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Corporate Social Responsibility and Employment: a Plurality of Configurations

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The principal of corporate social responsibility is frequently presented as the basis for a new way of regulating working conditions and the environment (Sobczak 2002). This type of regulation, initiated by multinationals, is considered to be an alternative to, or at very least a supplement (European Commission 2001) to, legal norms in place within nation states and even continental areas (in the case of the EU). As a form of “soft law”, this model would avoid the use of a legislative intervention that would prohibit behaviour deemed harmful for the community, and would contribute to what some are negatively terming “legislative inflation”¹. Indeed, this new form of regulation would reflect *the firm’s role* in the monitoring of working conditions and environmental awareness. Accordingly, the theme social responsibility has caused the perception of multinational firms to evolve radically, from the image of multinationals often denounced by political leaders in the 1970’s as threats to state sovereignty, towards a celebration of economic players whose declarations of principals could moralise globalisation. In its current form, corporate social responsibility has been rendered through “codes of conduct” and “international framework agreements”, many of which are catalogued on the ILO website concerning the “Tripartite declaration of principals concerning multinational enterprises”.

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¹. The promotion of “corporate social responsibility” is an important element of employer discourse that seeks to limit public initiatives seen as limiting firms’ manoeuvring capabilities.

This evolution corresponds with the advent of a new kind of company model, that of the “networked firm”, a firm which outsources its production activities in order to focus on management and design. Codes of conduct allow these firms to establish minimum standards regarding working conditions and the environment for their subcontractors operating in territories sometimes all but lacking the rule of law. These codes correspond to a strong trend of relocation to areas where economic activities are more profitable.

A lexical analysis of these codes of conduct shows, however, that the emergence of a “merchant firm”, which abandons jobs in developed countries in favour of outsourced production in developing countries, is not the only possible model to which corporate social responsibility applies: other models are emerging. This plurality of models, identifiable through their different codes of conduct, requires a deeper analysis which would take into account the social movements addressed through these codes, declarations of principals, and agreements. In truth, codes of conduct have very little to do with a sudden appearance of “angelic” firms struck by a sudden need for philanthropy. They form part of a communication strategy aimed at restoring a firm’s “image” when it has been challenged by the exposure of abusive practices by unions and non governmental organisations (particularly human rights and consumer associations).

After reviewing the role of international norms in codes of conduct and social responsibility, we will consider the plurality of firm models that can be observed. We will then discuss the different configurations as they relate to the issue of employment.

Codes of conduct from the 1970s to the 2000s: an increase in number but decrease in impact

The increase during the 1970s of initiatives aimed at regulating the activities of multinationals, perceived to be a threat to democracy, resulted in the 1990s in a policy based on “principals” rather than a true legal framework. Declarations of principals became the starting point for observing firms’ initiatives, and sought to promote the emulation of “best practices”. This movement is in clear contrast with the establishment of the movement towards “social harmonisation”² which accompanied and reinforced the creation of a European society by laying the foundations of European social legislation (Didry 2009). This

². On this idea, cf. Mazuyer (2007).

contrast leads us to centre our discussion on the dialectic between the initiatives undertaken by international organisations and the codes of conduct created by multinationals, the impact of which was put forward by the European authorities as a reason justifying the halt of the legislative movement propelled by Jacques Delors³.

From a proposed code in the 1970s to an inventory of codes in the 2000s

The 1970s were a period when the power of multinationals throughout the world was being questioned, notably with regard to the nation states. President Allende underlines this sentiment in his passionate and premonitory speech before the United Nations' General Assembly on December 4th 1972:

“We are faced by a direct confrontation between the large transnational corporations and the states. The corporations are interfering in the fundamental political, economic and military decisions of the states. The corporations are global organizations that do not depend on any state and whose activities are not controlled by, nor are they accountable to any parliament or any other institution representative of the collective interest. In short, all the world political structure is being undermined.”

From that point onward, international organisations began reflecting on the means necessary to control the excesses of multinational firms, culminating with a proposed “code of conduct for multinational enterprises” presented to the UN in 1974. This code, however, eventually gave way to declarations and principles, sparking the proliferation of “codes of conduct”, both monitored and encouraged by international organisations.

UN, ILO, and OECD initiatives in reaction to multinationals

In 1947, a social clause (art. 7) was included in the Havana Charter on the organisation of international trade adopted by the UN, but the charter was abandoned upon request of the United States in favour of the GATT⁴. It wasn't until the 1970s that the international community, both on a political level and through union action⁵, mobilised against the activities of multinationals, giving rise to initiatives from the UN as well as the ILO and the OECD.

³. Cf. European Commission (2001). On the decline of the “single market” convention, see Robert Salais's contribution to this book.

⁴. For more history and a deeper look at international commitments concerning labour law, cf. Drouin (2005).

