

## GLOBALIZATION, TRANSNATIONAL CORPORATIONS AND THE FUTURE OF GLOBAL GOVERNANCE

Chapter 12 in Andreas Geog Scherer and Guido Palazzo (Eds.): Handbook of Research on Global Corporate Citizenship. Cheltenham, UK, and Northampton, MA: Edward Elgar. Forthcoming - 2008.

Stephen J. Kobrin  
Department of Management  
The Wharton School  
University of Pennsylvania  
[kobrins@wharton.upenn.edu](mailto:kobrins@wharton.upenn.edu)

(3.5)

Globalization is still very partial and incomplete. While the world economy may be global, law, regulation, politics, and society are still largely national, only slowly emerging from bounds imposed by the modern international or Westphalian states system. There is a governance gap as politics lags behind markets which extend beyond the reach of nation states (Habermas 2001); global markets have grown rapidly “without the parallel development of economic and social institutions necessary for their smooth and equitable functioning” (World Commission on the Social Dimension of Globalization 2004, xi).

We are in the midst of a transition from an international to a transnational or post-Westphalian political-economic system and have not yet developed the modes of cooperation, institutions or even the language necessary to govern an integrated world economy effectively. My concerns in this paper are the implications of this asymmetry, and of the emergence of a transnational world order, for problems of economic governance. I will focus on problems rather than solutions, on the changing parameters of a new governance regime rather than its precise definition. My objective is to frame the problems systemic evolution poses for societal control of the economy and economic actors.

### **The Post-Westphalian Transition**

The modern Westphalian international order was a coherent system with a well defined structure. First, it was *state-centric*: states were the only actors in international politics and the only subjects of public international law. There was a clear distinction between the public sphere of politics and government and the private sphere of markets and economic transactions. Second, it was *inherently geographic* based on borders,

mutually exclusive territorial jurisdiction and sovereignty. Last, it was *anarchic* lacking any central authority.

The sovereign, territorial state, which was the primary “container” of politics, provided a territorially bounded space in which “the struggles for democracy, the nurturing of social solidarities, and constitutional forms of government could develop within the framework of the rule of law” (McGrew 1997). International politics entailed interactions among states as governments and the international economy was comprised of discrete cross-border transactions. The only public international interests were state interests: “the public domain, the interstate sphere and the realm of governance were largely coterminous” (Ruggie 2004, 505).

We are in the midst of deep-seated change in the organization of the world economy and world politics, a transition to a transnational or post-Westphalian order that is in some ways comparable to the transition from the medieval to the modern era in the sixteenth and seventeenth centuries (Kobrin 1998). Three aspects of that transition are directly relevant to problems of economic governance: the fragmentation of political authority; the diffusion of the boundary between the public and private spheres; and changes in the nature and meaning of geographic space.

In a prescient article over thirty years ago Nye and Keohane (1971, xxi) foresaw the emergence of a transnational order defining world politics as “all political interactions between significant actors in a world system in which a significant actor is any somewhat autonomous individual or organization that controls substantial resources and participates in political relationships with other actors across state lines.” While states certainly remain important (perhaps the most important) actors, the system is no longer state-

centric: non-governmental organizations (NGOs), multinational corporations and international organizations such as the World Trade Organization have emerged as significant transnational actors in world politics.

The once clear distinction between the public and private spheres, between politics, law and regulation on the one hand and the market and economic activities on the other has broken down. Public authorities engage directly in economic activities through state-owned or controlled companies and private firms take on public functions such as setting standards or providing health care. The rise of the “competition state” and the dramatic expansion of the social responsibilities of business firms have blurred the once clear line between public and private sectors.

Last, globalization and the revolution in information technology have changed the economic and political meaning of space. Borders are “transcended” rather than crossed, relations become increasingly “supraterritorial” as distance, borders and geographic space itself lose economic and political significance (Scholte 1997). Markets no longer need to be defined in terms of geographic proximity and, in some circumstances, the location of transactions and organizations has become indeterminate.

Ruggie characterizes this evolving order as a newly emerging global public domain that is no longer conterminous with the system of states. “It ‘exists’ in transnational non-territorial spatial formations, and is anchored in norms and expectations as well as institutional networks and circuits within, across and beyond states” (Ruggie 2004, 519).

Importantly, it is a system in transition, a world of partial globalization. States are not replaced but rather “embedded” in a broader and deeper “transnational arena.” In

Rosenau's (1990) terms, "sovereignty free" and "sovereignty bound" actors coexist with one another. Supraterritoriality coexists with territorial spaces where locality, distance and borders still matter. It is a system in the throes of evolution where uncertainty about structures and relationships abounds.

### Economic Governance

Our thesis is that the idea of a self-adjusting market implied a stark utopia. Such an institution could not exist for any length of time without annihilating the human and natural substance of society; it would have physically destroyed man and transformed his surroundings into a wilderness. Inevitably, society took measures to protect itself, but whatever measures it took impaired the self-regulation of the market, disorganized industrial life, and thus endangered society in yet another way.

Polyani (1977(1944), 3) thus described the "double movement" governing the dynamics of a market society: the continuous expansion of the self-regulating market was met forcibly by a countermovement seeking to re-embed the market in the fabric of society. He argued that there was "nothing natural about *laissez-faire*," that the development of the market required an "enormous increase in the administrative functions of the state" (139); his thesis that a self-regulating market cannot exist in isolation, that it must be embedded in a social and political order to function, is widely accepted.

At a minimum, markets require the establishment of property rights (including intellectual property), contractual conditions, procedures for civil redress, and a supply of public goods to function. "Economic activities require the existence of rules and their enforcement as preconditions that the market cannot generate itself" (Scherer et al. 2006, 505). Under the modern international states system economic governance was synonymous with government, it was provided by territorially sovereign states; the

structure of the system assumed a geographic congruity between politics, economics and social relations, that the space encompassed by borders had meaning as a political-economic construct. While there was considerable variety in specific political and economic institutions (Hall and Soskice 2001), each state established the rules and provided the enforcement mechanisms necessary for a market to function.

To a large extent, this was true internationally as well, the international world economy was embedded in the system of sovereign states both individually and collectively. An international economy is perfectly consistent with the structural characteristics of the Westphalian system: it is comprised of territorially defined national markets as its constituent units; transactions take the form of discrete cross-border flows of goods and capital; and markets and the location of transactions are fixed in terms of two dimensional space.

The problems posed by cross-border flows of trade and investment did not violate the norms or assumptions of the Westphalian international system, they tended to involve the collective determination (by states) of rules governing international transactions and jurisdictional issues of extraterritoriality and overlap in areas such as the enforcement of sanctions or boycotts and taxation. Jurisdictional conflicts, which were the exception rather than the rule, were dealt with by sovereign territorial *governments*, either individually or collectively. To the extent the realist distinction between internal and external affairs was preserved and disputes were resolved through traditional inter-state mechanisms, the outcomes reflected the norms and values of a political community comprised of the sovereign states collectively.

