where most of Mexico's foreign trade comes from or goes to, and where countless hoards still try to cross the border and hundreds die in the process.

The tragic personal histories of the hundreds of women murdered in Ciudad Juarez, and the thousands whose babies have been delivered with low birth weight, make up only part of the story.\textsuperscript{19} While these tragedies cannot be directly attributed to

\textsuperscript{19} Hector Balcazar et al., Factors Associated with Work-Related Accidents and Sickness Among Maquiladora Workers: The Case of Nogales, Sonora, Mexico, 25 Int'l J. Health Services 489-502 (1995). See also Catalina Denman, Salud y Maquila: Acotaciones del campo de investigación en vistas de las contribuciones recientes, in RELACIONES: SALUD, EXPERIENCIA Y ENFERMEDAD, VOL XIX 75-100. For a detailed account and analysis of the situation in Ciudad Juarez, see Deborah Weissman, The
NAFTA, regional integration has certainly accelerated their pace and intensified the violence. Similarly, although the absolute disregard for human life and minimum standards of social responsibility of the U.S. owners of the automotive battery recycling plant owned by Metales y Derivados, just a short distance from the international airport in Tijuana, is not a direct consequence of NAFTA, the site continues to poison tens of thousands in the area. The CEC documented the illegal storage of 7,000 tons of toxic waste, including lead, arsenic, and heavy metals in the soil surrounding the defunct plant, but, without enforcement authorities and the reluctance of Mexican officials to discourage foreign investment, no action has been taken.

These outstanding incidents, however, should not mask the systematic pattern of unethical behavior and the inability and/or unwillingness of the two NAFTA agencies and the appropriate Mexican authorities to reign in the wholesale abuse of the rule of law that these groups were created to enforce. Numerous incidents have demonstrated that international investors have come to depend on the brutal practices of official Mexican labor organizations, that the local political structure supports these practices and the acceptance of this flagrant violation of Mexican and international law by the local and national judicial system. Again, we should not be misled about the widespread character of the problem just because only a few cases have become cause célèbres. For example, there is a well-documented case involving workers at the Han Young truck assembly plant in Tijuana, a subsidiary of the U.S. branch of the Korean Hyundai Corporation, who were beaten by hired assailants to thwart an attempt to form an independent union to address flagrant problems of workplace safety. Following their vigorous and successful campaign to organize an independent union, workers went on strike with the support of a well-run international solidarity movement, only to face a local police action to protect strikebreakers brought in to break the union. In spite of favorable judicial rulings, the local

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20 Others have documented numerous cases of anencephaly and lead poisoning in the community. The remains of the plant still sit, untreated and unprotected, on the Otay Mesa. See, e.g., David Bacon, The Toxic Border, INTERHEMISPHERIC RESOURCE CENTER, at http://www.americaspolicy.org/reports/2004/0412toxic.html.
political powers have remained intransigent, and the struggle has waned.

In another instance, a more felicitous outcome was negotiated, but only after a violent local struggle. In this case, the Duro Bag Company of Ludlow, Kentucky, a supplier to the Hallmark Corporation, refused to negotiate with its workers and called in police to break the strike. After winning union representation elections, these workers had to face hired assailants who physically blocked them from entering the plant. After more than two years and a strenuous struggle with the union movement in the United States of America, the Duro Manufacturing Company acceded to workers' demands in Matamoros to form an independent union and reinstate the fired leaders.21

Examples of companies attempting to flout the law abound in the border region. The international transport of solid wastes, especially toxic residues, has caused numerous problems over the years. The La Paz Agreement between the United States and Mexico, which mandates that all raw materials and industrial waste generated from imports be returned to the country of origin for disposal, has not led to an accurate inventory tracking system, much less an effective enforcement procedure to ensure compliance. Exposure to toxic chemicals and unsafe working conditions are more frequent complaints, however. Workers at two U.S.-owned auto parts plants (Customtrim/Autotrim plants in