⁵. With for example, the theme of the “democratisation of the economy”, promoted by the European Confederation of Free Trade Unions (which became the European Trade Union Confederation in 1974), cf. Didry and Mias (2005).

1 - The ILO's Tripartite declaration

In 1973, the ILO published a report entitled *Multinational Enterprises and Social Policy*. This raised the issue of multinational firms causing competition between countries, creating a risk of negatively impacting working conditions. Discussions within the ILO led to an initial "Tripartite Declaration on principles concerning multinational enterprises and social policy" adopted in 1977.

2 - The UN's code of conduct concerning multinationals

Generally, the UN discussion on multinationals concerns ways in which to control their activities within the different countries where they are established. This was the aim discussed during the planning of a "Code of conduct for multinational enterprises" put forward by the United Nations⁶ with intent to sanction multinationals in their country of origin for their abusive practices throughout the world. The goal was to create the conditions necessary for multinationals to be held legally accountable, in other words liable⁷, for their actions. This project sparked a lasting process of reflection. The creation of the UN's Global Compact at the end of the 1990s is one of the later results of this reflection. Sometime between the 1970s and the 1990s, the term "code of conduct" ceased to refer to a plan to regulate and sanction multinationals, to apply instead to initiatives of firms employing "best practices" as defined by the principals set forth by international organisations.

3 - OECD guidelines

In the OECD, the issue of the power held by multinationals led to the creation of a group of "guidelines" addressed to these firms. These guiding principles are laid out in 10 chapters, including a chapter dedicated to "Employment and industrial relations" (chapter 4). The "promotion" of the guidelines is the responsibility of "national contact points", institutions where individuals may report multinationals within their national territory that fail to comply with the principles. These guidelines, voted in 1976, were revised in 2000, giving rise to the collection of data of various natures. Designed as a starting point in the larger picture of promoting best practices in firms, these guidelines were paired with the institution of "National Contact Points" (NCP) available for legal recourse in case of infringement.

⁶. From a report submitted by a high-level group in 1974.

⁷. Cf. Drouin (2005).

Paradoxically, the normally liberal OECD seems to have gone a step further than the ILO or the UN in regulating firms' abusive practices. However, NCPs are independent of each other and are free to adopt diverging positions as was the case for the brutal closure of Marks and Spencer in France and Belgium in 2001. Indeed, the French NCP decided that the firm had violated the guidelines whereas its Belgian counterpart deemed that it did not have sufficient evidence to ascertain whether a violation had in fact occurred.

The ILO's Tripartite declaration as basis for an inventory of codes of conduct

1 - Condensing international regulations

International organisations have slowly lost their ambition to create a single code of conduct to regulate the behaviour of multinationals. Progressively, international norms have taken the form of "declarations" proclaiming a limited number of principals taking into account previous legislative advances.

The ILO declaration concerning "fundamental rights and principals at work" adopted in 1998 is a combination of other ILO conventions and covers four main principals: freedom of association, recognition of the right to collective bargaining, the abolition of forced or obligatory work, the abolition of child labour, and the elimination of discrimination at work. It primarily targets nation states, regardless of if they have ratified the ILO conventions, by monitoring changes in legislation and practices within their borders.

Launched in 2000, the "Global Compact" outlines eleven principals ranging from the respect of human rights, to the fight against corruption, to the protection of the environment. These principals are written in the form of a wishes rather than laws⁸. They are part of an incentive strategy based on the distribution of labels to firms that commit to the application of the principals⁹.

2 - Revising the Tripartite declaration concerning multinationals

The ILO Declaration on the fundamental rights and principals at work gave rise in 2000 to a revision of the Tripartite declaration of principals concerning multinational enterprises, adopted initially by the ILO in 1977. Article 8 was revised to read that parties:

⁸. For example: "Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining"

⁹. On French firms' initiatives concerning the application of the Compact's principals, cf. Mazuyer, Deumier and Laulom (2010).

“should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights and Work and its Follow-up, adopted in 1998. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.”

In this way, the ILO’s principals have taken on the role of guidelines for initiatives originating from firms. By their mention in the Tripartite declaration, the efficacy of the principals has diminished in intensity but increased in scope: they no longer apply solely to the behaviour of nation states but also to that of multinationals’ relationships with individuals¹⁰. The initiatives undertaken by multinational firms and catalogued on the ILO’s website¹¹ make up the corpus for this study¹².

Corpus characteristics

Among the initiatives catalogued by the ILO, only the codes of conduct and collective agreements¹³ of single firms were examined, which excludes documents establishing norms for whole industries such as the toy industry. These codes were compiled to form a corpus, and were characterised by variables such as the firm name and associated industry, variables which were analysed as information additional to the body text of the codes themselves.