Bull (1977, 13) defined “international society” as common interests, rules and institutions of states: an international society exists “when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive of themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.” He argued that an element of international society has always been present in the modern international system. The international economy, comprised of national markets and discrete cross-border transactions, was embedded this international society, a political community and social order comprised of the Westphalian states system.

As will be seen, given the fragmentation of political authority and the impact of the digital revolution on the meaning of economic space, borders and territorial jurisdiction the problems of economic governance are different in kind in a transnational world order. Globalization at this point is partial and incomplete: while the international, territorially rooted system may have been compromised, it has not been replaced by anything approaching a coherent transnational order. There is no transnational social system or political community in which to embed an integrated global economy.

I will next turn to a discussion of the emergence of multinational firms as significant political actors with private political authority. I will then consider the impact of spatial reorganization on governance, particularly the transition from territorial national markets to disaggregated value chains as the constituent units of the world economy. The more general issue of economic governance in a transnational system will then be discussed in the context of a need for a hybrid public-private structure which

reflects the idea of a “new global public domain.” Last, I consider the potential impact of this transition to a transnational world order on the firm.

#### Multinational Firms as Political Actors

Individuals become part of mass movements for change and action...Business gets involved in politics, not as partisans of a political party, but as important actors in global debate (Blair 2007)

In this speech Tony Blair recognized the fundamental change that has taken place in the political role of the corporation. Traditional multinational firms are products of the Westphalian international system, corporations “which have their home in one country but which operate and live under the laws and customs of other countries as well” (Lilienthal 1960, 119). Each unit of a Multinational Corporation “lives” within a state, it owes its very existence as a legal entity to the government of the national territory in which it is incorporated. “(F)or private business enterprises operating transnationally, legal personality is conferred under national and municipal laws, and corporate rights, duties, and remedies remain a function of national law” (Cutler 2001, 141).

The multinational firm exercised economic rather than political power. It reflected the relatively clear separation of the private and public spheres, of markets and economic activity on the one hand and politics, law and regulation on the other.

That has changed, in practice if not in theory, with the emergence of a post-modern system, the fragmentation of political authority, the rise of significant non-state actors and the blurring of the line between the private and public spheres. A growing number of non-state actors have political authority in the international system: “(W)hile these new actors are not states, are not state-based, and do not rely exclusively on the actions or explicit support of states in the international arena, they often convey and/or



appear to have been accorded some form of legitimate authority” (Hall and Biersteker 2002, 4). Cultler, Haufler and Porter (1999) argue that private authority involves an organization not associated with government institutions exerting decision making power which is regarded as legitimate in a particular issue area. Private institutions can become authoritative, and thus perceived as legitimate, because of perceived expertise, historical practice or an explicit or implicit grant of power by states.

Ruggie discusses “private authority” and “private governance” in terms of the “apparent assumption by TNCs [Transnational Corporations] and global business associations of roles traditionally associated with public authorities, sometimes in conjunction with CSOs [Civil Society Organizations], but more widely on their own...” (Ruggie 2004, 502). In 2002 the United Nations announced that it had “abandoned” its policy of relying on governments to deal with HIV/AIDs in developing countries and that it would now help fund corporate efforts to provide anti-retroviral drugs. The change in policy was seen as “an acknowledgement that companies have the resources to find health solutions where governments and NGOs are overstretched or failing” (Lamont 2002). The battle against AIDs is but one example of multinational firms being asked to take on duties that were historically the responsibilities of governments.

The activities of rating agencies provide a second example of the provision of public goods by a private firm. While there are advantages as well as disadvantages to having an independent, private firm judging the credit worthiness of sovereign states, there is no question that the major credit rating agencies are private sector firms who exercise considerable influence “over the capacity of sovereign nations to access international capital...” (Abdelal and Brunder 2005, 1). Firms such as Standard and

Poors and Dun and Bradstreet perform a public function that might well be the province of an international organization, supplying an international public good that can affect the economic and political power of states significantly. They function as actors in the international political system exercising private political authority.

The inclusion of Trade-Related Aspects of Intellectual Property (TRIPS) in the 1994 agreement establishing the WTO provides an excellent example of MNCs functioning as autonomous actors in world politics. As Susan Sell (2003, 1) notes, the “central player in this drama was...the *ad hoc* US-based twelve member Intellectual Property Committee (IPC).”

In 1986 the IPC mobilized a group of American, European and Japanese firms who drove TRIPS through the GATT/WTO negotiations. While the American government was not opposed to TRIPS, it largely followed the lead of the IPC. There is little question that the IPC functioned as an independent actor in international politics: “What is new in this case is that industry identified a trade problem, devised a solution, and reduced it to a concrete proposal that it then advanced to governments...In effect, twelve corporations made public law for the world” (Sell 2003, 96).

There is an admittedly fine line between business firms as interest groups lobbying their respective governments or international organizations and MNCs as actors in international politics exerting private political authority. In this case, it is clear that the IPC played a direct role in the Uruguay Round negotiations: it put the item on the agenda; developed the standards to be negotiated; determined that the best course of action would be to set minimum standards rather than try to harmonize intellectual property rules; and was instrumental in reaching the eventual TRIPS agreement (Santoro 1995; Sell 2003).

Private political authority is no longer an oxymoron. The multinational firm's role in international politics is no longer restricted to indirect participation through lobbying governments and attempting to influence policy positions: they can set standards, supply public goods and participate in international negotiations. They are transnational actors who possess *private* political authority and are "increasingly engaged in authoritative decision making that was previously the prerogative of sovereign states" (Cutler et al. 1999, 16). They participate "in the formulation and implementation of rules in policy areas that were once the sole responsibility of the state or international governmental organizations" (Scherer et al. 2006, 506).

Ruggie (2004, 227) describes this blurring of the private-public boundary in terms of a new global public domain. "I define the new global public domain as an institutionalized arena of discourse, contestation, and action organized around the production of public goods. It is constituted by interactions among non-state actors as well as states. It permits the direct expression and pursuit of a variety of human interests, not merely those mediated (filtered, interpreted, promoted) by states."

The fragmentation of political authority and the rise of significant non-state actors complicate the problem of economic governance in a transnational world order in a number of ways. First, governance is no longer synonymous with government, either in terms of individual governments or relations among them in the inter-state system. Multiple actors provide public goods and exert significant, legitimate authority in international politics. Any system of governance must reflect this fragmentation of authority: it must involve multiple actors in rule making and rule enforcing.

Second, we are in the midst of a transition to a transnational world system and the political order or society in which the market is to be embedded is far from clear. While I argued above that the Westphalian state system collectively constituted a political order or community in which to embed markets – at least in a metaphorical sense -- that no longer will suffice. In fact, given the blurring of the line between public and private, between politics and markets, the concept itself may require reformulation. Markets require a supporting structure that they cannot generate. The institution or institutions that will provide this supporting structure in a transnational world order is a critical and unresolved question.

### The Meaning of Space

The medieval to modern transformation was associated with a transformation in how space and time were experienced, conceptualised and represented. With contemporary globalization we may now be experiencing a similarly radical modern-to-postmodern transformation, with similarly radical consequences for existing territoriality (Anderson 1996).

