

UIC School of Law

## UIC Law Open Access Repository

---

UIC Law Open Access Faculty Scholarship

---

1-1-2000

### Corporate Transparency and Human Rights, 8 Tulsa. J. Comp. & Int'l L. 15 (2000)

William B.T. Mock

*John Marshall Law School*, [wmock1@uic.edu](mailto:wmock1@uic.edu)

Follow this and additional works at: <https://repository.law.uic.edu/facpubs>



Part of the [Business Organizations Law Commons](#), and the [Human Rights Law Commons](#)

---

#### Recommended Citation

William B.T. Mock, Corporate Transparency and Human Rights, 8 Tulsa. J. Comp. & Int'l L. 15 (2000).

<https://repository.law.uic.edu/facpubs/168>

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Open Access Faculty Scholarship by an authorized administrator of UIC Law Open Access Repository. For more information, please contact [repository@jmls.edu](mailto:repository@jmls.edu).



## CORPORATE TRANSPARENCY AND HUMAN RIGHTS

*William B.T. Mock*<sup>†</sup>

### I. INTRODUCTION: GRACE AND OBLIGATION

In order for corporate support for human rights to become a routine of corporate commitment, it must cease to be a matter of corporate grace and rise to the level of corporate obligation. In other words, corporate support for human rights must operate on the level of social, political, and economic activity, however inspired such commitment may be from the moral level. The essential practical distinction between the social, political, and economic levels, on the one hand, and the moral level, on the other, is that accountability for one's actions arise temporally in the former spheres of action, whereas accountability or credit for moral actions must await another, less visible world.

Corporations must, therefore, be made accountable in the coin of the temporal, workaday world for their actions or inactions on issues of human rights. Human rights activists and their supporters have long sought to make corporations feel the consequences of their human rights abuses. Such efforts, however, are largely sporadic and incidental (in the sense of relating to particular *incidents*) or limited to one particular corporation or another.<sup>1</sup>

---

<sup>†</sup> Professor of Law, The John Marshall Law School, Chicago, IL. This article originated as a speech presented at the 2000 Spring Meeting of the American Bar Association Section on International Law and Practice, as part of a panel on Corporate Responsibility for Human Rights. The author wishes to thank Professor Mark Wojcik of The John Marshall Law School, who chaired the panel, for the opportunity he afforded the author to participate in this forum.

1. Footwear manufacturers, like NIKE, and clothing manufacturers, like Kathie Lee Gifford, have often felt the brunt of these sporadic efforts.

## II. STRUCTURAL IMPROVEMENTS IN CORPORATE HUMAN RIGHTS

We have, fortunately, moved past the time when such efforts were completely ad hoc, in that coalitions of human rights supporters had to be hobbled together every time an egregious abuse surfaced. Today, with groups such as Amnesty International<sup>2</sup> and Human Rights Watch,<sup>3</sup> corporate and governmental institutional infrastructures for observing and reacting to human rights abuses have been developed. As a consequence, the human rights community is well organized, allowing for swift and organized responses.

Structurally, this is only a part of what is necessary. It will probably be impossible to organize in advance of abuses the likely victims of such abuses. In advance, they are unidentifiable, politically vulnerable, and perhaps unwilling to “rock the boat” for fear of inviting the very problems we are addressing today. However, there are structural improvements that we can make to the corporate community itself—improvements that will allow for the systematic improvement of human rights just as fully as did the creation of permanent and visible organizations dedicated to uncovering and fighting human rights abuses.

At this point, let us take time to consider two concepts that will be key to such structural improvements and to achieving the real-world corporate accountability that we began considering at the beginning of this talk. Those two concepts are transparency and separating equilibria. However abstract and academic such terms may sound, they will provide a very powerful set of tools towards achieving corporate accountability. We will consider each in turn.