The corpus is composed of 175 framework agreements and codes of conduct representing 151 firms (cf. table n°1), difference owing to the fact that certain firms have several reference texts in the ILO’s database.

Of these 175 texts, 151 are codes created unilaterally by the firm and 34 are framework agreements negotiated with union associations.

One third of the firms are based in Europe (33.8%), 62% in North America (the United States and Canada), 2.6% in the Asia-Pacific region, and 2% in the rest of the world.

The range of industries present in the corpus shows a clear predominance for the manufacturing industry (more than a quarter of the firms), followed by the chemical, oil and food-processing industries. “Traditional” industries (forestry, building, mining...) represent a similar proportion to hi-tech industries (telecommunications, aeronautics, electronics, and

¹⁰. On the conditions and details on the efficacy of labour law on national and international scales, see Auvergnon (2008).

¹¹. On the site: <http://www.ilo.org/dyn/basi/VpiSearch.Main> visited from 2003 to 2005.

¹². For a presentation of the guidelines used for collecting data from the corpus and corpus expectations, see Diller (1999).

¹³. Codes of conduct and collective agreements can be differentiated by their method of adoption: the first is adopted unilaterally by the management of a firm whereas the second implies negotiation between representatives from the management and unions respectively.

information technology). Finally, the presence of public works, represented by distribution networks (water, gas, electricity), should be noted, as should that of the health and education industries.

Table 1. Industries and origins of firms under study

	Europe	N. Amer.	Asia/ Pacif.	Other	Total firms	% firm	Codes
Manufacturing	5	35		2	42	27,8	48
Chemical	5	8			13	8,6	15
Oil	7	4			11	7,3	15
Food-processing	4	4	1		9	6	14
Retail	4	3	1		8	5,3	11
Forestry	3	5			8	5,3	10
Telecommunications	5	3			8	5,3	10
Public works	2	3	1		6	4	6
Aeronautics		5			5	3,3	5
Building	4	1			5	3,3	5
Finance	3	2			5	3,3	5
Construction materials	2	2	1		5	3,3	5
Electronics	3	1			4	2,6	4
Automobile	1	2			3	2	3
Education		3			3	2	3
Information technology		3			3	2	3
Metal working		3			3	2	3
Mining		2		1	3	2	3
Media, culture	1	1			2	1,3	2
Hotel – Catering	1				1	0,7	1
Toy	1				1	0,7	1
Health		1			1	0,7	1
Unknown		2			2	1,3	2
Total	51	108	4	3	166	100%	175

Worlds of corporate social responsibility

Codes of conduct convey the existence of a need for multinationals to display the unilateral commitments made as part of their communication policy. This need originates as much from the firms themselves, who react to the initiatives of “stakeholders” such as non governmental organisations and unions, as from the partners, subcontractors, and employees responding these firms’ requirements. The codes allow a series of commitments to be identified, but also and above all, they underline the plurality of themes that constitute “corporate social responsibility”. An initial distinction can be observed between commitments

related to the environment and those related to fundamental rights at work, but a deeper analysis of the codes reveals an even greater diversity, in which a true plurality of “worlds of social responsibility” can be seen. These “worlds” reflect a level of coherence between typical firms and their products, activities and code content, suggesting that beyond the issues of environment (integrative firm), and of work (merchant firm), we should also take into account issues linked to employee responsabilisation (supervisor firms) and the role of ownership in the preservation of a firm’s assets (knowledge firm).

Lexical analysis of the corpus

The corpus, composed of codes of conduct as mentioned previously, was lexically analysed using software called Alceste. The first phase of this analysis was to classify sentences according to their vocabulary. Eight separate categories were identified as being characterised by certain word groups, in other words, specific lexical fields. A previous presentation of these categories¹⁴ revealed the restricted role¹⁵ played by themes related to the most common conception of corporate social responsibility, namely the regulation of working conditions and the protection of the environment. It also showed the importance of alternative themes concerning work and workers¹⁶, particularly in regard to ensuring that established principals are effective¹⁷ and to clearly defining the firm’s assets to reduce the risk of ownership claims by employees¹⁸.

A discussion of results of the second phase of the software’s analysis, a factorial analysis identifying the principal components, will be used to build on these previous contributions. This phase uses the vocabulary found in the sentences that form the eight categories identified in the first phase. The proximity of sentences to their categories is evaluated according to words shared: the more words are shared, the closer they are. Consequently, the groupings presented in the 2007 article may now be replaced by the sections of a framework. This framework forms the basis of the design of diagram n°1 (below).

Overview of the results

¹⁴. Béthoux, Didry and Mias (2007).

¹⁵. 3 categories representing 38% of the sentences.

¹⁶. Attested in all the other categories.

¹⁷. 2 categories representing 25% of the sentences.