The medieval to modern transformation (conventionally associated with the Treaty of Westphalia in 1648) entailed the territorialization of politics, the replacement of overlapping and interlaced feudal hierarchies by a system of territorially sovereign states. The cardinal organizing principle of the modern state system is the division of the earth's surface into mutually exclusive territorial jurisdictions enclosed by discrete and meaningful borders (Ruggie 1993): the state is inherently geographic with political authority both based upon and defined as a territorial construct (Spruyt 1994).

As noted above, a geographically organized international system assumes that the state is the “primary container of politics” *and* that there is a geographic congruity between politics, economics and social relations; that geographic space has meaning as a

political-economic construct. Conceptually, that implies the state's authority over all economic actors and economic transactions within its borders and over economic activity conducted by its nationals abroad. While that principle led to conflicts over extraterritoriality – attempts to exercise authority over non-nationals abroad – they were limited, the exception rather than the rule (Kobrin 2001).

As Anderson suggests, the post-modern transition may well have radical consequences for a political-economic system rooted in mutually exclusive territoriality. I will discuss four aspects of this transition which impinge on the meaning of space as a political-economic construct and the problems of economic governance: the viability of discrete borders; the increasing indeterminacy of location; the increasing irrelevance of geographic proximity; and the reorganization of international production as a result of the disaggregation of production. All four are, in large part, a function of the digital revolution.

If a border is to have significance as an economic construct the relevant government must be able to exert control over flows across it. While no authority has been able to exert complete control over a border – smuggling and illegal migration have always been with us – at this point, the exceptions are becoming the rule. A digital version of a song, movie or book can be transmitted electronically over the internet with the push of a key, rendering borders immaterial in a very real sense. While governments have attempted to exert control over websites in other jurisdictions, successful efforts are few and far between. It is far from clear governmental authorities can exert significant control over “cross border” flows of digital transactions or that they are even aware of the vast majority of them.

Even if the sender's and recipient's computers are located in different jurisdictions, the idea of "crossing a border" applies only metaphorically. It is more reasonable to conceive of the book or song "rematerializing" on the recipient's computer. Similarly, an Indian technology firm can maintain a New York Bank's computer over the internet without any discrete or observable cross-border exchanges taking place. In fact, it is far from clear whether the Indian firm's effort can be classified as an export in the traditional sense.

Borders have become increasingly irrelevant to civil society groups. While NGOs such as Amnesty International have organized global human rights campaigns for some time, they now use the Internet to provide "peer-networked human rights activism" (Reynolds 2006, 103). A coordinated effort by elements of an NGO located in different states to protest the violation of worker rights by an MNC, for example, is clearly "global" political activity even if none of the participants leaves their home country: given access to interconnected global electronic networks, borders become less significant and less of a barrier.

Economic governance has traditionally required that transactions and institutions can be located precisely in two dimensional geographic space. Taxation, consumer protection, corporate regulation, and the very legal personality of the corporation itself all depend on being able to establish territorial jurisdiction precisely: we ask *where* the transaction took place, *where* the investment originated, *where* equity capital was raised and *where* the corporation is located (Kobrin 2002).

The question of *where* a digital transaction takes place, where it is located in two dimensional geographic space may no longer be conceptually relevant. If I use my

computer in Philadelphia to view a painting on the Louvre's website, is the digital image in Paris or Pennsylvania? While the question is debatable, I would argue that in this case, it is not really material. The question, however, has proven to be non-trivial.

Two examples will suffice. In 2000, a French court ordered Yahoo to remove auctions of Nazi memorabilia from its U.S. website. Trading in Nazi artifacts is illegal in France, but perfectly legal in the United States. While the case is complex, the French court argued that the fact that the website could be viewed in France gave it jurisdiction, "that access by French internet users to the auction website...constituted a contravention of French law..." (Akdeniz 2001,110). While territorial sovereignty certainly gives the French government the right to prevent its citizens from purchasing Nazi goods and to ban imports at the border, does it have the right to claim jurisdiction over a U.S. website simply because it can be viewed in France? Would that give every jurisdiction control over every website, regardless of location? Is it even possible for the French authorities to be aware of every website around the world offering, for example, electronic copies of *Mien Kampf*?

The problem of internet gambling, which is a major on-line business provides a second example of the indeterminacy of location in cyberspace: eight million Americans bet \$6 billion annually on the Internet (Richtel and Timmons 2006). Internet gambling is legal in a number of locations such as Antigua but illegal in the United States. However, U.S. government has gone after off-shore gambling operations rather than individual Americans who play electronic poker or bet on horse races on the net. In response, Antigua brought a dispute to the World Trade Organization, accusing the U.S. of protectionism against international gambling companies. As of early 2007, the WTO has

found for Antigua, arguing that the United States discriminated between domestic and foreign companies (Pimott 2007).

As with the Yahoo case, the question is the relevance of geographic location arises again. It is far from clear where the transaction actually takes place and it may be difficult to determine where the gambler and website are physically located. Both cases raise serious questions about the viability of a system of economic governance based on territorial jurisdiction when the underlying assumption of locational determinacy is violated.

Marshall (1920) (citing Jevons) notes that while the term “market” originally connoted a specific place, “this distinction of locality is not necessary. The traders may be spread over a whole town, or region of country, and yet make a market, if they are, by means of fairs, meetings, published price lists, the post-office or otherwise, in close communication with each other.” Two points are important here: markets are defined in terms of geographic jurisdiction (Marshall does allow for world markets as an exception) and actual proximity is not necessary if “close communication” is possible. In practice, while markets could be defined broadly, actual transactions required proximity.

The digital revolution has eliminated the need for proximity in many transactions and made geographic or jurisdictional definitions of markets problematic. Marshall’s exception of world markets is becoming the rule, especially in services. Again, two brief examples will suffice. The Indian technology sector has exploded in the last decade and it is now common for software firms in Bangalore to both develop code for American firms and service computers located in New York or London via the internet (Kobrin 2000). It is also increasing common for CAT scans or MRIs obtained after the normal



working day to be read by groups of radiologists located in India or Australia: the term “Nighthawks” has been applied to these groups. With the advent of digital imaging devices and the internet, a service, that in the recent past required a patient and doctor in immediate physical proximity (reading an X-ray) now can be performed anywhere in the wired world (Brody 2004). The problems this poses for governance based on territorial jurisdiction are obvious.

The indeterminacy of location and the increasing irrelevance of geographic proximity are components of a significant change in the organization of the world economy which has important implications for governance. Baldwin (2006, 7) conceives of successive waves of globalization as two “great unbundlings.” The first reflected the decreasing importance of geographic proximity, the need to locate the production of goods close to their consumption. The second, a function of rapidly falling communication and coordination costs, allows the different stages in the value chain itself to be geographically dispersed.

Grossman and Rossi-Hansberg (2006,4) describe this phenomenon as a “trade in tasks,” arguing that the transport and communications revolution has weakened the link between specialization and geographic concentration allowing for the separation of “tasks” in the value chain in space and time. “International competition plays out not just at the level of the industry, or even the firm, but right down at the level of individual tasks – assembly, packaging, data entry – that cut across whole sectors of the economy” (Economics Focus 2007).