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21 In this case, the outcome may be due, in large measure, to the strong culture of union organizing in this area as compared to its absence on the west coast of Mexico. Ironically, even after the agreement was reached, the Company had to struggle against the intransigent local representative of the Labor Ministry who attempted to undermine the agreement. There are fourteen cases that have been brought before the NAALC for violations of the legal right to freedom of association. For details about these cases and references to the relevant legal precedents, see Joel Solomon, Trading Away Rights: The Unfulfilled Promise of NAFTA, HUM. RTS. WATCH. Vol 13, No. 2B (April 2001) http://www.hrm.org/reports/2001/nafta. A recent victory by another group of former employees of a Korean maquiladora further reinforces past lessons about the importance of international solidarity. In this case, a group of workers in La Paz, Baja California, fought for legally specified severance payments after the firm, Pung Kook, closed its operations. Without recourse in Mexico, the workers sought help from unions elsewhere, from the international solidarity movement, and from the company's principal customer, Adidas, as well as from Korean ethnic organizations in Los Angeles and Seoul. After more than 18 months of actions on a number of fronts, the company not only paid the wage claims but made restitution for its systematic efforts to attempt to break the independent union before leaving Mexico. See Bacon, supra note 20.
Matamoros), for example, filed a complaint with the NAALC that they had been systematically exposed to toxic chemicals at work in violation of Mexican health and safety laws. In spite of ample evidence of the violations and strong international support, the case was dismissed. Similar problems with official inaction arise with illegal discharges into sewage systems and surface water outlets.

In the final analysis, however, these abuses along the border only provide anecdotal evidence of the scope of problems facing the CRM in the region. They only hint at the severity and ubiquity of the problem. But, they do not come to grips with the underlying causes for the widespread pattern of abuse and the official acquiescence in the face of ample evidence of transgressions. Policy makers in the border area are in a quandary. The area has already grown far beyond its capacity to serve the whole population with a basic basket of essential public services and a minimum guarantee of quality of life to which they aspire. But, the local establishment is incapable of conceiving of an alternative solution, called the "high road" in the parlance of regional development, based on improving working conditions, rising productivity, and qualitative improvements in infrastructure. Thus, discussions of "growth management" or "smart growth" strategies that are now common in some parts of Europe and in the Pacific Northwest of the United States are unthinkable in discussions among policy planners on both sides of the U.S.-Mexican border. When combined with the low level of preparation of local officials and the culture of lawlessness resulting from the central role of drug trafficking in the region, it is little wonder the situation continues to deteriorate.

A. Social and Environmental Abuses: A Systematic Pattern?

The plethora of horror stories about the abusive exercise of corporate power by foreign investors serves to confirm the worst stereotypes about the inner workings of the prevailing economic system. Throughout Mexico, one encounters examples of the impunity of international capital and the ineffectiveness of the

22 Roger Simmonds & Gary Hack, Global City Relations: Their Emerging Forms (Taylor & Francis eds., 2001); Mark J. Spalding, Sustainable Development in San Diego-Tijuana: Environmental, Social, and Economic Implications of Interdependence (1999).
regulatory and judicial institutions created to protect communities and prevent further damage. One of the more egregious examples is the case of the Metalclad Corporation which was expelled from Mexico as a result of serious charges of environmental misfeasance and criminal behavior in trying to manipulate a complex administrative situation to its advantage. After having won a contract to build and operate a toxic waste processing facility in the state of San Luis Potosí, the company decided to ignore the advice of its own lawyers to obtain local government permits; instead, it assumed that the Federal operating permit that came with the contract would be sufficient. In the end, aggrieved local authorities sided with local environmentalists who opposed and ultimately cancelled the project. Metalclad won a $16 million judgment against Mexico through an international appeals procedure that was widely considered to reflect the abusive exercise of corporate power.²³

