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BOOK REVIEW

CORPORATE SOCIAL RESPONSIBILITY IN THE MULTINATIONAL ENTERPRISE

CONSTANCE Z. WAGNER*

Levi's Children: Coming to Terms with Human Rights in the Global Marketplace. Karl Schoenberger. Atlantic Monthly Press, 2000.

Levi's Children: Coming to Terms with Human Rights in the Global Marketplace, written by veteran foreign correspondent and business journalist Karl Schoenberger, considers the dark side of globalization. The book depicts the struggle by Levi Strauss & Co. to abide by the principles it established regarding workers' rights in the international arena after its decision to relocate some manufacturing operations overseas. Despite good faith efforts, Levi's has been largely unsuccessful, forcing it to back away from a core corporate value in these overseas operations.

Levi Strauss has traditionally been a front-runner in the corporate responsibility movement in the United States. Its inability to maintain the same high ethical standards abroad as at home dramatically highlights the moral dilemma faced by many multinational corporations. *Levi's Children* examines whether a corporation such as Levi Strauss can behave in a socially responsible manner and still survive in the marketplace.¹

The author reaches several disheartening conclusions, one being that corporate profits are more important than human rights in today's business environment.² Schoenberger also concludes that even companies who care about human rights in theory are doomed to failure when they attempt to transcribe those principles to everyday business practices and decisions.³

The book utilizes the experiences of corporations in the apparel industry to illustrate how many U.S. companies turn to cheaper

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1. See generally KARL SCHOENBERGER, *LEVI'S CHILDREN: COMING TO TERMS WITH HUMAN RIGHTS IN THE GLOBAL MARKETPLACE* (2000).

2. *Id.* at 226, 236.

3. See *id.* at 161.

foreign labor in lieu of domestic manufacturing facilities in order to protect the bottom line and remain competitive. Often, this foreign labor pool is comprised of children from poverty-stricken homes working under sweatshop conditions.⁴ Such practices would be deemed illegal, as well as morally reprehensible, in the United States. Why then are such practices acceptable in the global marketplace for labor?

One explanation is that the municipal law of the countries hawking such labor does not adequately protect the rights of their own workers. These countries are primarily interested in establishing a legal regime that will be attractive to new business and investment from abroad. Indeed, the governments of the countries involved in human rights abuses are engaged in a race to the bottom, fearing that new foreign investment will be discouraged if they attempt to curb those abuses. In some cases, critics of such governments suffer human rights abuses themselves in retaliation for their efforts.⁵ Moreover, international law has not yet developed an approach which enables it to fill the gap left by the failure of these national governments to protect human rights. Thus far, the moral pressure exerted by nongovernmental organizations (NGOs), the governments of more developed countries, and international organizations is not yet strong enough to curb abusive practices, allowing them to continue unhindered.

Given the legal and moral gaps, several questions arise. Should U.S. multinationals respect workers' labor and human rights to the same extent abroad as at home? Do multinationals owe some measure of moral responsibility towards foreign workers whose rights are being violated? The author clearly believes the answer to these questions is yes. As the title of the book suggests, these workers are "Levi's new children," who expect to receive the benefits of the company's "famed paternalism," in the same manner as their domestic counterparts.⁶

One solution to the plight of foreign workers would be for multinationals to regulate themselves, taking action to protect such

4. According to the International Labor Organization approximately 250 million children between ages 5 and 14 are working in developing countries. Of this number, 120 million are working full time, and 130 million are working part part time. See *Statistics: Revealing a Hidden Tragedy*, at <http://www.ilo.org/public/english/standards/ipecc/simpc/stats/4stt.htm>. (last updated Oct. 31, 2000).

5. See SCHOENBERGER, *supra* note 1, at 186 (describing the hanging of Ken Saro Wiwa for criticizing Nigeria's military government); see also *id.* at 195 (discussing labor activists, the Li brothers, who were tortured in a Chinese prison).

6. *Id.* at 55.

workers or to boycott contractors in countries where human rights violations occur. An ethicist might argue that multinationals should adopt some sort of self-regulatory measures, but the reality remains that they will rarely do so. The drive to generate profits and remain competitive with other companies by utilizing cheap foreign labor is too strong.