¹⁸. 3 categories representing 37% of the sentences.

The “classic” themes of social responsibility can be found on the left side of diagram n°1: the upper left hand corner contains the theme of the environment and the lower left hand that of regulating work. Themes related to the application of principals announced in the codes are in the upper right hand corner. Those themes related to the ownership of a firm’s assets can be found in the lower right hand corner.

Diagram n°1: the worlds of corporate social responsibility

<i>Internal</i>	
<p>Integrative firm <u>Typical firms:</u> Procter and Gamble, Caterpillar, Total Fina Elf, Nestlé, Shell <u>Industries:</u> Chemical, oil <u>Key words (sampling):</u> Reputation, Ethic, Integrity, Partners, Shareholder, Stakeholder, Consumer, Environment, Product, Community</p>	<p>Supervisor firm <u>Typical firms:</u> Boeing, Cable and Wireless <u>Key words (sampling):</u> Control, Contractor, Subcontractor, Manager, Supervisor, Accident, Misconduct, Report Discipline</p>
<i>Products</i>	<i>Assets</i>
<p>Merchant firm <u>Typical firms:</u> Kellwood <u>Industry:</u> Manufacturing <u>Key words (sampling):</u> Vendors, Sourcing, Forced labour, Children, Age, Discrimination, Race, Unions</p>	<p>Knowledge firm <u>Typical firms:</u> Verizon, IBM, Halliburton <u>Industries:</u> Telecom, information technology, public works <u>Key words (sampling):</u> Asset, Confidential, Intellectual, Discovery, Invention, Corruption, Bribe, Conflict of Interests</p>
<i>External</i>	

The main types of firm

Alceste’s classification permits the distinct groupings of sentences and codes of conduct that make up the corpus to be visualized simultaneously, allowing the companies most strongly associated with each of these groups to be observed. It underlines the firms that are the most representative of each group of firms and codes of conduct, as indentified during the analysis, by isolating the most significant sentences in their codes.

1- The integrative firm

A considerable portion of the codes of conduct analysed deal with the idea of creating a dynamic of production through a dual process of integration: internal (the integration of individuals, consumers, and employees into the firm) and external (the integration of the firm into its environment). This process of integration is based firstly on the firm’s *product* as a

contribution to the common good¹⁹, notably through attempts to minimise negative effects on health and the environment, as demonstrated by the practices of Philip Morris for example.

Companies operating in the chemical industry are the firm type most associated with this group, the representative code being that of Procter and Gamble.

Integration in the code of Procter and Gamble corresponds to a fundamental commitment to provide quality products to consumers in return for a recognition which would allow the enduring success of the firm.

“We will provide products and services of superior quality and value that improve the lives of the world’s consumers. As a result, consumers will reward us with leadership sales, profit and value creation, allowing our people, our shareholders, and the communities in which we live and work to prosper.”

This openness to external partners leads to a kind of mutualisation of company property allowing the company to succeed, prosper and attain a lasting position of leadership:

“We all act like owners, treating the Company’s assets as our own and behaving with the Company’s long-term success in mind.”

The use of “we” and the invitation to assume ownership of company assets convey an approach demonstrating an aspect of “community”, in contrast, as we will see, with the tendency of “knowledge firms” to defend their assets. In some respects, the workers themselves are reduced to company assets meant to operate facilities “like” they were owners, the “like” conveying the distance maintained between the true ownership of assets and the employees.

This process of integration *into the firm* is complimented by an integration process of the *firm itself* into its surrounding “environment”. This phenomenon can be observed mainly in the oil and food-processing industries, particularly in the codes of Total Fina Elf, Royal Dutch Shell, and Nestlé.

The protection of the environment, particularly by limiting greenhouse gases, is targeted through the improvement of these firms’ products:

“TotalFinaElf endeavours to contribute to the efficient and properly managed utilization of all sources of energy and products that it provides through its activities.

The Group takes into account the needs of today's consumers and the interests of future generations through an assertive policy of continuous improvement and environmental protection that forms part of its strategy of sustainable development.”

¹⁹. “Integrity in a business relationship means that all participants are working together for the common good, and are not making decisions based on self-interest.” (Code Raython Company, 2000).

2- The merchant firm

Vendor selection and ways to go about sourcing production activities carried out by subcontractors are both issues forming a good transition point with the integrative firm in the sense that these issues concern the “values” of prime contractors operating between the vendors of their products and their subcontractors. This corresponds to the difficulty associated with production activities involving firms not having participated in establishing the code of conduct. Those most affected by this issue are firms operating in the manufacturing industry. The codes of conduct of these firms allow the delimitation of what could be termed as a “merchant firm agreement”, an agreement transposing the mechanics of the relationship between the merchant and craftsman of the 19th century industrial era²⁰ to the relationship between western manufacturing multinationals and their factories in South East Asia, Latin America, and even Eastern Europe.