A more recent case illustrates the complexities of the CRM. The German chemical giant, BASF, established a manufacturing plant for pigments on lands it rented in south-central Mexico. This company was one of the earliest participants in the CESR movement, aggressively moving to modify its production and administrative systems to qualify as an exemplar corporate citizen; it continues to promote this agenda internationally. Just recently, however, local complaints of serious health and environmental problems focused a spotlight on the devastation it created during the years it operated in the area. Serious academic studies are documenting its legacy of toxicity that is likely to plague the area for the foreseeable future. When it first abandoned the plant in 1995, BASF contracted with the only authorized toxic waste processing company in the country to manage the cleanup of the area; the work was subcontracted to a local firm which probably did not realize the scope of the problem and did not do an adequate job. Ten years later, in spite of a long history of complaints and attempts by the property owner to obtain satisfaction, the local population, its aquifer, and the ecosystem continue to bear the huge burden of illness and ecocide because

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there are no adequate institutional mechanisms to oversee this process. When information about the problem surfaced, BASF rapidly changed management but no complete diagnosis of the situation has yet been conducted, and public officials continue to downplay the severity of the problem. Meanwhile, the chemical company has not yet developed an appropriate response and continues to flaunt its certification as a socially and environmentally responsible corporate citizen.  

One of the most egregious cases of the abuse of the self-aggrandizing process of conferring awards for CESR by the corporate community on itself (greenwashing) is that of Peñoles, one of Mexico's leading mining companies. This operator of Mexico's only lead smelter is part of a large domestic holding company (BAL), which includes an important insurance and financial group, a department store chain, and local water service companies; it also operates numerous mines under contracts that leave the workers and the neighboring communities without recourse for the damages incurred. The company was awarded a CSR award for its efforts to clean up the huge overlay of environmental liabilities that it had accumulated as a result of more than a century of operating the plant without provision for the lead particles that were released into the air and settled into the soil and water; in the 1990s, tens of thousands of children were "discovered" to be suffering the effects of lead poisoning. The situation was so dramatic that the U.S. Center for Disease Control was called in to make an assessment of the situation and to validate the remedial programs proposed by the company. While Peñoles spent millions on the effort and dedicated significant resources to explaining what it was doing to the local population, it has steadfastly denied the need to continue with the additional remedial actions that independent evaluators consider essential.

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24 This information is based on interviews with the researchers who are presently involved in analyzing the problem. Unfortunately, the issue is now (2005) in civil court, impeding further corrective actions and leaving the people to continue to bear the brunt of the environmental problems they have inherited. Rather, than being an analysis of BASF, these comments point to the problem of the absence of mechanisms to deal with the tragic human and environmental costs that have already been imposed on the region and that even an enterprise that accepts the full CESR discourse is not completely prepared to face the challenges of the problems it has created or inherited.

25 For more information on this mining company, see http://www.penoles.com.mx.
One of the most evident problems is a huge mountain (some 50 meters high and 500 meters long) of tailings from the smelter that stands as an imposing monument to the company’s lack of sensitivity, while the ore bearing trucks that travel from the mines leave trails of lead-bearing dust in their wake, some of which continues to deposit in the Torreon metropolitan area.26

B. Is Responsible Corporate Citizenship Possible?

There are numerous examples of responsible corporate behavior seriously accepting the challenge to provide a healthy workplace and rehabilitate damaged ecosystems. Unfortunately, there are few in Mexico. Of these few, the most outstanding are being implemented by domestic enterprises. For example, a well documented success story is that of Negro de Humo, a former subsidiary of the state petroleum company that was privatized and reorganized by an unusual group of managers. The company makes a necessary ingredient for the manufacture of tires, and, under the leadership of a committed chief executive and an innovative group of managers, was able to transform a dirty and unhealthy process into a prize-winning example of corporate citizenship.27