## III. TRANSPARENCY

Transparency is a term much bandied about in organizational and governmental studies these days.<sup>4</sup> The World Bank, the Asian Develop-

---

2. The Amnesty International web site address is <http://www.amnesty.org> (last visited Oct. 9, 2000).

3. The Human Rights Watch web site address is <http://www.hrw.org> (last visited Oct. 9, 2000).

4. “Transparency is a flexible concept used in a variety of contexts, from financial disclosure requirements to anti-corruption measures.” EDWIN REKOSH, IN THE PUBLIC EYE: PARLIAMENTARY TRANSPARENCY IN EUROPE AND NORTH AMERICA 1 (Int’l Hum. Rts. Law Group, 1995). See also ASIAN DEVELOPMENT BANK, GOVERNANCE: PROMOTING SOUND DEVELOPMENT MANAGEMENT 32 (1997); Edgardo Boeninger, *Governance and Development: Issues and Constraints*, PROC. [1991] WORLD BANK ANN. CONF. ON DEV. ECON. 267, 284 (1992). “Corruption can undermine the effectiveness of institutions.

ment Bank, and the OECD have looked at transparency as a precondition to governmental accountability and democratic empowerment.<sup>5</sup> In essence, transparency is a measure of the degree to which information about significant procedures, plans, and actions is made available to interested parties other than those creating the procedures, making the plans, and driving the actions. Information and the costs of obtaining it is the key to transparency.<sup>6</sup>

Ad hoc transparency may exist if an organization (public or private) releases information in a particular matter without obligation to do so. In a sense, this is transparency by grace. Structural transparency, on the other hand, requires an ongoing obligation to release information. This obligation may arise from legal mandate, overriding social pressure, or sufficiently high and public levels of economic self-interest. Achieving structural transparency in corporate life is—or should be—a high-level aim of human rights activists.

A central effort of human rights activists concerned with corporate behavior must, therefore, be to establish the conditions necessary for corporations to establish structural transparency. Lobbying for corporate disclosure laws is, obviously, one approach to this. In the United States, such corporate disclosure laws have traditionally been tied to economic issues, not social issues, however.<sup>7</sup> In a series of incidents dating from the Vietnam-era shareholder activism movement, the SEC and the Appeals

---

Implementation [of policies] will improve if procedures are transparent, opportunities and incentives for fraud are reduced, and officials are held accountable." *Id.*

5. See generally ASIAN DEVELOPMENT BANK, GOVERNANCE AND REGULATORY REGIMES FOR PRIVATE SECTOR INFRASTRUCTURE DEVELOPMENT: FINAL REPORT (1998) (discussing regulatory encouragement of private sector development). Similarly, IMF Study Group Report: Transparency and Evaluation (Jo Marie Griesgraber, chair) (Center of Concern 1998) (considers the transparency of procedures of the IMF); ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, TRANSPARENCY FOR POSITIVE ADJUSTMENT: IDENTIFYING AND EVALUATING GOVERNMENT ADJUSTMENT (1983); WORLD BANK, PROC. [1991] WORLD BANK ANN. CONF. ON DEV. ECON. (1992); World Bank, *Limited Reductions in Agriculture—But Greater Transparency and a Framework for the Future*, DEC NOTES n.12 (May 1996).

6. For further development of this argument, consider: William Mock, *An Interdisciplinary Introduction to Legal Transparency: A Tool for Rational Development*, 18 DICK. J. INT'L L. 293 (2000); William Mock, *Investment Consequences of Information Hurdles in Smaller Developing Countries*, 2 VYTAUTAS MAGNUS U. [LITHUANIA] L. REV. 108 (Jan. 2000); William Mock, *On the Centrality of Information Law: A Rational Choice Discussion of Information Law and Transparency*, 17 J. MARSHALL J. COMPUTER & INFO. L. 1069 (1999).

7. Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 HARV. L. REV. 1197, 1246-73 (1999) (analyzing Nat. Resources Def. Council, Inc. v. SEC, 606 F.2d 1031 (D.C. Cir. 1979) and related cases).