Merchant firms are concerned with ensuring that working conditions in manufacturing facilities are in accordance with ILO fundamental principals. This group of firms can therefore be identified by their references to ILO principals, and is dominated almost exclusively by the codes of manufacturing firms, with the exception of Barclays bank for issues related to discrimination.

This group contains the codes of firms such as Kellwood, Levi Strauss, and C&A. A sentence from Levi Strauss’ code is particularly representative of the relationship between sourcing and the respect of fundamental rights at work:

“Our global sourcing operating guidelines help us to select business partners who follow workplace standards and business practices that are consistent with our company’s policies.”

The issue of relocation of the manufacturing activities targeted by the codes is reflected through the need to refer to local norms to evaluate whether principals, such as the ban on forced or child labour, have been properly applied, as demonstrated in Kellwood’s code:

“• Child Labor: The use of child labor is not permissible. For a definition of "child", we will first look to the national laws of the country in which business is being conducted. If, however, the laws of that country do not provide such a definition or if the definition includes

²⁰. What Alfred Marshall terms “industrial districts”, such as Lyon’s silk industry for example, were at the heart of the movement towards collective agreements in France, cf. Didry (2002).

individuals below the age of 14, we will define "child", for purposes of determining use of illegal child labor, as any one who is:

- a. less than 14 years of age; or
- b. younger than the compulsory age to be in school in the country in which business is being conducted, if that age is higher than 14.”

3 - The supervisor firm

Another group of codes of conduct emphasises the employees’ responsibility in the application of principals set forth in the codes. Three codes stand out in particular, that of Cable and Wireless in the telephone line installation industry, that of Boise Cascade Company in the forestry industry, and that of Boeing in the aeronautics industry:

“Every employee has the responsibility to ask questions, seek guidance, report suspected violations, and express concerns regarding compliance with this policy and the related procedures. The Boeing Company will maintain a program to communicate to employees its commitment to integrity and uncompromising values, as set forth in the Boeing Values. The program will inform employees of company policies and procedures regarding ethical business conduct and assist them in resolving questions and in reporting suspected violations. Retaliation against employees who use company reporting mechanisms to raise genuine concerns will not be tolerated.” (Boeing)

Thus, a dual movement of information is created: the first movement originating from the employees who transmit information concerning the firm’s principals, and the other originating from the management who pass on information concerning the employees’ application of principals. In this model, the “anonymous hotline” is the key tool.

The special feature of firms of this kind is that employees of different firms often work together. Boeing, consequently, specifies its code’s scope in the following way:

“Applies to: All Boeing company and subsidiary employees, contract labor, consultants and others acting for the company (“employees”).”

Here, as was the case with the merchant firm, this world of social responsibility implies the use of sourcing. However, in the case of the supervisor firm, sourcing involves the coexistence on the same site of different firms involved in the creation of the same product.

4 - The knowledge firm

Codes of conduct of firms connected to information and communication technologies, such as IBM and particularly Verizon, the large American telephone operator, tend to define the extent company assets both internally and externally.

These firms' codes of conduct put an important emphasis on issues of intellectual property by attempting to anticipate complicated disputes related to sharing ownership of discoveries, particularly with their employees.

“When you joined IBM, you were required to sign an agreement under which you, as an employee of IBM, assumed specific obligations relating to intellectual property as well as the treatment of confidential information. Among other things in the agreement, you assign to IBM all of your right, title, and interest in intellectual property you develop when you are employed in certain capacities, such as a managerial, technical, product planning, programming, scientific or other professional capacity.”

Defending company ownership of assets means focussing primarily on non-material assets, but consequently also implies an interest in maintaining the confidentiality of information controlled by the firm, an essential aspect of Verizon's code:

“We will safeguard the confidentiality and integrity of company systems (including password logons, password-protected screensavers, access codes, network access information, log-on IDs) from improper access, alteration, destruction and disclosure. We will only access or use these systems when authorized.

We will also abide by company standards contained in this section and other company policies regarding protecting data and information stored on these systems.” (Verizon)

A plurality of “responsibility generating situations” affecting employment

A second look at the codes of those firms most typical of each aforementioned world of social responsibility, allows us to see past the idyllic vision of codes of conduct as spontaneous commitments.

In each of the four worlds mentioned above, the appearance of codes of conduct is concurrent with the mobilisation or emergence of institutions that challenge the firms' activities. We will examine how codes can be analysed as reactions to “responsibility

generating situations” as described by Fauconnet (1928)²¹, and the role played by work and employment. The four main types of situation reveal different relationships to employment in instances where firms’ behaviour is called into question by different social actors (governmental organisations, unions). The integrative firm attempts to reintegrate the personnel after extensive restructuring, the merchant firm tries to monitor working conditions after outsourcing all its manufacturing, the supervisor firm seeks to group together workers from a variety of subcontractors on the same site, and the knowledge firm endeavours to defend its ownership of products created by its employees.