This example is one of a number of cases in the industrial port of Altamira on Mexico’s Gulf Coast. While searching for an explanation, we found a single person who had played a key role in the development of the petrochemical complex and in the implantation of the culture of good corporate citizenship. He was an unusual participant in the original efforts to spread the message of the World Business Council for Sustainable Development (WBCSD) to Latin America and continues to shape corporate policies in the region. Today, the local industrialists’ association is extending the individual efforts of its members by sponsoring the rehabilitation of the severely damaged regional system of lagoons that plays an important role in regulating the health of the


27 It is interesting that in spite of several detailed case studies of the process, the leadership has made no attempt to gain recognition from beyond the holding company of which it is a part. Id. Many participants also expressed skepticism about the systems of eco-labeling presently being used in Mexico.
ecosystem. The firms continue deepening their individual contributions to ecosystem health by extending the system of exchange among themselves, transforming the wastes of one plant into inputs of another. The simplest of these exchanges is the sale of excess heat and vapor from one plant for use in production in another.

Even in this case, contradictions continue to emerge. A local pediatrician noticed an unusual occurrence of infant leukemia in the region. Local health authorities had not detected the problem, in part, because many of the infants were being treated in nearby Texas institutions, since there were no qualified oncologists in the region. When the problem was brought to the attention of the industrialists, they expressed concern, but to date, nobody has been able to pinpoint its origin.

The petrochemical companies in this region are now members of the National Association of the Chemical Industry (ANIQ) that brings together the largest, predominantly foreign owned companies in Mexico. Membership in the Association is contingent upon qualifying for the Mexican version of the "Responsible Care" program that the industry is implementing worldwide. The program was developed in large measure in reaction to the Bhopal disaster. It requires a strict and closely monitored effort to ensure that the industry adheres to high standards for clean production and responsible management. In interviews with executives of a number of the participants, it became clear that meeting the rigid international standards was more exacting than they anticipated.

Corporate policies to promote responsible environmental behavior appear to be increasingly important among foreign-based transnational firms. They are implementing global strategies to ensure a more efficient use of materials and a more effective recycling of by-products. These policies are not inspired by local concerns in Mexico but, rather, by competitive pressures emerging primarily in the other OECD countries. When asked, a number of managers pointed out that their most important efforts in this direction are the result of company-wide directives and that the personnel charged with supervision are being trained abroad. It

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was striking, however, that these interviews did not identify any concerted effort to extend these practices throughout their supply chain, as they have done for inventory control and information systems. Even more striking, however, Mexican firms with international affiliates do not report any corporate-wide programs of environmental protection or remediation. Most participants continue in the program because of mandates from their home offices, although it is clear that many firms do not have a clear understanding of the culture of corporate responsibility so carefully elaborated by the international business community. Nor do they have the human resources necessary for a full and effective application of the program in their Mexican operations.

This conclusion was vividly reinforced during our visits to a number of important pharmaceutical companies in Mexico. All of these international companies pride themselves on their active participation in global certification and labeling programs. They are leading contributors to the CRM and make substantial contributions to groups like the WBCSD. The transition that several companies were making from home office executives to local officers in the offices responsible for implementing CESR was particularly notable. It was apparent that when the transfer of responsibility was made, the importance of the post and the program was rapidly downgraded and the effectiveness of the new head of office was severely compromised. This became evident, for instance, after the appointment of a woman to the post. Although highly qualified, her effectiveness was severely compromised because of her youth and gender.

The difficulty in implanting CESR in Mexico stems from the inability to translate home office dictates into an effective and fully understood action program. While the companies are trying to comply with the letter of the program, they miss the spirit behind the initiative. They have proven ineffective in communicating it to their personnel throughout the company and have been unable to ensure that their Mexican employees adopt the new approach as part of their culture. As in many other facets of their activities, the radical changes applied by CESR require a

29 In two cases, the managers reported that they were unwilling to get involved in modifying the production practices of their suppliers. When questioned about the difference between quality and environment controls, they avoided responding.
culture of respect and participation that is often missing in local corporate structures.