Unfortunately, Levi's experiences abroad demonstrates that even the will to "do the right thing" is not enough. The isolated actions of a company like Levi's cannot make much of a difference in changing overall corporate attitudes about human rights. As Schoenberger laments, if Levi Strauss, with its long history of concern for workers' rights, cannot succeed in this endeavor, who can?⁷ The author speculates about solutions for bridging the gap between the corporate bottom line and the protection of human rights, but is ultimately unable to come up with any concrete or satisfying answers.

Levi's Children endeavors to relate two stories. First, the book is an account of the moral dilemma U.S. multinationals confront in tapping into the foreign labor market of lesser-developed countries. Second, the book describes the increasing pressure exerted by the public for U.S. companies to conduct business in a socially responsible manner.

In the book's first narrative, several chapters are devoted to examining violations of worker's human rights in particular countries and the responses of multinationals doing business there. While the primary focus is on Levi's experience, the book also contains brief case studies of the positive experiences of several other U.S. corporations that have sought to avoid complicity in human rights violations.⁸ In addition, the book touches on the negative experiences of companies with poor records on human rights, including the case of Unocal in Burma and U.S. garment manufacturers in Saipan.⁹

7. *Id.* at 183.

8. The favorable human rights records of Reebok and Nike are discussed, including their adoption of corporate codes of conduct, appointment of corporate managers charged with monitoring corporate social responsibility and human rights issues, cooperation with NGOs, and establishment of local grant programs. *See id.* at 133-38, 206-08. For further information on such programs, see the Levi's, Nike, and Reebok web sites. *Levi Strauss & Co. General Information: Corporate Social Responsibility*, at http://www.levistrauss.com/index_about.html (last visited May 16, 2001); *Nike: Responsibility*, at <http://www.nikebiz.com/social> (last visited May 16, 2001); *Reebok: Human Rights*, at http://www.reebok.com/about_reebok/human_rights/default.asp (last visited May 16, 2001).

9. SCHOENBERGER, *supra* note 1, at 83, 67. *See generally* Doe v. Unocal Corp., 110 F. Supp.2d 1294 (C.D. Cal. 2000) (dealing with Burmese villagers who brought suit against a

Dominating this first story is an examination of the historical development of Levi's Global Sourcing & Operating Guidelines, the first corporate code of conduct adopted by a multinational.¹⁰ The Guidelines mandated standards for Levi's own practices, as well as its terms of engagement with overseas contractors. They were adopted in an attempt to institutionalize a company tradition of progressive policies towards workers and a commitment to ethical business conduct.¹¹ Additionally, the Guidelines carried the purpose of safeguarding the company from criticism about its controversial decision to close certain U.S. plants and move manufacturing jobs offshore.¹²

The Guidelines were groundbreaking when they were introduced in 1992, reflecting the belief that sound business decisions are best made by taking into account other corporate constituencies in addition to shareholders.¹³ They subsequently became the model for efforts by other companies in the United States and Europe to respond to human rights violations abroad.¹⁴

Shortly after their adoption, the Guidelines were the basis for Levi's decision to cease contract production in Burma.¹⁵ In 1993, again pursuant to the Guidelines, Levi's responded to reports of serious human rights violations in China issued by Amnesty International, Human Rights Watch, and the U.S. Department of State, by announcing that the company would cease doing business with China.¹⁶ To Levi's chagrin, no other U.S. company followed its lead.

In 1996, Levi's revised the Guidelines, significantly, Levi's replaced provisions that required it to refrain from doing business in countries with a record of pervasive human rights violations. The new language merely committed the company to assess

U.S. oil company for international human rights violations committed by the Myanmar military to benefit the oil company); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058 (9th Cir. 2000) (dealing with workers in Saipan's garment industry who brought suit against U.S. corporations for violations of the Fair Labor Standards Act).

10. *Id.* app. A, at 265-68.

11. *Id.* at 30.

12. *Id.* at 62.

13. *Id.* at 33 (quoting Chairman Robert Haas). For an example of recent theoretical literature challenging shareholder-centeredness, see David Millon, *Communitarianism in Corporate Law: Foundations and Law Reform Strategies*, in *PROGRESSIVE CORPORATE LAW* 1-33 (Lawrence E. Mitchell ed., 1995).

14. Following Levi's lead, Reebok adopted a code of conduct in 1992. SCHOENBERGER, *supra* note 1, at 134. See also *Reebok: Human Rights Production Standards*, at http://www.reebok.com/about_reebok/human_rights/default.asp (last visited May 16, 2001).