Environmental impact: a challenge for the integrative firm

As previously discussed, Procter and Gamble, TotalElfina and Shell’s codes of conduct are prime examples of the socially responsible firm type termed here as the integrative firm. These codes of conduct are adopted according to their specific situational contexts, their content being influenced particularly by the ongoing adoption of new commitments.

Procter and Gamble’s code was published in 2000. During the decade previous to that, the company underwent an extensive restructuring process, whereby ten thousand American jobs were downsized and a partnership was formed with Chinese firms for the production of washing powder²². Procter and Gamble and Nike were among those challenged by Michael Moore in his film *The Big One*, which came out in 1997. The restructuring of Procter and Gamble shows a profound change in the firm’s strategy, accompanied by a displacement of standard chemical product manufacturing, such as detergent, to make room for products requiring more R&D, particularly in the pharmaceutical industry. The firm has also expanded the development of its cleaning products with the help of the “Institut Pasteur”, in order to reinforce the antibacterial component of its world famous *Mr. Clean*²³. Procter and Gamble’s significant product improvements are reflected in its code, which insists on their products’ role as contributors to the common good. This code of conduct furthermore attempts to restore a group dynamic by encouraging a sense of ownership among the employees having gone through the period of restructuring and extensive lay offs during the 1990’s.

²¹. For Paul Fauconnet, responsibility is not simply an idea linked to individual wrongdoings; it is a “social fact”, a characteristic attributed to actors in fixed social and institutional configurations.

²². *Le Monde*, 22nd February 1994.

²³. *Les Echos*, 13th October 1999.

Oil companies' codes of conduct emphasise commitments that constitute responses to accusations against them, particularly concerning oil extraction and transport. Royal Dutch/Shell, for instance, is a firm well accustomed to public scrutiny²⁴. After dealing with accusations of collusion with Apartheid in South Africa, the firm was attacked by Greenpeace in 1991 for its actions concerning the Brent Spar platform sunk in the North Sea after being retired from service. The firm found itself in the hot seat once again for turning a blind eye to exactions imposed by the Nigerian dictatorship on the Ogonis. These issues have allowed boycotts initiated by environmentalist organisations to enjoy a measure of success, particularly in Germany. Concerns raised by these accusations are reflected in the 1997 code, where special attention is paid to offshore installations for example²⁵. In the case of TotalElfina's code, oil transport was the focus of certain changes adopted in 2000 after the Erika was shipwrecked in December 1999. Similarly, the code's focus on the development of extraction areas answers to earlier accusations claiming that the company benefitted from army support to recruit labour for the construction of a pipeline in Burma between 1995 and 1999²⁶.

The environment would seem, therefore, to constitute a prominent motif in these firms' codes of conduct; however, beyond this theme lies that of the way in which workers are treated. Indeed, in the case of the Erika for Total or the Brent Spar platform for Shell, environmental catastrophes were linked to the never ending search for profitability, which also inevitably affects working conditions. For Procter and Gamble or Total in Burma, accused respectively of abusive lay offs and forced work, conditions are affected through the way in which work contracts are broken or established.

Sourcing and fundamental rights at work: an ongoing struggle for the merchant firm

The issue of fundamental rights at work has been at the heart of series of campaigns launched by associations, in the United States and the rest of the world, opposed to poor working conditions in South East Asian or Latin American firms working for multinationals

²⁴. On Royal Dutch/Shell's communications strategy, cf. Patrick Laprise (2005).

²⁵. "All major installations having significant environmental risks should have been certified. This includes as a minimum:

All crude oil and natural gas export terminals, gas plants, offshore platforms, major flow stations, floating production and storage vessels, all Shell operated refineries and chemicals manufacturing facilities"

²⁶. The firm was later sued in France and Belgium by Burmese victims in 2003 but the case was dismissed after a settlement was reached out of court. At Total's behest, Bernard Kouchner wrote a report on the Burmese situation that can be found on Total's website: http://birmanie.total.com/fr/controverse/p_4_4.htm

in the clothing and sport shoe manufacturing industries. The firm most affected by these press-promoted, association-led campaigns and investigations has been Nike. This firm was first called into question at the end of the 1980s following strikes in firms working for Nike in South East Asia, instigating the first investigations and formal complaints from human rights associations (including Human Rights Watch). Nike responded by adopting an initial code of conduct in 1992. But the consumer associations continued to uncover numerous violations including the use of child labour²⁷, as successive codes were adopted. Finally, the multinational moved towards a system aimed at monitoring firms performing custom work for Nike, as a reaction to these firms' recurring abusive practices. One of the culminating points in these movements against Nike came with Michael Moore's interview of Phil Knight in *The Big One* in 1997.

