CHAPTER 13

The Legal and Ethical Environment for Multinational Corporations

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Every company doing business abroad faces numerous legal and ethical issues. The multinational corporation (MNC) faces legal issues raised by "home country" laws, "host country" laws, regional regulations or directives, bilateral and multilateral treaties, and international standards and certifications. Ethical issues become entwined in various legal options, and local customs and norms add another layer of complexity to the question of how to act both legally and ethically in an unfamiliar environment. This chapter offers general guidance on these complexities. We contend that MNCs are wise to focus on four kinds of ethical challenges: these are (1) bribery, competition, cronyism and public governance as they relate to supporting competitive market capitalism; (2) human rights issues; (3) environmental issues; and (4) social equity issues. While failure to focus on these can result in significant legal and reputational consequences, paying proper attention to them can improve corporate performance and enhance the functioning of economies that embrace capitalism.

After a brief summary of international law and the market system, this chapter reviews the four main ethical challenge areas for MNCs. Each challenge area should receive careful deliberation by multinational managers who wish to maintain a company's legal and reputational balance.

International Law

The salient features of international law are relatively simple: companies operating internationally are subject to bilateral and multilateral treaties ratified by nations involved in global trade, and also are subject to the specific laws of the host countries where they operate. When companies do business in host countries, they also may be required to obey the laws of their home nations: In addition to the right to make and enforce laws within their territory, all nation-states reserve the right to make and enforce laws that apply to its citizens (or "nationals"), wherever they may be located or do business. For MNCs based in the United States, this means that U.S. antitrust, anti-bribery, and equal employment opportunity laws often apply to their operations abroad.

When U.S. companies do business internationally they often find that host country laws and regulations are far more lenient in areas of environmental protection, human rights, and health and safety labor standards than they are in the United States. To some managers, this warrants a morally relativistic approach of "When in Rome, do as the Romans do." However, when an MNC is introducing a new type of enterprise in a host country, there may be no local standards or customs to follow. Moreover, when MNCs doing business in developing nations with relatively weak regulatory regimes fail to follow widely recognized standards of labor standards, environmental care, and human rights, they can generate local antagonism—regardless of legalities—as well as adverse reactions from non-governmental organizations (NGOs) and others, resulting in reputational loss, or even their ability to operate within a given host country. Also, failing to give serious deliberation to such ethical challenges can result in criminal prosecution, either in the MNC's home country or host country. In other cases, civil lawsuits may create significant liability or, at the least, prove to be unprofitable distractions.

The Market System and International Law

Capitalism has many forms and variations.[1] But in all of its manifestations, some concept of a "free market" stands at the center: that is, individuals and business organizations exchange goods, services, and various forms of payment with minimal government restrictions. Where people freely transact business with adequate information, "the market" is said to deliver an optimal mix of goods and services to society. The ethics of such a system depend on the application of such notions as free will, consent, choice, rationality, competition, merit, and due diligence.

Economists posit that a perfectly competitive market would have an absence of "negative externalities," an adequate supply of "public goods," and many buyers and sellers with "few barriers to market entry." Negative externalities are the costs imposed on people who have not freely chosen to assume them, such as bystanders who suffer ill-effects from pollution. The public goods essential to a properly functioning free market system include a state-sponsored system of dispute resolution (courts and established legal rules), a system of titles for various kinds of property (real and personal), and a physical infrastructure that can support the movement of goods across interstate and international borders. Barriers to entry can be public (such as tariffs, or public subsidies that make it more difficult for new technologies or competitors to emerge), or private (such as monopolies and cartels that deliberately restrain competition).

For many reasons, including politics and human nature, governments even in most developed nation-states have not completely aligned their policies and practices with these basic principles of perfectly competitive markets. Economists call this "market failure." Even in the United States, where there is a relatively sound legal and physical infrastructure for business, there remain significant instances of anti-competitive behavior, negative externalities, subsidies that distort competition, and lack of adequate information (or information asymmetries, in which sellers generally have more information than buyers). And international law offers even greater opportunities for companies to engage in profitable acts that violate the principles underlying free market systems. In sum, both in the domestic and international context, the principles of the perfectly competitive system that economists prize are often subverted in practice: a firm may monopolize an entire industry and exercise its market power to throttle potential competition, divide up a market with a competitor, or fix prices with one or more competitors so as to wrest the maximum profit from unsuspecting consumers. For example, some pharmaceutical companies market drugs approved for one use for another (unapproved) use, or provide financial incentives to doctors to prescribe drugs that may not be the most efficacious.