The net result is the geographic fragmentation of production processes, or more generally, the disaggregation of supply chains. “Firms are less likely to simply make

products and export them; they increasingly participate in highly complex cross-border arrangements that involve a wide array of partners, customers and suppliers” (Gereffi 2005, 2). The disaggregation of supply chains and the resulting trade in tasks are manifestations of a seismic reorganization of the global economy: from the organization of production in terms of national markets and discrete cross-border flows to transnational production and supply networks (Gereffi 2005).

The basic constituent unit of the global economy is in the process of evolving from territorially defined national markets to disaggregated supply chains comprised in large part of trade in individual tasks. The emerging globally integrated enterprise is “a company that fashions its strategy, its management, and its operations in pursuit of a new goal: the integration of production and value delivery world wide. State borders define less and less the boundaries of corporate thinking or practice” (Palmisano 2006, 129).

Increasingly, the tasks themselves are non-material: they entail the manipulation of ideas and information that can be transmitted anywhere in an instant. While most tasks can be located in two dimensional geographic space (multi-locational digital efforts might be an exception), in aggregate the complex supply chain renders location, geographic proximity and territoriality increasingly irrelevant. The implications for economic governance are significant and it is to that topic that I now turn.

### **Economic Governance in a Transnational World Order**

We have fading borders and this means the instruments of the national states are being constantly eroded. It is no longer possible for the individual states to dictate the rules of the economic game... (Benoit 2007).

In this interview with the *Financial Times*, Franz Müntefering, Germany’s Vice-Chancellor, asked whether governments can continue to shape the laws that “rule the

world” and do so in a manner that avoids destruction of the social dimension. Bull (1977) asked the same question thirty years ago, trying to imagine alternatives to the international states system.

He defined the essential attributes of the system as sovereign states, interaction among them to form a system, and, as noted above, “a degree of acceptance of common rules and institutions in respect of which they form a society” (225). Bull then asked what the world order would look like if one or more of these attributes disappeared: a world comprised of states and interaction among them without a society would imply the demise of the international order due to the disappearance of common values, rules and institutions; sovereign states without a system would result in isolated states where interaction was minimal.

Bull foresaw a world order comprised of a system and society without sovereign states, the third alternative, taking the form of either a world government or a new medievalism comprised of overlapping authorities and cross-cutting loyalties (Bull 1977, 246).<sup>1</sup> However, Bull wrote before the rise of autonomous transnational actors, private political authority and the digital transformation of space, before the outlines of the emerging post-Westphalian transition became obvious. While neither a world government nor the complete abandonment of state sovereignty is likely, the systemic changes taking place in the international political-economic order can be reconceptualized in terms of two underlying dimensions: the fragmentation of authority as multiple actors emerge from a state-centric system where states were the only legitimate sources of authority and the only subjects of public international law; and changes in the nature of space as borders become more permeable, location less

---

<sup>1</sup> See (Kobrin 1998) for a discussion of neomedievalism.

determinate, proximity less important and the root principle of mutually exclusive territoriality increasingly compromised.

In figure 1, possible changes in the political-economic system are visualized in terms of four quadrants comprised of these two dimensions. The lower left quadrant captures the traditional international system, a state-centric world order based upon mutually exclusive territoriality where all three of Bull's attributes remain intact. The lower right envisions a world where states remain as the only actors in the system, but territoriality is compromised. A possibility here is Slaughter's (2004) idea of disaggregated states with transnational governance exercised through networks of government officials preserving the system and society. It is somewhat more difficult to conceive of a system in based upon mutually exclusive territoriality where political authority has fragmented (upper left). While it may stretch the concept, Rosenau's (1990) multi-centric world of parallel universes of sovereign and non-sovereign actors may apply here.

The upper right quadrant describes a world where both state-centric political authority and territorial sovereignty are compromised, a transnational transformation where all three of Bull's attributes of the international states system are in flux: territorial sovereignty; modes of "international" interaction; and the nature of an international society.

Bull's underlying question remains relevant: how can we reconstruct a *system* of governance that takes multiple actors, private political authority and the decreased viability of territorial jurisdiction into account *and* provide a *society* – rules and institutions perceived as both authoritative and legitimate -- in which to embed the global

market? In essence, we need to provide for both a system of interaction and some form of transnational society that encompasses both the fragmentation of authority and the dramatic changes into the nature of space. In this paper I can provide only the barest outline of an answer to that question and suggest some of the implications for governance of the firm.

### Governance without Government

Lamy notes that the concept of governance disappeared in the 16<sup>th</sup> century with the emergence of nation states and the state-centric international system. Government “belongs to Westphalian nation states and their particular modes of government, legitimacy and representativeness;” a society such as medieval Europe or the current international order without any organized central power needs governance (Lamy 2006, 1).

In defining the idea of governance without government, Rosenau (1992,1- 3) asked a critical question: “if governance connotes a system of rule, and if it is not sustained by an organized government, who makes and implements the rules?” He goes on to note that “(T)o presume the presence of governance without governments is to conceive of functions that have to be performed in any viable human system irrespective of whether the system has evolved organizations and institutions explicitly charged with performing them.”

Any effective post-Westphalian system of economic governance will have to be consistent with the parameters of the evolving transnational order including the fragmentation of authority, the rise of multiple actors in international politics and the decreased viability of territoriality. Gereffi (2005,37) defines market governance as

“those institutions, governmental and non-governmental, that both enable and constrain the behavior of markets and market actors.” He argues that three developments may allow the international system to adapt to the task of governing a global market: the thickening of international institutions; the emergence of private forms of governance; and capacity building in developing countries. The first two are directly relevant here.

Resolving the asymmetry of partial globalization requires a mechanism to allow politics to catch up with global markets. In the absence of world government, that will have to include both empowered and authoritative international institutions that bring multiple actors (states, MNCs and NGOs) into the policy formation and decision making process and hybrid or public-private forms of governance that are perceived as legitimate and authoritative. I will focus on the latter here.

There is increasing interest in “the emergence of private locations of authority in the international system, and their implications for the future of international order and global governance” (Hall and Biersteker 2002, 7). The concept has been discussed in terms of industry self-regulation (Haufler 2001), private international regimes (Cutler 2002), non-state market-driven governance systems (Cashore 2002), and civil business regulation (Vogel 2006).

While the idea of private governance of markets and economic actors is often discussed in terms of business self-regulation, the concept can certainly include cooperative efforts among multiple actors such as business firms and civil society groups, as well as public authorities. Cutler, (2005) notes that international legal theory, which is premised on the authority of the territorial state, is at odds with the reality of increasingly authoritative non-state actors and “non-state law.” She describes the involvement of

states in this process as a deterritorialization and reterritorialization of law, law made by private actors enforced through the apparatus of the state.