C. Local Corporate Leadership

Mexico has a number of important and successful local business leaders who are committed to the principles of sustainable development and CESR. These leaders continue to play important roles in the CRM and CESR agendas and have taken an active role in promoting environmental education and organizing numerous activities that offer the opportunity to reward each other for their outstanding efforts. These events are an important part of the CESR agenda in Mexico, and thus warrant a more detailed examination.

Mexico's cement industry is one of the most vigorous promoters of the CRM. Its largest company, CEMEX, with holdings in more than a dozen countries, has a long standing program to provide cement to people in its regions of influence to ensure that their housing meets minimally acceptable standards. Together with other local community programs, CEMEX also advertises these programs widely to encourage buyers of cement and cement products to choose its brands over those of its competitors. The second largest cement company, Apasco, now a subsidiary of Holcim, the Swiss company owned by Stephen Schmidheiny, is being integrated into the pro-active international CESR agenda. The third largest cement company, Cruz Azul, is a workers' cooperative. It has a broad program of community participation and a high quality infrastructure to offer services to people in its areas of influence. It also undertakes an active program of environmental restoration in areas where they have finished working. This program includes a health program and medical facilities of such sufficient quality that the company has been exempted from participating in the national system, and it has extended its services to the communities in which its plants are located. In the comparison between these three competitors, it is striking that the cooperative does not attempt to collect badges from other parts of the corporate community but, instead, has a program that is proving very effective at achieving the goals of the CRM.

Another case illustrates instances where both communities and workers can emerge as winners from their struggles. It is
important to note, however, that substantial skill and effort as well as outside support for workers are almost always at a disadvantage in trying to overcome the problems occasioned by traditional labor-management practices. This unusual example in a maquiladora, producing clothing for name brands in the developed countries, is particularly poignant in highlighting the effectiveness of cross-border organizing to support a local labor struggle. In this case Kuk Dong, a Korean firm in the central Mexican state of Puebla, faced a bitter battle with its mostly female labor force over working conditions and wages. Its initial intransigence led to serious problems in the region and the threat of violence by all the parties, including the state government. The workers received support from the United Students Against Sweatshops campaign in the United States which brought its influence to bear directly with the Nike Corporation, one of the company’s principal customers. After lengthy negotiations lasting almost nine months, an agreement was signed recognizing the union and granting the women a socially acceptable contract. The solidarity movement joined with the workers to exact a promise from Nike not to cut back on orders to the firm and respect the integrity of the new union. Since then, the company, renamed MexMode, has been able to prosper by boasting of the favorable labor contract.

A more extreme case of enlightened corporate leadership is that of Yakult in Mexico. This Japanese based firm has a Mexican CEO with a strong personal sense of ethics. He has implemented a program of social and environmental responsibility that directly involves all members of the enterprise. As he expresses it, he established a maximum ratio of differences in salaries of ten to

30 The Worker Rights Consortium (WRC) describes itself as “a non-profit organization created by college and university administrations, students and labor rights experts. The WRC’s purpose is to assist in the enforcement of manufacturing Codes of Conduct adopted by colleges and universities; these Codes are designed to ensure that factories producing clothing and other goods bearing college and university names respect the basic rights of workers. There are more than 100 colleges and universities affiliated with the WRC.” Workers Rights Consortium, at http://www.workersrights.org (last visited Apr. 4, 2005).