In the face of firms aiming to cut all direct ties with manufacturing to retain only those activities related to model design and product commercialisation, the human rights associations focussed their campaigns on exposing ties between multinationals and firms violating ILO principals. Kellwood and Wal Mart were swept up in a scandal in 1998 concerning the manufacturing of the Kathie Lee clothing line, involving a subsidiary of Kellwood called Halmode. The Human Rights Action Service²⁸ accused them of blocking the creator Kathie Lee's request to monitor the wage and the age of workers in Honduras or in factories located in the infamous Dongguan zone near Shenzhen (Hong Kong's industrial zone). The association acted by publishing a leaflet entitled "Buyers Guide to Human Rights", which encouraged consumers to write to Kellwood's head office, the address of which could be found printed in the middle of the page containing the article.

For merchant firms, social responsibility corresponds to an ongoing battle between consumer associations and multinationals, a battle linked to the poor working conditions which continually surface in firms newly contracted by multinationals. As is the case for integrative firms, associations play an essential role in calling multinationals into question in their home countries, and likewise their home markets, regarding their practices in developing countries²⁹. The result has been a conflictual process through which working conditions in firms manufacturing sports shoes and clothing for multinationals have markedly improved,

²⁷. For a timeline of the main campaigns addressing working conditions in factories producing for Nike, see the following page: <http://depts.washington.edu/ccce/polcommcampaigns/NikeChronology.htm>

²⁸. <http://www.humanrightSACTION.net/>

²⁹. Duval (2006) discusses NGOs' role as "interpellators".

particularly by means of reinforcing the monitoring procedures that ensure the proper application of codes by subcontractors.

Re-establishing a community at work: the objective of the supervisor firm

The importance of monitoring revealed in Boeing or Cable and Wireless's codes reflects these firms' tendency towards extensive outsourcing, which has in turn led to the coexistence on a single site of several firms working on the same product. In Boeing's case, the adoption in 2000 of a code of conduct applying to *all* workers creating their airplanes was a continuation of an extensive shift in the firms' activities, caused in large part by competition with Airbus throughout the 1990s. Indeed, at the end of 1995, Boeing was faced with a 69 day long strike over the issues of health insurance and ever-increasing amounts of subcontracting. The firm's chaotic situation was prolonged by its renewed involvement in the aeronautics market, implying an increased rate of work and simultaneously, the purchase (contested by the European authorities) of Mac Donnell Douglas in 1998, which caused job cuts.

Boeing's code of conduct is therefore a reaction to the necessity of organizing the coexistence of employees from different subcontractors and, in some cases, even consultants. The code reflects the general orientation in the aeronautics industry towards outsourcing, linked in part to the competition between Boeing and Airbus and in part to financial market pressure on labour costs. Outsourcing in this industry has gone beyond the subcontracting of peripheral activities such as cleaning or building maintenance and has extended as far as entrusting some aspects of equipment design to consulting companies, notably in order to prevent contracted engineers from benefitting from collective agreements. This was one of the causes of the 1995 conflict: outsourcing affected the highest paid positions and the balance of the firm's health insurance scheme. In the case of Airbus in Toulouse, France, outsourcing allowed the firm to cut out engineers covered by the metalworker's agreement, provoking a union struggle for the recognition of a "working community" which would include the totality of workers present on a site in the electoral base for a works council comprised of Airbus employees as well as of workers from other firms³⁰. Thus, the adoption of Boeing's code of conduct is a product of both the outsourcing of tasks on their production sites in the aeronautics industry and the union battles aiming to limit the resulting social consequences.

³⁰. For more on this dispute that has lasted more than a decade, see Boussard and Pétracchi (2008).

Intellectual assets: a concern for the knowledge firm

The codes of firms dealing with “new technologies” share a common concern over the ownership of assets and more particularly the ownership of discoveries within their firm. This concern is linked firstly with the desire to establish the firm’s ownership over what is produced, a priority being that employees not use instruments or software created by other firms in order to avoid legal disputes with other software and instrument creators. Indeed, the issue of intellectual property is very delicate in the context of this type of firm, particularly in regard to financial valuation. The importance of intellectual assets can be observed to some extent in most firms, including clothing firms such as GAP or Kellwood, who centre their American-based activities on creating patterns which are then sent to manufacturing establishments in Latin America or South East Asia (Davis 2009). But the information and communication technologies industry is the most sensitive to this issue: even the constituent elements of their software must not be seen to be similar to those used elsewhere in software belonging to another firm. This extreme sensitivity calls into question the seemingly peaceful vision of technological clusters such as the Silicon Valley, by underlining the tensions created by the battle for ownership of discoveries. The emergence of the freeware *Linux*, which caused Intel to ally with IBM against the SCO group, owner of the rights to the *Unix* code used in *Linux*³¹, is a telling example of these tensions.