Court for the District of Columbia Circuit declared that social issues lacking serious economic consequences were not part of the mandatory prospectus and reporting requirements under the 1933 and 1934 securities acts.<sup>8</sup> In effect, this is seen as an unwelcome attempt to muddy economic issues and analysis with fuzzy social concerns.

#### IV. SEPARATING EQUILIBRIA

The game theoretical concept of separating equilibria provides an alternative, and as yet underutilized approach to obtaining structural corporate transparency. To see why this is so, we must first take a detour into game theory itself—a branch of public choice or rational choice analysis. Game theory, which traces its roots to *Theory of Games and Economic Behavior*, a 1944 book by John Von Neumann and Oskar Morgenstern,<sup>9</sup> deals (often mathematically) with issues of strategic interaction between parties seeking to maximize their own interests. Perhaps the best-known product of game theory is the Prisoner's Dilemma problem,<sup>10</sup> which provides a thought-provoking model for the clash between self-interest and community well-being in the context of individual decision-making. Such familiar concepts as the free rider problem,<sup>11</sup> strategies for division of goods,<sup>12</sup> and approaches to regulation of the global commons<sup>13</sup> are also part of game theory.

Separating equilibria occur when incentives arise which cause parties to act in ways that distinguish them from each other on the basis of characteristics that might not normally be visible, thereby revealing those hidden characteristics to all observers. In other words, parties who may be similarly situated reveal themselves to be fundamentally different when the right circumstances cause them to do so.

---

8. *Id.*

9. JOHN VON NEUMANN & OSKAR MORGENSTERN, *THEORY OF GAMES AND ECONOMIC BEHAVIOR* (3d ed. Princeton) (1953).

10. For a review of the history of the Prisoner's Dilemma within game theory, see WILLIAM POUNDSTONE, *PRISONER'S DILEMMA* (1992).

11. See, e.g., Gary Banks, *Transparency, Surveillance and the GATT System*, in *IN WHOSE INTEREST: DUE PROCESS AND TRANSPARENCY IN INTERNATIONAL TRADE* 57 (Michael M. Hart & Debra P. Steger, eds., 1992).

12. See, e.g., STEVEN J. BRAMS & ALAN D. TAYLOR, *FAIR DIVISION: FROM CAKE-CUTTING TO DISPUTE RESOLUTION* (1996).

13. Garrett Hardin, *The Tragedy of the Commons*, 162 *SCI.* 1244 (1968); ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (Cambridge U.P. 1990).

Perhaps the clearest way to understand this is to consider the value of a bachelor's degree in the workplace.<sup>14</sup> We are all familiar with statistics indicating the increased earnings of college graduates over those with only high school diplomas. One interesting aspect of those statistics is that, by and large, it does not appear to matter what the graduate majored in, so long as the degree was obtained. Another general observation is that most employers of recent college graduates appear unconcerned by the choice of major, so long as the grades were generally decent. Any college graduate is better than anyone who did not attend college, without reference to what was actually studied or learned.

An answer to this counter-intuitive observation lies in the use of college educations to create a separating equilibrium among high school graduates. Imagine, as is likely the case, that employers are more concerned about an applicant's character than that person's knowledge: is the person a motivated, hard-working, intelligent self-starter? Such characteristics are not directly observable in a short encounter and must be gleaned from an applicant's record. Yet the value of these qualities to employers is well known, and all applicants will claim them on their resumes in some way. Ideally, employers would put all applicants through a quest—like the challenges set by ancient kings for the hands of their daughters—that would scare away all but the most qualified candidates. In modern society, college provides just such a quest or challenge. Those incapable of finishing a college education, or those who find the very prospect too daunting to pursue, are letting the world know that they lack the very qualities that employers want but cannot learn by their own direct observations.<sup>15</sup> The higher effort required of such candidates to finish such a daunting challenge causes such candidates to separate themselves from the rest.