31 HUBERTO JUÁREZ NUÑEZ, REBELIÓN EN EL GREENFIELD (Benemerita Universidad Autonoma de Puebla & AFL-CIO, 2002). A subsequent contract, negotiated in 2004 appears not to have been as favorable for the workers, who acceded to the changes because of the increasingly harsh competitive climate in which the company claimed it was operating.
one, thereby obliging him to pay a reasonable salary to the lowest paid workers if he was to obtain an adequate income. This is combined with a transparent accounting system that distributes a profit-sharing program, according to Mexican law, that generally pays out as much as each worker earned during the year. Door-to-door distributors of the product are given an advantage over store sales through a price structure that allows a decent income to women on the basis of average neighborhood volumes. In the workplace, there are no janitorial workers because each worker is responsible for the cleanliness of his or her area, and common areas are shared among all personnel. This ethos is reinforced by a series of training programs and promotion opportunities, as the firm invests in other enterprises. On the environmental front, a large proportion of the containers are returned to the factory for recycling, and the vexing problem of the aluminum foil used to seal the plastic bottle has been resolved with a guillotine. A complete life cycle analysis is implemented to evaluate all resources used in the process, and water requirements have been substantially reduced.

A different level of corporate responsibility is evident in the collaborative efforts initiated by eight international electronics firms in the Guadalajara area to create a working group for health, safety, and the environment. Initiated in response to a government call for decentralized efforts to speed the safe handling and recycling of toxic wastes, the group felt frustrated by the lack of official response to its proposed solutions. It soon became clear that there was no real commitment to the federal program within the government and that they would have to proceed on their own to achieve the objectives. Since these initial efforts, responsibility for the group has rotated among the firms, and its activities have spread to providing joint protection services for fires and chemical accidents. More recently, they are providing technical assistance to the city of Guadalajara, as it attempts to meet the challenges of upgrading its municipal services. This organization offers a case study of the ways in which firms with their own corporate code of responsible behavior are going beyond their minimum mandate to fill a gap that is often provided by public authorities in other regions. The people involved are enthusiastic promoters of the concept and have extended their influence to public service consulting on these matters in their region.
IV. Neglected Aspects of the CRM

Mexico’s pace of accelerated integration into the world economy has created many pressures that work against a responsible corporate profile. In spite of an optimistic judgment about the “dematerialization” of international trade, there are numerous indicators suggesting that the resource intensity of foreign commerce may actually be increasing, with its heavy component of environmental impacts. Similarly, the geographic redeployment of industry is not being guided with any notion of the carrying capacity of an ecosystem or the balance between available supplies of basic resources (such as water and energy) and the demands for them with new entrants. Similarly, the facile assumption that people can be moved from one region to another simply amounts to transforming workers into another commodity. There are a number of sectoral considerations not covered in the case materials presented in the body of this report that are worthy of reflection:

(1) The maquiladora economy poses special challenges of its own. Not only is it exceedingly vulnerable to the swings in economic activity of its principal trading partners, as was evident during the downturn of 2000-2001 during which 350,000 jobs disappeared, but also to policy shifts in other poor countries that are frequently tempted to go on “raids” to attract jobs and income from existing sites. The recent shift of several dozen plants from small communities in Yucatan to others in Central America can serve as a warning of how “footloose” these enterprises can be. When a small plant that is the only modern source of employment in a very small community leaves, the effects can be devastating. These effects will be magnified to the extent that the people abandon their traditional production systems in favor of this “modern employment,” as has been the case in numerous recent cases of plant closings.

(2) One worrisome challenge that fortunately did not materialize to any important degree is the decision to move factories in search of pollution havens. The scarce literature on the subject, together with our own cursory study of the changing composition of firms on the northern border, suggests that new firms opening plants in the region are not causing more contamination than before. Rather, it suggests that the increase in detritus is a result of the growth of output and the lack of innovative systems to ensure lower emissions. A much more
environmentally and socially damaging long term effect of the growth of the maquiladora sector is the human toll on social groups unable to be accommodated within the existing infrastructure and the violence this provokes in these societies.

(3) Agricultural specialization poses a real danger to corporate responsibility and sustainable development. Since it involves productive systems that are particularly intensive in use of natural resources and in consuming growing quantities of energy and water, the new international division of labor sets the stage for serious challenges to responsible production programs. Any meaningful evaluation of the environmental and social impact of corporate internationalism requires a special place for evaluating the way in which agribusiness appropriates and uses natural resources (land, energy, nutrients, germplasm) and people in an unequal process of exchange.