Regimes have been defined as “sets of implicit or explicit principles, norms, rules, and decision making procedures around which actors’ expectations converge” (Krasner 1982). While regime theory was originally conceived in terms of informal arrangements in traditional international politics, more recently the idea has been applied to non-state actors with a private regime defined in terms of “an integrated complex of formal and informal institutions that is a source of governance for an economic issue area as a whole” (Cutler et al. 1999, 13).

Similarly, Vogel (2006, 2) defines civil regulation in terms of private or non-state regulatory frameworks to govern multinational firms and global supply networks. Its defining feature is “that its legitimacy, governance and implementation is not rooted in public authority.” It is based on “soft law” or private law. The concept of soft law is important here. Its primary characteristic is that it is non-binding: soft law instruments range from treaties with non-binding obligations, resolutions and codes formulated and accepted by international or regional organizations to statements by private actors which purport to formulate international principles (Roht-Arriaza 1995).

Kenneth Abbott and Duncan Snidal (2000) distinguish between hard and soft law in terms of three characteristics: the degree to which rules are obligatory or legally binding; the precision of the rules; and the delegation of functions such as monitoring and implementation to third parties. Hard law then refers to legally binding, precise obligations that delegate authority for interpreting and implementing the law. Soft law results from relaxing each of these criteria, particularly the first.

A number of points are important. First, the hard-soft law distinction is continuous rather than binary. Second, the lack of legally binding obligations does not mean that adherence to soft law is completely voluntary: agreements may be enforced through a variety of control mechanisms such as political pressure or public opinion. Third, there are numerous instances of soft law commitments evolving over time into hard international law: “it is evident that a substantial part of ‘soft’ law today...describes part of the hard law of tomorrow” (Dupuy 1990; Hillgenberg 1999).

There are a number of examples of private or hybrid public/private governance regimes that have provided effective governance through soft law in a variety of issue areas. The International Standards Organization (ISO), founded in 1946, is a network of the national standards institutes of 156 countries with a central secretariat in Geneva. Each national committee determines its own composition. “ISO occupies a special position between the public and private sectors. This is because, on the one hand, many of its member institutes are part of the governmental structure of their countries, or are mandated by their government. On the other hand, other members have their roots uniquely in the private sector, having been set up by national partnerships of industry associations.”<sup>2</sup>

ISO’s standards are “voluntary.” However, as Roht-Arriaza observes, the process is neither fully private nor fully voluntary. “The standards may affect the public regulatory process in a number of ways: global and regional trade agreements may explicitly recognize them; government regulations may refer to them for definition of terms; and government procurement rules may adopt them. Further, market pressure

---

<sup>2</sup> <http://www.iso.org/iso/en/aboutiso/introduction/index.html>.



from consumers, financiers, insurers, and competitors may convert them to prerequisites for companies wanting to do business in large markets” (Roht-Arriaza 1995, 487).

ISO engages in what has been termed a form of private lawmaking. It broadened its reach considerably with its 9000 quality control standards (1987) and is blurring the line between the private and public spheres with its 14000 environmental standards now under consideration. Increasingly, ISO sets industry standards in conjunction with or in addition to those set by domestic regulators (Spiro 1996, 967).

Cashore (2002, 2) describes the Forest Stewardship Council which involves both industry and civil society groups and uses eco-labeling to identify forest companies and land owners who practice sustainable forestry. He describes the program in as a non-state market-driven entity, as an example of “transnational private governance systems that derive their policy making authority not from the state, but from the manipulation of global markets and attention to consumer preferences.”

The idea of governance does not imply that government is irrelevant: while state power has certainly eroded as markets have become global, it has not disappeared. There are still a large number of economic transactions that can be governed by states on the basis of territorial sovereignty. However, while states remain “essential players, to a considerable and growing extent, rule making, as well as rule elaboration and application...are taking place in global settings that, even if established by states...conduct their activities...with some de facto decision making independence from their creators” (Cohen and Sabel 2006, 165).

An effective *system* of governance of global markets must transcend both mutually exclusive territoriality and sovereign authority. It must exert non-territorial

control and involve multiple actors to reflect the fragmentation of political authority.

What appears to be evolving is some combination of inclusive and authoritative international organizations and private, soft law based, governance regimes.

Bull's second concern was a *society* in which to embed markets and economic actors; some system of norms, rules and institutions. I argued above that under the Westphalian system, international markets comprised of discrete cross-border transactions were, to a large extent, embedded in the international state system as a political community with international institutions seen "essentially as instruments that states use to achieve common purposes" (Keohane and Nye 2003, 387). If government by states and the states system is replaced (at least in part) by a system of transnational governance, what will constitute the political community or society to confer authority and legitimacy on governance institutions?

A critical assumption of the Westphalian system is that of the state as a container, of a congruity between the politics, economics and social relations. Territorial borders delimit political space and provide the basis "on which individuals are included and excluded from participation in decisions affecting their lives" (Held 2006, 292). That is no longer the case in an interconnected world where it is increasingly likely that individuals will be affected by decisions made by other states in the system, by private political authorities, and by autonomous international organizations. There is "less and less congruence between the groups of participants in a collective political decision and the total of all of those affected by the decision" (Habermas 2001, 70). It is difficult to stretch the traditional idea of a political community, either within the bounds of a state or as a society of states, to encompass this complex transnational world order.

I have noted elsewhere that “our modes of thought are trapped in the modern state system...we can only express our concepts of political and economic authority in terms of borders and territorial jurisdiction” (Kobrin 2004, 129). The very concept of territorial jurisdiction is entwined with conceptions of space, distance and identity (Berman 2002). It is difficult to conceive of a society that is not both territorially delimited and based on sovereign authority.

Reconceptualizing the concept of a “society” in transnational terms requires relational rather than geographic concepts, spaces of flows rather than spaces of spaces (Castells 2000). The transnational space is filled with multiple and overlapping networks of supply chains, multinational firms, trans-governmental relations, international organizations, civil society organizations and private regimes and governance systems. It is reasonable to argue that each of these constitutes a political community or society in Bull’s terms – common norms, rules and institutions.

Given the interwoven and networked nature of the transnational political space, it is possible that over time a larger political community will emerge that is congruent with the global economy, a “society” comprised of generally accepted norms and rules. “The evolution of intersubjective consensuses based on shared fates and common histories, the possession of information and knowledge, the pressure of active or mobilizing publics, an/or the use of careful planning, good timing, clever manipulation, and hard bargaining, can – either separately or in combination – foster control mechanisms that sustain governance without government” (Rosenau 1997, 147).

We are immersed in the post-Westphalian transition and can only dimly perceive the emerging outlines of a transnational world order. It is clear, however, that the

emergence of effective global economic governance will be a difficult and drawn out process. We are likely to be left with partial globalization, and all of the problems that entails for governance of the economy and economic actors for some time to come.

### **Implications for the Firm**

Rosenau (1990, 249, 252) posits the coexistence of state-centric and multi-centric worlds where “both sovereignty-bound and sovereignty-free actors have come to define themselves as the subject of world politics, while viewing the other as objects.” That contradiction is critical: in a transnational system, multinational firms are both governed and governor, both objects and subjects of international politics.