15. SCHOENBERGER, *supra* note 1, at 81.

16. *Id.* at 122.

whether the human rights environment in a particular country would prevent it from conducting business in a manner consistent with the Guidelines and other company policies.¹⁷ In 1998, the company reversed its position on China, stating that the human rights environment had improved.¹⁸ When pressed for further explanation, Levi's announced that it would not be practical to conduct business in Asia without a presence in China. Staying out of China while others were conducting business there would threaten its commercial interests.¹⁹ Economic factors, namely the loss of its core market, resulting in a dramatic fall in profits by the late 1990's, were clearly an important motive behind the change in position.²⁰

The second narrative in *Levi's Children* focuses on the increasing intensity of the demands made by the public for U.S. corporations to conduct business in a socially responsible manner. Human rights, as well as labor and environmental issues, have become major concerns of critics of the new globalized economy.²¹ The author emphasizes the efforts of NGOs devoted to furthering ethical business practices, such as Business for Social Responsibility, the Minnesota Center for Corporate Responsibility, the Council of Economic Priorities, and the Fair Labor Association.²² These groups offer training and advice to corporations on human rights policies and other social accountability issues, in addition to monitoring the actual performance of corporations on these issues. Schoenberger highlights only those NGOs that take the middle ground on human rights issues, positioning somewhere between the aggressive advocacy of groups like Human Rights Watch and Amnesty International, and the obstinacy of multinationals who turn a blind eye to human rights violations. No coverage is given to the efforts of national governments or international organizations to develop corporate codes of conduct for multinationals or to foster improved labor standards internationally.²³

17. *Id.* at 127.

18. *Id.* at 125.

19. *Id.* at 126.

20. *Id.* at 159.

21. See LORI WALLACH AND MICHELLE SFORZA, PUBLIC CITIZEN'S GLOBAL TRADE WATCH, WHOSE TRADE ORGANIZATION?: CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY 13-50, 173-192 (1999).

22. SCHOENBERGER, *supra* note 1, at 18, 236.

23. For a summary of historical efforts to develop corporate codes of conduct by the U.N. Commission and Centre on Transnational Corporations, the International Labour Organisation and the U.N. Conference on Trade and Development, see Peter Hansen and Victoria Aranda, *An Emerging International Framework for Transnational Corporations*, 14 *FORD-*

While the first story is fairly comprehensive, this second narrative is incomplete. The two narratives are never fully linked, leaving the reader asking why the solutions proposed by NGOs have not solved, or at least mitigated, the problem of involvement by multinationals in human rights violations.

Interwoven into the narratives in *Levi's Children* is speculation regarding possible solutions to the problem of multinational corporations maintaining profits as well as human rights principles. After concluding without much discussion that national governments and international organizations are unlikely to solve the problem, the author suggests that the answer can be found in greater voluntary cooperation between NGOs and multinational corporations.²⁴ This idea is not original with Schoenberger. In fact, it is the solution proposed by United Nations Secretary-General Kofi Annan in his Global Compact, unveiled at the World Economic Forum in 1999.²⁵

The Global Compact is a voluntary commitment by corporations to embrace a set of nine principles relating to human rights, labor, and the environment.²⁶ The commitment is evidenced by issuing a statement supporting the Compact, publicly advocating the Compact, and posting a progress report on the Compact website on an annual basis.²⁷ The Global Compact seeks to involve not only businesses, but also governments, labor organizations, and NGOs.²⁸ Labor organizations and NGOs are asked to become active participants in this process by serving as advocates for the nine principles and participating in project development.²⁹

HAM INT'L L.J. 881, 885-87 (1991). For a discussion of the role of labor standards in the World Trade Organization, see Kimberly Ann Elliott, *Getting Beyond No. . .! Promoting Worker Rights and Trade*, in *THE WTO AFTER SEATTLE* 187-204 (Jeffrey J. Schott ed., 2000).

24. SCHOENBERGER, *supra* note 1, at 236-37.

25. *Id.* at 14-15.

26. Principles 1 and 2 deal with the protection of international human rights by requiring that corporations ensure they are not complicit in human rights abuses. Principles 3 to 6 concern labor rights, calling for the elimination of child labor practices and discrimination in the workplace, as well as guaranteeing the freedom of association. Principles 7 to 9 encourage measures aimed at protecting the environment such as developing environmentally friendly technologies. See *The Global Compact: The Nine Principles*, at <http://www.unglobalcompact.org/gc/unweb/nsf/content/thenine.htm> (last visited May 16, 2001).