(4) A final area of concern is the management of the banking system. Mexico’s mishandling of its financial institutions in the transition to deregulation is a shameful study for which the country will pay dearly for decades to come. Banks must be institutions for channeling important parts of local savings into productive investments in the same region. Since the restructuring has made this increasingly unlikely, the country will continue to find itself a loser in the national and international economy. Some attention must be directed, then, to the responsibility of these institutions to promote responsible behavior by themselves behaving in a responsible fashion.32

V. Conclusion

It is clear from the Mexican experience that CESR has come onto the scene as a new arena for corporate activity. It is not only a new area for investment but, more importantly, it is also a new area for evaluating performance. As such, Mexican institutions both governmental and social are woefully unprepared to seize the opportunity, either as a guide to demanding more consistent results or as a metric against which to impose greater restrictions. CESR has not come of age in Mexico: it is a rarified discourse for a small group of large international corporations which dominate their

32 David Barkin, Financial Globalization and Sustainable Development in Mexico, in ENVIRONMENTAL MANAGEMENT IN DEVELOPING COUNTRIES (Mulugetta & Yacob eds., 1999).
sectors and are probably exercising oligopoly pressures in the Mexican economy.

The search for more responsible behavior in environmental terms probably means that many resources of all sorts are being used more efficiently and that production is cleaner. But, these inferences do not address serious questions about the quality of the products being produced or the quality of the life styles that these new production systems are feeding. Each product may require fewer resources and generate fewer greenhouse gases in production and consumption, but will the sum of all this production still allow humanity to share the planet with other creatures for future generations?

In contrast, the demands of the CRM for socially responsible corporate behavior continue to fall on deaf ears in Mexico. This is true in both the public and private sectors. As is evident from the few cases presented in this Article, there is no institutional commitment to enforcing the constitutional mandate for freedom of association, much less in adhering to the international treaties to which Mexico is a signatory. The failure to create institutional support for socially responsible behavior affects all aspects of life: (1) educational and medical services are distributed unevenly at the expense of the country’s most disadvantaged; (2) even workplace health and safety enforcement procedures and record keeping have been modified to better suit the needs of capital; (3) the real purchasing power of the minimum wage has declined by more than two-thirds and the constitutional mandate that it be fixed at a socially acceptable level to support a family is rarely observed. Of course, wages might be set above the minimum by enterprises, but they rarely take into account the real cost of living.

CESR has not developed sufficiently to be a marketing tool in Mexico. But the application of the standards of eco-efficiency or green production in Mexico may serve to promote favorable marketing images elsewhere. The depth of the crisis and the lack of respect for people’s time and the quality of their life in Mexico are insurmountable obstacles to effectively implementing any serious program of responsible production.

Self-regulation and voluntary initiatives are the watchwords of this new area for corporate activity. At present, this is a blessing because existing governmental agencies themselves have little idea of what responsible behavior might be. Some minimum set
of guidelines will have to emerge against which to evaluate the energy used in production and for consumption of different products and to evaluate the contribution to or destruction of aquifers, forests, fisheries, and other repositories of nature’s bounty. We must begin to develop these guidelines collectively, to set limits on consumption and production. This, however, is an obiter dictum that cannot yet be taken seriously. Those committed to the possibility of corporate sustainability must contribute to, and maybe even to lead, this task.

In Mexico, however, we have a prior task. We must build the institutions of civil society, of government, and of community that will prepare us to become more demanding participants in the shaping of our own society. As long as politics is an elite game of musical chairs and a corrupt transfer of wealth, our demands for greater responsibility from the corporate sector may well sound sanctimonious. We must develop the trade unions, the institutions of communal governance, and the industrial and civic organizations that permit and oblige us to shape the society in which we live. Without an institutional underpinning, our demands for corporate rectitude and respect are unbalanced. Only when these institutions are constructed will it be possible to demand more from ourselves and from others.
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