Cutler (2001, 137) terms this “the problem of the subject.” She notes that the “implications of treating corporations, like individuals, as objects and not as subjects are deeply troubling empirically and normatively. When one reviews the activities of business corporations it becomes clear that while they may be objects at law (*de jure*), they are, in fact, operating as subjects (*de facto*).” Multinational firms are now part of the governance process, entities with duties as well as rights: private political authority is a reality.

The idea of private political authority calls the liberal distinction between the public and private spheres into question. Under the Westphalian system the state was seen as the locus of political and legal authority and the self-regulating market as an apolitical arena for private economic relations (Cutler 2001). That is no longer a reasonable picture of reality as multinational firms -- as well as NGOs and international organizations -- are becoming part of a hybrid transnational system of governance.

While the very extensive literature on corporate social responsibility acknowledges that corporations have responsibilities to stakeholders over and above their owners (shareholders), few suggest that the corporation has a responsibility to undertake activities that have no relation to profitability (Vogel 2005). At this point, however, a MNCs public responsibilities could well include the provision of health care (e.g., dealing with AIDS in Africa), promoting rather than merely observing human rights, maintaining order in failed states and more generally, acting as a provider of public goods. These duties tend to be imposed on the firm as a result of its capabilities and its role as a political actor and there is no obvious reason why they should bear a relationship to profitability. That raises very basic questions about the social definition of a corporation, and the responsibilities of its managers, which are as yet unresolved.

More tangibly, the transnational transformation and its impact on the role and very definition of the MNC raise profound strategic issues for the firm. While non-market or political strategies have been part of the International Business literature for some time (Boddewyn and Brewer 1994), transnational politics – the implications of the firm as subject – will have to be incorporated directly into the core strategy of the multinational firm.

Since the early pioneering work of Fayerweather (1982) the fundamental strategic problem of the MNCs has been expressed in terms of the tension between exploiting the considerable advantages of the firm's global footprint and the need to respond to unique political, social and cultural differences in individual markets. Fayerweather expressed this as a tension between pressures for unification and fragmentation of strategy.

Bartlett and Ghoshal (1989) greatly developed and expanded the concept. They argued that to fully exploit its strategic potential the firm must *simultaneously* respond to pressures for adaptation through national responsiveness and efficiency through global integration. Firms which can gain meaningful efficiency benefits through integration (e.g., scale, scope or learning) and who face minimal pressures to respond to market differences are classified as “globally integrated.” Those to whom returns to efficiency are limited and the pressures to respond to market differences are strong are “nationally responsive.” Firms in industries such as Pharmaceuticals who simultaneously face strong pressures both to integrate across borders (due to enormous R&D costs) and to respond to national differences (in drug regulation and purchasing) are “transnational.”

Formulating the core strategic problem of the multinational firm in terms of simultaneous pressures to obtain efficiencies through integration and to adapt through responsiveness is consistent with the Westphalian international order. It reflects a world of borders and territoriality where the defining aspect of the MNC involved “expansion of the operating horizon of the enterprise beyond the borders of the home nation” (Tallman and Yip 2003, 320). In essence, the framework forces managers to think about when *cross-border* differences can, and should be ignored, and when they must be dealt with directly.

In a transnational strategic context, borders and territoriality are of diminished import, the line between the public and private spheres has blurred and private political authority is a reality. Increasingly, multinational firms are both objects and subjects, governed and governors, they have duties and as well as rights and are increasingly likely

to be part of a hybrid, transnational governance regime. This newly emerging non-territorial context requires that pressures for global governance be added to the responsiveness – integration framework. Many multinational firms must now respond strategically to both territorial and non-territorial imperatives.

This new third dimension reflects the degree to which firms are likely to have “public” responsibilities imposed on them (e.g., the provision of public goods), exercise private political authority, or be incorporated in transnational governance regimes. Some firms (or industries) are likely to be unaffected by governance pressures: they remain private market-based economic actors who are objects rather than subjects. Others exercise political power, have explicit duties as well as rights, and are part of the governance structure. They are hybrid entities with a presence in both the private and public spheres.

I can do no more than speculate on the strategic implications of this added private-hybrid dimension here. One obvious problem is that it does not fit cleanly into the earlier geographically-rooted formulation of MNC’s strategic calculus. It is a third dimension that is hard to insert into a two-dimensional territorial space. There is no question, however, that it must be dealt with.

The extent to which a multinational firm is subject to pressures to respond nationally or integrate globally is a function of industry characteristics. Pressures to function as a hybrid (as opposed to a purely private firm) should also reflect industry characteristics such as political salience (oil or minerals), the degree of oligopoly, whether or not the product is essential (e.g., pharmaceuticals), visibility (upstream versus downstream operations) and the impact on the environment or human rights. However, other factors may well come into play here such as region of origin. For example, firms

based in democratic societies may be more subject to public pressure, and thus more susceptible to accepting public responsibilities, than those based in autocratic regimes.

There is no reason to suspect that transnational governance is correlated with either national responsiveness or global integration. Clothing or food firms, where responding to national differences is critical, may well find themselves part of a hybrid regime with NGOs and international organizations which attempts to agree on a schedule of worker rights and perhaps even monitor and sanction violations. Pharmaceutical companies, which are the epitome of a transnational firm, are clearly actors exercising private political authority and an industry which has been successfully pressured to supply public goods.