The defence of intellectual property on the Internet has also become an issue. At the end of the 1990s, pressure on Internet providers increased, notably in the United States with the adoption of the Digital Millennium Act in 1998. This act accords audio and video recording companies, or their representatives, a right to action allowing them to subpoena users downloading copyright material. In Verizon’s code adopted in 2000, there is an emphasis on the confidentiality of information provided to the firm by users (including the Federal government) which reflects the 1998 legislation as well as the Recording Industry Association of America (RIAA) suit against peer to peer sharing, involving Napster and Kazaa, and against its users. The legal battles continued into the 2000s, and in 2003 Verizon’s confidentiality policy was challenged in court by the RIAA in hopes that the identities of subscribers suspected of offenses would be divulged. This challenge was a response to a development concerning the way in which files are shared, namely that sharing was no longer occurring via an intermediary site, but through software requiring the identification of users and computers suspected of sharing. In 2003-2004, the United States Court of Appeal in the

³¹. « Unix : Intel s’associe à IBM dans la bataille qui l’oppose à SCO », *Les Echos*, 13 janvier 2004.

District of Columbia Circuit became the ultimate venue of decision, hosting the appeal of the case opposing the RIAA and Verizon, as well as a suit brought by the American Civil Liberties Association supporting subscriber confidentiality³². The result was a ruling in favour of Verizon³³. The tendency towards increased measures of protection for intellectual property online, however, has continued with the recent ruling against users in the United States³⁴ and the passing of the HADOPI³⁵ law in France.

Conclusion

Conceptualising corporate social responsibility as a social fact allows it to be understood as something other than the simple proliferation of declarations of principals decreed by multinationals to regulate the evolution of activities on a global scale. Indeed, codes of conduct are not regulations that spontaneously stem from firms, but are reactions to “responsibility generating situations”. These situations represent, from Facuonnet’s standpoint, instances of “social deliberation”, or in other words, situations of tension and conflict in which codes of conduct represent reactions to initiatives of other actors, particularly non governmental organisations.

Through the analysis of codes of conduct, a typology of firms has been established and, by associating these codes with “collective mobilisations”, a typology of other actors has also been put forward, permitting the codes to be understood according to contexts of mobilisation concerning both collective actions, via associations for example, and legal actions before the courts. Consumer associations, therefore, play a primordial role in questioning the practices of firms operating in developing countries. After investigation, they act through boycott campaigns which affect firms’ sales and profitability, and sometimes through law suits in the firm’s country of origin, founded on the right of action accorded in the case of basic human rights violations in other parts of the world. But consumer associations are not alone: other firms and unions are also important actors in the creation of “responsibility generating situations”. Corporate social responsibility, therefore, contains an

³². “A.C.L.U. Challenges Music Industry in Court”, New York Times, Monday, September 29, 2003, available at: <http://www.nytimes.com/2003/09/29/business/media/29aclu.html>.

³³. « Les Etats-Unis accentuent répression et prévention », *Le figaro*, vendredi 16 juillet 2004.

³⁴. « Joel Tenenbaum symbole du téléchargement illégal aux Etats-Unis, reconnu coupable », *Le monde*, 31 juillet 2009.

³⁵. Concerning the creation of a High Authority Promoting the Distribution and Protection of Creative Works on the Internet.

inherent aspect of negotiation, a trend which is now spreading with the creation of international framework agreements (da Costa and Rehfeldt 2008, Descolonges and Saincy 2006). Moreover, rather than challenging positive law by artificially opposing hard law and soft law, social corporate responsibility and the codes of conduct that contribute to it are applied according to existing legal frameworks, whether they be ILO principals, or national legislation (determining the age of majority and minimum wage, for example).

Thus, corporate social responsibility is not a simple unilateral initiative; it is first and foremost a response to the institutional interventions and collective mobilisations inherent to the democratic way of life in a state applying the rule of law. The plurality of configurations denoted by the codes of conduct must be taken into account in order to discern the diverse ways in which the issues of work and workers' rights are involved. In the classic configuration of corporate social responsibility concerning the environment, the role of workers in environmental choices is called into question. In terms of ILO fundamental rights, firms often intervene too late to prevent abuses, the issue being the delayed application of monitoring procedures caused by a constantly increasing number of tiers in subcontracted production. In the "supervisor" configuration, the objective is to re-establish the concept of the production unit, and consequently a functioning community at work, despite the coexistence of many firms on one site. Finally, in the case of intellectual property, the issue is sharing ownership of products created within the firm.

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