If corporations could be made voluntarily and openly to separate themselves into those which would support human rights and those which would ignore human rights, the work of human rights advocates could be focused more sharply on the issues likely to produce the most productive advances in human well-being. Simply put, a means must be found to

---

14. INÉS MACHO-STADLER & DAVID PÉREZ-CASTRILLO, AN INTRODUCTION TO THE ECONOMICS OF INFORMATION: INCENTIVES AND CONTRACTS § 5.3 (1997); LOUIS PHILIPS, THE ECONOMICS OF IMPERFECT INFORMATION § 5.1.3 (1988).

15. Unfortunately, a college education provides only an incomplete separating equilibrium, because other factors could lead a bright and dedicated high school graduate not to enter or finish college. For example, the employment market's use of a college degree as a separating equilibrium, and the existence of obstructing factors extraneous to such a use, provide strong arguments in favor of widely available financial aid to attend college.

make human rights reporting low-cost to corporations that respect human rights and high-cost to those that do not. In this manner, respecters and disrespecters will distinguish themselves clearly, and public posturing will be rendered futile.

Easier said than done. In order for this to be more than an academic exercise in angels dancing on the head of a tyrant, the theory must have some practical ramifications. Let us now turn to practical realities.

## V. CORPORATE CODES OF CONDUCT AND VERIFICATION MECHANISMS

Some of the more familiar codes of conduct are the Sullivan Principles<sup>16</sup> (adopted to fight the South African apartheid system), the MacBride Principles<sup>17</sup> (adopted with reference to the sectarian problems in Northern Ireland), the Arcos Principles<sup>18</sup> (adopted with reference to Cuba), the Apparel Industry Partnership Workplace Code of Conduct,<sup>19</sup> the Clinton Administration's Model Business Principles,<sup>20</sup> and Social Accountability 8000.<sup>21</sup> All of these declare fine principles and ask that multinational corporations sign on to these principles, either formally or by observing them in practice. These corporate codes typically include reference to various aspects of human rights, such as child labor,<sup>22</sup> slave labor,<sup>23</sup> rights of racial equality,<sup>24</sup> and occupational health and safety.<sup>25</sup>

16. The (Sullivan) Statement of Principles (Fourth Amplification), Nov. 8, 1984, *reprinted in* 24 I.L.M. 1496 (1985) [hereinafter Sullivan].

17. Irish National Caucus, *The MacBride Principles* (1984 with 1986 amplifications), available at <http://www.knight-hub.com/inc/MacBride.html> (last visited Oct. 8, 2000) [hereinafter *MacBride Principles*].

18. Rolando H. Castañeda & George Plinio Montalván, *The Arcos Principles*, available at <http://www.sigloxxi.org/arcos-i.htm> (last visited Mar. 3, 2001) [hereinafter *Arcos*].

19. Apparel Industry Partnership, *Preliminary Agreement Charter Document Fair Labor Association*, available at <http://www.lchr.org/sweatshop/aipfull.htm> (last visited Oct. 8, 2000).

20. U.S. Dep't of Commerce, *U.S. Department of Commerce Model Business Principles*, available at <http://www.depaul.edu/ethics/principles.html> (last visited Oct. 8, 2000) [hereinafter *Model*].

21. Social Accountability International, *Social Accountability 8000*, at <http://www.cepaa.org/sa8000.htm> (last visited Oct. 8, 2000) [hereinafter *Social Accountability 8000*].

22. See, e.g., Apparel Industry Partnership, *supra* note 19, ¶ 3; *Social Accountability 8000*, *supra* note 21, § IV.1.

23. See, e.g., Apparel Industry Partnership, *supra* note 19, ¶ 2; *Social Accountability*, *supra* note 21, § IV.2.

24. See, e.g., *MacBride Principles*, *supra* note 17, *passim*. Principle 6, for example, addresses "[t]he abolition of job reservations, apprenticeship restrictions and differential

Substantively, this is wonderful, but the picture gets cloudier once information policy and transparency are considered. The audit and disclosure aspects of these codes reveal serious problems in using these codes to distinguish between socially progressive companies and those that prefer to ignore global social issues. The Sullivan Principles were perhaps the strongest in this area: they required signatories to pay dues each year for the purpose of funding outside compliance audits, which were then made public.<sup>26</sup>

The MacBride Principles, by comparison, are purely substantive. Corporations sign on to the Principles, but the Principles themselves contain no procedures that lower information costs for those wishing to learn whether a particular company is complying with them. A company could thus claim adherence and yet resist calls to demonstrate that adherence.