27. See *The Global Compact: From Principles to Practice*, at <http://www.unglobalcompact.org/gc/unweb/nsf/content/participate.htm> (last visited May 16, 2001).

28. See *The Global Compact: What It is and Isn't*, at <http://www.unglobalcompact.org/gc/unweb/nsf/webprintview/whatitis.htm> (last visited May 16, 2001).

29. See *The Global Compact: Commonly Asked Questions*, at <http://www.unglobalcompact.org/gc/unweb/nsf/webprintview/faq.htm> (last visited May 16, 2001).

Although the author does not develop this idea further, his emphasis on the importance of the Global Compact represents a contribution to the literature in this field. Rather than emphasizing the unbridgeable gap between these two worlds, as many recent writers have done, he urges conciliation and compromise.³⁰ If *Levi's Children* is to be deemed successful on any point, it is this one.

The book suffers from several shortcomings. The author presents a great deal of information, perhaps too much given the length of the work, in a superficial fashion. Instead of an in-depth case study of Levi's experience in the human rights arena, the coverage was spotty and cursory. The author attributes this to the lack of publicly available information about Levi's operations and his inability to penetrate its corporate communications department.³¹ Most of the information appears to stem from personal interviews with corporate outsiders and news stories. Schoenberger tries to fill these gaps by providing anecdotal information about the human rights record of other U.S. multinationals, but this information is similarly sketchy. In fact, more information can be obtained by visiting the human rights sections of corporate web sites and human rights NGOs' web sites available on the Internet.³²

In addition to suffering from a lack of research, *Levi's Children* lacks a coherent analytic framework. The author races from topic to topic, displaying a good knowledge of current events, but without explaining the connections among them. Many questions came to mind while reading *Levi's Children*, but they remained unanalyzed and unanswered. For example, what is the role of human rights NGOs in the corporate responsibility movement? There is a likely connection between the adoption of corporate codes of conduct by companies like Levi's and Reebok in the 1990's and the advocacy work of NGOs like Human Rights Watch, but the connection is never made clear by the author.

Another unanswered question is why the author believes that industry self-regulation is the only viable solution. Why couldn't initiatives by human rights NGOs, national governments, and international organizations be pursued at the same time? The author

30. SCHOENBERGER, *supra* note 1, at 17-18.

31. *Id.* at 238-39.

32. See, e.g., *The California Global Corporate Accountability Project*, at <http://www.nutilus.org/cap/index.html> (last visited May 16, 2001); *CorpWatch*, at <http://www.peacenet.org/trac/> (last visited May 16, 2001); *Sweatshop Watch*, at <http://www.sweatshopwatch.org> (last visited May 16, 2001).

has not described in depth the efforts undertaken by these entities, and has not analyzed at all why such efforts have proven unsuccessful in the past. Additionally, the author narrowed his focus to U.S. companies and their lack of success. Perhaps a comparative perspective drawn from the experiences of European multinationals might be effective in shedding some light on the problems discussed here.

Finally, the book lacks legal analysis. The author has written what amounts to a first chapter of a book on corporate social responsibility in the human rights arena that needs further elaboration and a conclusion. The issues that need further exploration include: 1) the type and nature of the barriers to integrating human rights concerns into the global operations of multinational enterprises; 2) the means for eliminating such barriers; and 3) the consequences for business and society stemming from failure to bridge the gap between profit-making and social responsibility. Among the legal barriers that need to be considered is the U.S. corporate law doctrine concerning the fiduciary duties owed by officers and directors, which mandates maximization of shareholder wealth, to the exclusion of all other values.³³ While this doctrine has been frequently criticized, it is still a pillar of U.S. legal doctrine. An analysis of this doctrine from the perspective of the multinational enterprise and its human rights obligations would be a welcome addition to the literature.

Levi's Children is not a legal book, but it may be of interest to corporate lawyers as well as human rights lawyers. Its chief virtue lies in the author's search for a pragmatic solution to an emerging problem for U.S. multinationals. While the author is only partially successful in fulfilling the project he set for himself, the book's shortcomings point the way for more and better literature on this important and timely topic.

33. Other barriers that come to mind are the cultural indifference to or tolerance of human rights abuses in this country and elsewhere and consumer pressure to buy cheap goods, but these may be better dealt with by a social critic or philosopher than a lawyer.