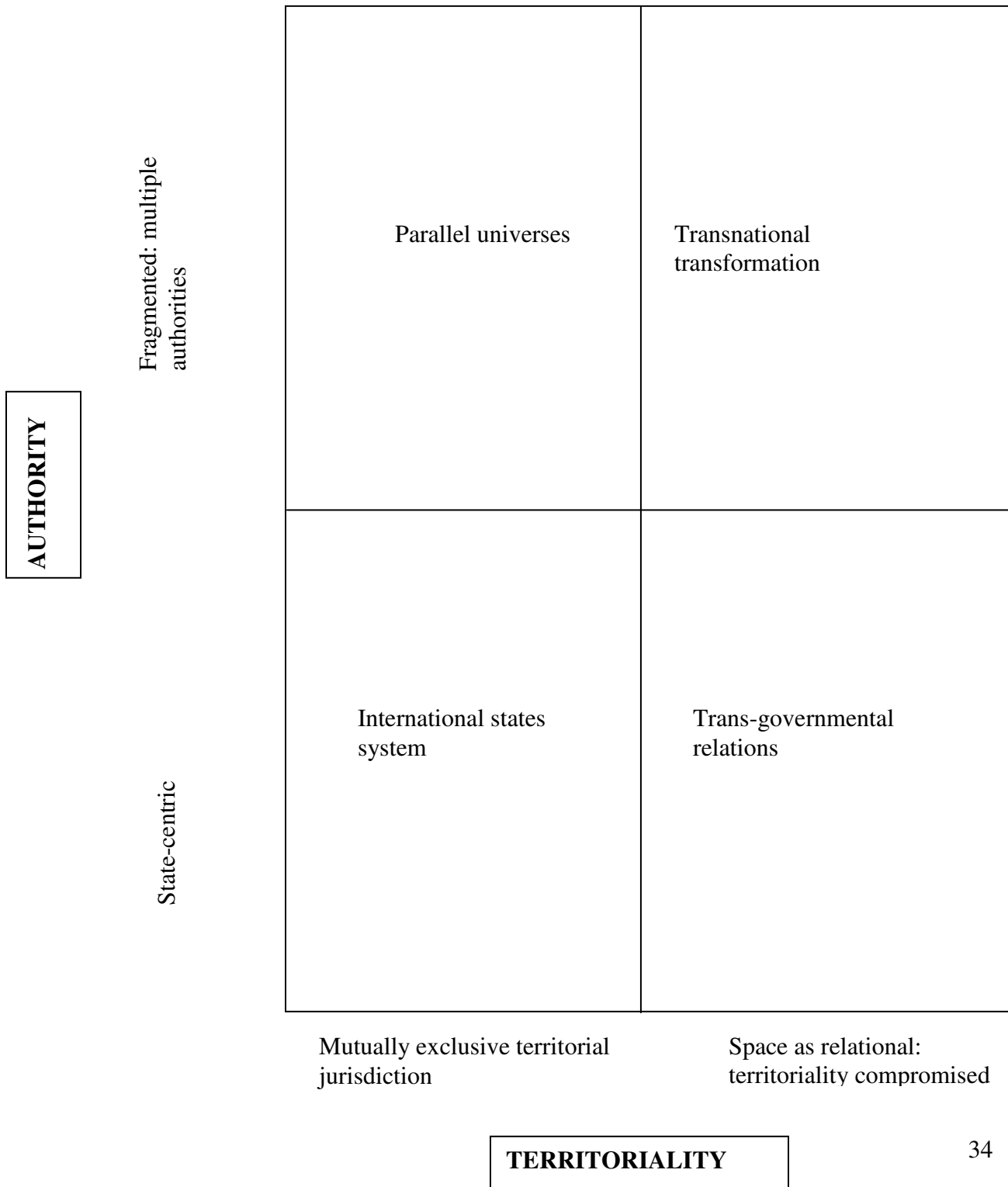
The addition of a governance dimension will significantly complicate the strategic problems faced by multinational firms. First, and most obviously, it requires that the firm deal with three dimensions rather than two simultaneously. More importantly, the new governance dimension is different in kind from the other two. As noted above, there is no reason to assume that governance activities will bear a direct, and perhaps even an indirect, relationship to returns and profitability: they result from the dramatically changed role of the multinational firm in a transnational order. While managers will have to develop strategies that deal simultaneously with integration, responsiveness and governance, to a very real extent, that will entail juggling apples and oranges. The governance dimension may be difficult to evaluate using the metrics common to the other two.

Furthermore, if firms are functioning as subjects rather than objects, if they are political actors involved in the determination of political outcomes, then questions of



authority, legitimacy and democracy need to be dealt with. Managers of MNEs are certainly not elected nor are they subject to democratic control (Scherer et al. 2006). That raises extremely complex questions of accountability which are not normally relevant in the process of determining strategy. (See Held 2006; Keohane and Nye 2003; Koenig-Archibugi 2004; Scherer et al. 2006 for a more complete discussion of these issues.)

Figure 1.  
Possible Political-Economic Systems



## BIBLIOGRAPHY

- Abbott, Kenneth W., and Duncan Snidal. 2000. Hard and Soft Law in International Governance. *International Organization* 54 (3):421-56.
- Abdelal, Rawi, and Christopher M. Brunker. 2005. Private Capital and Public Policy: Standard & Poor's Sovereign Credit Ratings. Boston: Harvard Business School Case.
- Akdeniz, Yaman. 2001. Case Analysis of League Against Racism and Antisemitism (LICRA), French Union of Jewish Students, v Yahoo Inc. (USA), Yahoo France. In *Electronic Business Law Reports*, 110-20.
- Anderson, James. 1996. The Shifting Stage of Politics: New Medieval and Postmodern Territorialities. *Environment and Planning D: Society and Space* 14:133-53.
- Baldwin, Richard. 2006. Globalization: The Great Unbundling. Helsinki: Economic Council of Finland.
- Bartlett, Christopher A., and Sumantra Ghoshal. 1989. *Managing Across Borders: The Transnational Solution*. Boston: Harvard Business School Press.
- Benoit, Bertrand. 2007. SPD Chief Stands By Call to Tackle 'Locusts'. In *Financial Times*. London.
- Berman, Paul Schiff. 2002. The Globalization of Jurisdiction: Cyberspace, Nation States, and Community Definition. 166. Hartford, University of Connecticut School of Law.
- Blair, Tony. 2007. Speech to The World Economic Forum.
- Boddewyn, Jean, and Thomas Brewer. 1994. International Business and Political Behavior: New Theoretical Directions. *Academy of Management Review* 20 (2):397-413.
- Brody, William R. 2004. Nighthawks: Global Outsourcing Comes to Radiology. In *Crossroads*.
- Bull, Hedley. 1977. *The Anarchical Society: A Study of Order in World Politics*. New York: Columbia University Press.
- Cashore, Benjamin. 2002. Legitimacy and the Privatization of Environmental Governance: How Non-State Market-Driven (NMSD) Governance Systems Gain Rule-Making Authority. *Governance* 15 (4):503-29.
- Castells, Manuel. 2000. *The rise of the network society*. Oxford ; Malden, Mass.: Blackwell Publishers.
- Cohen, Joshua, and Charles Sabel. 2006. Extra Rempublicam Nulla Justica? *Philosophy and Public Affairs* 34 (2):148-75.
- Cutler, A. Claire. 2001. Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy. *Review of International Studies* 27:133-50.
- Cutler, A. Claire. 2002. Private International Regimes and Interfirm Cooperation. In *The Emergence of Private Authority in Global Governance*, edited by Rodney Bruce Hall, and Thomas J. Biersteker, 23-40. Cambridge: Cambridge University Press.
- Cutler, A. Claire. 2005. Critical Globalization Studies and International Law Under Conditions of Post Modernity and Late Capitalism. In *Critical Globalization Studies*, edited by P. Applebaum, and William I. Robinson, 197-205. New York and London: Routledge.
- Cutler, A. Claire, Virginia Haufler, and Tony Porter. 1999. Private Authority and International Affairs. In *Private authority and international affairs*, edited by A. Claire

Cutler, Virginia Haufler, and Tony Porter, 3-28. Albany, N.Y.: State University of New York Press.

Dupuy, Pierre-Marie. 1990. Soft Law and the International Law of the Environment. *Michigan Journal of International Law* 12:420-35.

Economics Focus. 2007. The Great Unbundling. In *The Economist*.

Fayerweather, John. 1982. *International Business Strategy and Administration*. Cambridge: Ballinger Publishing Company.

Gereffi, Gary. 2005. The New Offshoring of Jobs and Global Development. In *ILO Social Policy Lectures*. Jamaica: International Institute for Labor Studies.