The Arcos Principles are closer to the Sullivan Principles in procedure. They require companies to have public accounting firms audit their compliance with the Principles, and report on that compliance by using a standard form.<sup>27</sup> Information on compliance will be made available to shareholders and the media.<sup>28</sup> Costs are supposed to be borne by the

---

employment criteria which discriminate on the basis of religion." *Id.* See, e.g., *Social Accountability 8000*, *supra* note 21, § IV.5; Sullivan, *supra* note 16, *passim* (Principle I, for example, calls for "[n]on-[s]egregation of the races in all eating, comfort and work facilities.").

25. See, e.g., *Arcos*, *supra* note 18, at Principle V ("Each signatory of the Principles will proceed immediately to . . . [e]nsure that the methods of production meet occupational safety and health standards, and that they do not pose unnecessary physical or health hazards to the workers or surrounding communities."); *Social Accountability 8000*, *supra* note 21, § IV.3.

26. The Sullivan Principles' section on *Periodic Reporting* required signatory companies to: "Report progress on an annual basis to Reverend Sullivan . . . Have all areas specified by Reverend Sullivan audited by a certified public accounting firm. Inform all employees of the company's annual periodic report rating and invite their input on ways to improve the rating." Sullivan, *supra* note 16, at 1499. The requirement that companies pay dues to support the Reverend Sullivan's work did not appear directly in the text of the Sullivan Principles.

27. The Arcos Principles' section on *Implementation* reads, in part, as follows: "The Signatory companies of the Arcos Principles will proceed immediately to: 1. Have all points of the Arcos Principles specified above audited on an annual basis by an internationally recognized certified public accounting firm. A reporting form to be provided . . ." *Arcos*, *supra* note 18, § III(A)(1).

28. Signatories to the Arcos Principles are required to "[p]resent an annual progress report . . . to at least one human rights or independent labor organization in Cuba . . ." *Id.* § III(A)(2). Furthermore, signatories are required to "[i]nform all Cuban employees of the company's annual report rating and invite their suggestions . . ." *Id.* § III(A)(3).



corporations through voluntary contributions to the Principles' administrators.<sup>29</sup>

The Clinton Administration's Model Business Principles are not an operating code, but a design for corporations seeking to develop their own codes of conduct.<sup>30</sup> Unfortunately, they are purely substantive and contain no provisions designed to lower information costs for observers outside the corporation.

The Apparel Industry Partnership Workplace Code of Conduct contains provisions for monitoring and audits,<sup>31</sup> but contains no specific provisions for public disclosure of results.<sup>32</sup> Social Accountability 8000, from the Council on Economic Priorities Accreditation Association, by contrast, has no provisions for external monitoring and audit, but requires public disclosure of compliance with the substantive principles of the program.<sup>33</sup> Neither, unfortunately, contains provisions for both external monitoring and public disclosure.

In addition, there are the internal codes of conduct, which have been adopted by multinational corporations themselves. Companies such as Levi Strauss<sup>34</sup> and NIKE<sup>35</sup> have written their own codes, designed both for their own internal operations and with respect to those companies that have strong ties to them (notably upstream suppliers). These internal corporate codes vary widely, and usually contain reporting standards as a matter of grace, not as a matter of obligation. Thus, even if the substantive standards are undertaken as an obligation, disclosure confirming compliance with those standards may not be.

---

29. "Signatories and supporting organizations will be requested to make special contributions to finance the effective implementation of this Program. By contributing to financing the costs of this enterprise, including monitoring, Signatories will demonstrate their good-faith adherence to the Arcos Principles." *Id.* § III(B).

30. The introductory language to the U.S. Department of Commerce Model Business Principles states, in part, "the Administration encourages all businesses to adopt and implement voluntary codes of conduct for doing business around the world." *Model, supra* note 20, at 1.

31. Apparel Industry Partnership, *supra* note 19, §§ V, VI, and Principles of Monitoring.

32. Indeed, § V.D states that each Participating Company has the right to prevent disclosure of the reports of external monitors, except for disclosures to the Fair Labor Association created by the Apparel Industry Partnership itself. *Id.*

33. Thus, ¶ 9.11 requires regular communication to interested parties of "data and other information regarding performance against the requirements." *Social Accountability 8000, supra* note 21.

34. At <http://www.levistrauss.com/about/code.html> (last visited Oct. 9, 2000).

35. At <http://nikebiz.com/labor/code.shtml> (last visited Oct. 9, 2000).

Finally, there are codes relating to particular industries. An example of this is the RUGMARK code<sup>36</sup> relating to the production of rugs. Compliance with such codes is usually indicated by a compliance mark that is allowed to appear on the final product of every industry member satisfying the substantive standards.

## VI. ENHANCING TRANSPARENCY AND CREATING SEPARATING EQUILIBRIA

What can be done to enhance the informational aspects of these various types of codes, to render them more transparent? In terms of separating equilibria, what can be done to make human rights reporting, through means of these codes, low-cost to corporations that respect human rights and high-cost to those that do not? There are several points worth considering.

At the outset, let us consider what kinds of code provisions will not create the differential reporting costs that will generate a separating equilibrium. These fall into two types. The first type of code provision is one that imposes no costs at all on corporations that abuse human rights. More specifically, a code that provides no public reporting mechanism is one that allows a multinational corporation to ignore the substantive provisions with impunity. Without the transparency that comes with public reporting of one form or another, no separating equilibrium will form.

The second type of code provision that will not cause a separating equilibrium to form is one that provides such lax enforcement and reporting mechanisms that they allow such corporations to masquerade as human rights respecters. Thus, a code requirement of a conclusory annual public report, where no consequences are likely to arise from false assertions of compliance with substantive provisions of the code, will actually encourage lower-cost non-compliance rather than higher-cost compliance, since both would lead to similar reports. Similarly, if code compliance grants a company authority to use a certification mark on its products, but the public is unaware of the existence or specifics of the certification mark, then non-compliance is less expensive than compliance. Such a situation can also arise where a non-complying company can easily generate its own proprietary mark indicating that it has complied with its own empty standards—meaningful marks risk being lost in a welter of

---

36. At <http://www.rugmark.org> (last visited Oct. 9, 2000) (see related links describing the RUGMARK program and compliance mark).

similar, but meaningless, marks. None of these circumstances will lead to a separating equilibrium.

Then what will work? What kinds of code provisions will separate the sheep from the goats, the corporate respecters of human rights from the corporate violators? This is a complex question, to which answers are still emerging, but some elements are coming clear from the existing codes and some further developments can be identified.

First, corporate codes of conduct must create a common set of standards and reporting formats. Those standards and reports must, in addition, be made public to lower the information acquisition costs to NGOs and concerned citizens. Second, there must be external review and auditing of compliance. Such a step will lower information verification costs to concerned parties. Having the companies themselves underwrite the cost of such audits through contribution to a central fund, as was done with the Sullivan Principles, is a particularly effective step: few non-complying companies will wish to contribute the funds needed to document their own violations.

A particularly useful aspect of such lowered acquisition and verification costs is that it will also lower the costs of litigation against the most egregious corporate abusers of human rights. In the *Burma v. Unocal*<sup>37</sup> case, a federal district court in California upheld access to U.S. courts for citizens of Burma who claimed that Unocal had effectively enslaved them during the construction of an oil pipeline through their country.<sup>38</sup> Uniform standards and reporting, accompanied by external audits, will threaten to provide an inexpensive evidentiary resource for plaintiffs against corporate abusers of human rights. Corporations conscious of their own record of abuses will have strong incentives to reform their practices or to withdraw from (or never join) the code system, thus creating a separating equilibrium.