Grossman, Gene, and Rossi-Hansberg. 2006. The Rise of Offshoring: It's Not Wine for Cloth Anymore. Princeton: Princeton University.

Habermas, Jurgen. 2001. *The Postnational Coalition: Political Essays*. Cambridge: MIT Press.

Hall, Peter, and David Soskice. 2001. *Varieties of Capitalism*. Oxford: Oxford University Press.

Hall, Rodney Bruce, and Thomas J. Biersteker. 2002. The Emergence of Private Authority in the International System. In *The Emergence of Private Authority in Global Governance*, edited by Rodney Bruce Hall, and Thomas J. Biersteker, 3-22. Cambridge: Cambridge University Press.

Haufler, Virginia. 2001. *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy*. Washington: Carnegie Endowment for International Peace.

Held, David. 2006. *Models of Democracy*. Stanford: Stanford University Press.

Hillgenberg, Hartmut. 1999. A Fresh Look at Soft Law. *European Journal of International Law* 10 (3):499-515.

Keohane, Robert o., and Joseph S. Nye. 2003. Redefining Accountability for Global Governance. In *Governance in a Global Economy: Political Authority in Transition*, edited by Miles Kahler, and David Lake, 386-412. Princeton: Princeton University Press.

Kobrin, Stephen J. 1998. Back to the Future: Neomedievalism and the Postmodern Digital World Economy. *Journal of International Affairs* 51 (2):361-86.

Kobrin, Stephen J. 2000. Development After Industrialization: Poor Countries in an Electronically Integrated Global Economy. In *The Globalization of Multinational Enterprise Activity and Economic Development*, edited by Neil Hood, and Stephen Young, 133-54. New York: St. Martin's Press, Inc.

Kobrin, Stephen J. 2001. Sovereignty@Bay: Globalization, Multinational Enterprise and the International Political System. In *Oxford Handbook of International Business*, edited by Thomas Brewer, and Allan Rugman, 181-205. Oxford: Oxford University Press.

Kobrin, Stephen J. 2002. Economic Governance in an Electronically Networked Global Economy. In *The Emergence of Private Authority in Global Governance*, edited by Rodney Bruce Hall, and Thomas J. Biersteker, 43-75. Cambridge: Cambridge University Press.

Kobrin, Stephen J. 2004. Safe Harbors are Hard to Find: The Trans-Atlantic Data Privacy Dispute, Territorial Jurisdiction and Global Governance. *Review of International Studies* 30:111-31.

Koenig-Archibugi, Mathias. 2004. Transnational Corporations and Public Accountability. *Government and Opposition*:234-59.

Krasner, Stephen. 1982. Structural Causes and Regime Consequences: Regimes as Intervening Variables. *International Organization* 36 (2):185-205.

Lamont, James. 2002. UN Seeks Help From Companies in War on HIV/AIDs. In *Financial Times*, 1. London.

Lamy, Pascal. 2006. Globalization and Global Governance. In *The Globalist*.

Lilienthal, David. 1960. The Multinational Corporation. In *Management and Corporations, 1985*, edited by Ashen Melvin, and G.L. Bach, 119-59. New York: McGraw-Hill.

Marshall, Alfred. 1920. *Principles of Economics*. London: Macmillan and Co., Ltd.

McGrew, Anthony. 1997. Globalization and Territorial Democracy: An Introduction. In *The Transformation of Democracy*, edited by Anthony McGrew, 1-24. London: Polity Press.

Nye, Joseph S. Jr., and Robert Keohane. 1971. Transnational Relations and World Politics: An Introduction. In *Transnational Relations and World Politics*, edited by Robert O. Keohane, and Joseph S. Jr. Nye, ix-xxix. Cambridge: Harvard University Press.

Palmisano, Samuel. 2006. The Globally Inetegrated Enterprise. *Foreign Affairs* 85 (3).

Pimott, Daniel. 2007. WTO Rules Against US in Internet Gambling Case. In *Financial Times*. London.

Polanyi, Karl. 1977(1944). *The Great Transformation*. Boston: Beacon Press.

Reynolds, Glenn Harlan. 2006. Does Power Grow Out of the Barel of a Modem: Some Thoughts on Jack Goldsmith and Tim Wu's *Who Controls the Internet?* *Stanford Law and Policy Review* 20:101-7.

Richtel, Matt, and Heather Timmons. 2006. The Gambling is Virtual; The Money is Real. In *New York Times*. New York.

Roht-Arriaza, Naomi. 1995. Shifting the Point of Regulation: The International Organization for Standardization and Global Lawmaking on Trade and the Envrionment. *Ecology Law Quarterly* 22:479-539.

Rosenau, James. 1990. *Turbulence in World Politics*. Princeton: Princeton University Press.

Rosenau, James N. 1992. Governance, order and Change in World Politics. In *Governance without Government: Order and Change in World Politics*, edited by James N. Rosenau, and Ernst-Otto Czempiel, 1-29. Cambridge: Cambridge University Press.

Rosenau, James N. 1997. *Along the domestic-foreign frontier : exploring governance in a turbulent world*. Cambridge, U.K. ; New York, NY: Cambridge University Press.

Ruggie, John Gerard. 1993. Territoriality and Beyond: Problematizing Modernity in International Relations. *International Organization* 47 (1, Winter):139-74.

Ruggie, John Gerard. 2004. Reconstituting the Global Public Domain: Issues, Actors and Practices. *European Journal of International Relations* 10 (4):499-531.

Santoro, Michael A. 1995. Pfizer: Global Protection of Intellectual Property. Boston: Harvard Business School Case.

Scherer, Andreas Georg, Guido Palazzo, and Dorothee Baumann. 2006. Global Rules and New Private Actors: Toward A New Role of the Transnational Corporation in Global Governance. *Business Ethics Quarterly* 16 (4):505-32.

Scholte, Jan Aart. 1997. Global Capitalism and the State. *International Affairs* 73 (3):427-52.

- Sell, Susan K. 2003. *Private Power, Public Law: The Globalization of Intellectual Property Rights*. Cambridge: Cambridge University Press.
- Slaughter, Anne-Marie. 2004. *A New World Order*. Princeton: Princeton University Press.
- Spiro, Peter J. 1996. New Global Potentates: Nongovernmental Organizations and the "Unregulated" Market Place. *Cardozo Law Review* 18:957-69.
- Spruyt, Hendrik. 1994. *The Sovereign State and Its Competitors*. Princeton: Princeton University Press.
- Tallman, Stephen B., and George S. Yip. 2003. Strategy and the Multinational Enterprise In *The Oxford Handbook of International Business*, edited by Alan M. Rugman, and Thomas Brewer, 317-48. Oxford: Oxford University Press.
- Vogel, David. 2005. *The Market for Virtue*. Washington, D.C.: Brookings Institute Press.
- Vogel, David. 2006. *The Private Regulation of Global Corporate Conduct*. Berkeley: Department of Political Science, University of California.
- World Commission on the Social Dimension of Globalization. 2004. *A Fair Globalization: Creating Opportunities for All*. Geneva: International Labor Office.