A third aspect of corporate human rights codes that would impose significantly higher costs on violators than on respecters of human rights would be provisions requiring reporting companies to undertake steps that actually promote human rights internally. For example, reporting

---

37. Nat'l Coalition Gov't of the Union of Burma v. Unocal, Inc., 176 F.R.D. 329 (C.D. Cal. 1997). See also *Doe v. Unocal Corp.*, 963 F. Supp. 880 (C.D. Cal. 1997) (plaintiffs stated a claim against Unocal under the Alien Tort Claims Act by alleging collusion in torture and enslavement by the Burmese military government). But see *Doe v. Unocal Corp.*, 110 F. Supp. 2d 1294 (C.D. Cal. 2000) (Unocal motion for summary judgment under Alien Tort Claims Act granted, on basis that Unocal did not exercise control over Burma's decision to enslave the plaintiffs).

38. Under the military dictatorship controlling Burma, the country's name has been changed to Myanmar. The U.S. government has not recognized this change.

companies could be required, as a condition of code participation, to hold regular human rights training conferences for their personnel (representatives of labor as well as managers and suppliers), or to send such people to human rights conferences sponsored by NGOs or other credible groups. Both corporate respecters and corporate violators of human rights will, of course, have to bear both opportunity and out-of-pocket costs associated with such training and education, but violators will have to bear the additional costs associated with maintaining their violative practices in the face of a better-informed and better-connected workforce.

Another development that could lower consumer information costs and create higher costs for violators than for respecters has to do with certification marks. Given the incredible range of items traded internationally, it is extremely difficult for even well-meaning and well-informed consumers to know the certification marks that apply to every product or industry. Perhaps the time has come for the creation of a meta-mark—a uniform super-certification that declares for consumers that a particular industry or product certification mark is legitimate, meets certain minimum criteria, and represents the state of the art of social consciousness in the industry. The purpose of such a meta-mark would be to allow consumers to become familiar with just one mark, which in itself would guarantee that the industry-specific or product-specific mark associated with it does indeed represent goods that have been produced in compliance with global human rights standards. Once again, lowering the information costs to concerned consumers will drive human rights abusers to the tough choice of the separating equilibrium—bring yourself up to global standards or forego the benefits of being part of the code system.

## VII. CONCLUSION

The suggestions in this short essay, and in the presentation upon which it is based, are not intended to represent a comprehensive analysis of how to make corporate codes of conduct fully effective in promoting human rights. Nor is this author making any claim that corporate codes of conduct could be of value in all settings or for all products.<sup>39</sup> Rather, this

---

39. See Robert J. Liubicic, *Corporate Codes of Conduct and Product Labeling Schemes: The Limits and Possibilities of Promoting International Labor Rights Through Private Initiatives*, 30 *LAW & POL'Y INT'L BUS.* 111 (1998). In this excellent article, the author identifies several limitations on the effectiveness of voluntary codes and labeling schemes, including underreporting due to worker fear of displacement, ineffectiveness in non-consumer branding, and unintended negative consequences on developing nations and

essay has attempted to bring an informational perspective—based upon the concepts of transparency and separating equilibria—to the discussion of how to make corporate codes of conduct more effective. By lowering information costs to parties concerned with human rights, and by raising overall costs selectively for those multinational companies that ignore or abuse human rights, we can make significant contributions to the cause of human rights in the international corporate world. Human rights will then become more a matter of regular corporate obligation than occasional corporate grace.

---

complying corporations. *See also* Douglas Cassel, *Corporate Initiatives: A Second Human Rights Revolution?*, 19 *FORDHAM INT'L L.J.* 1963 (1996).