Because even the myriad U.S. fair trade laws, in addition to U.S. antitrust and European competition laws, cannot put a stop to all such practices, below we explore how profit-seeking actions by MNCs can undermine the capitalist system through political and market manipulations, bribery, and tax evasion. In the areas of environmental protection, human rights, and social equity, we show how legal systems provide numerous opportunities for MNCs to profit while generating negative externalities, infringing human rights, or neglecting important social needs in various host countries. Put positively, we argue that when corporations engage in fair competition, encourage sound public governance, respect human rights and community values, and protect the natural environment, they can create lasting value for themselves and for the system we call capitalism.

Fair Competition and Good Governance

Good business requires adequate public goods and fair, well-enforced rules of competition, all of which can be subverted by bribery, corporate tax evasion, market manipulations, and the exercise of political power for private profit. Let us begin with bribery.

The practice of bribery undermines competition, and does so in the most direct possible way. For example, after W.S. Kirkpatrick Company won a large contract in Nigeria in 1981 by bribing a public official, another U.S.

company, Environmental Tectonics, learned that its competitive bid had never been seriously considered. Hence, competition in terms of quality and cost did not matter in the transaction; the bribe was the determining factor as to which company was awarded the contract. U.S. anti-racketeering laws applied in this instance (since both companies were U.S. "nationals"); moreover, the underlying act also violated the basic premises of competitive capitalism: that initiative, industry, diligence, and merit will be rewarded, and the best product or service will "win" in the marketplace. Kirkpatrick did not need to offer the best product, process, or project—it just needed to offer the biggest bribe. In any competitive bidding for contracts, true competition does not exist when a greatly inferior product "wins" via bribery. The act may create value for the bribing company but, otherwise, the market is distorted: the product costs too much (to cover the bribe), is of inferior quantity, or both. Innovative firms that would compete on merit are discouraged. In addition, the higher cost to governments of inferior products or services is a drain on the scarce public resources in the developing world and undermines confidence in both capitalism and democracy. Yet bribery remains a very potent force in global business today.[2]

Because the undermining of competitive bidding in government contracts undermines the efficiency and morality of capitalism, it is abundantly clear that international business requires sound regulatory oversight in this regard. This soundness requires a fair degree of objectivity, and should (ideally) not be highly politicized. No-bid, insider contracts (and contracts approved by public authorities on the basis of private politics or outright bribery) create conflicts of interest that undermine such sound oversight. Such practices produce a weakened version of capitalism in which competition is throttled, externalities are left unchecked, subsidies are rampant, taxes are not collected, and in which insufficient funds are available to create the needed public goods to support a well-regulated, competitive marketplace.

As we see below, many MNCs have believed that non-market practices and elaborate tax evasion strategies are justified by the mandate to deliver maximum shareholder value. But the value of free markets without good public governance is dubious; the existence of viable property laws,[3] contract rights enforcement, and peaceful, objective resolution of disputes in accordance with the rule of law[4] are public goods that are necessary for viable business transactions. The political and legal system in which a business operates matters to the success of that business, as managers of U.S. MNCs discover in host countries where they are met by the outstretched hand of "public servants," chaotic or non-existent systems of property rights, and byzantine (or opaque) regulations.

Wherever MNCs suffocate local governments in the developing world by depriving them of oxygen (tax revenues), they also deprive those systems of the much-needed enforcement and supervision of antitrust and anti-bribery laws, banking and securities regulation, enforcement of property and contract rights, and the securing and maintaining of such public goods as highways, bridges, ports, air traffic controls, weather information, parks, education, and defense. The problem here is the classic "free rider": if my company shirks taxes and lets others pay, my shareholders are better off. But wherever such strategic non-participation becomes widespread, it defeats the chance of creating a system of good public governance.

A landmark study by Raymond Baker (an avowed and successful capitalist) demonstrates how MNCs engage in multifarious methods of tax avoidance, using transfer pricing and accounting tricks to avoid taxation by the U.S. and E.U. countries. As Baker describes it, the

> …combination of mispricing, transfer pricing, tax havens, dummy corporations, shielded foundations, secrecy jurisdictions, flee clauses, the whole gamut of techniques and structures that supports dirty money, affords a quasi-legal veneer over a system that revels in its ability to walk on the edge and get away with subterfuge.[5]

Baker also notes that, while low tax rates are good for economic growth, tax evasion is not, because it undermines the rule of law and the ethical notion of "transparency" that is vital to healthy organizations and societies: "For every dollar owed but not collected by the IRS, either taxes must rise or budget deficits must widen, sending interest rates higher and placing a heavy burden on our children to pay down the debt."[6] Baker argues that falsified pricing, tax havens, secrecy structures, and the illicit movement of "trillions of dollars out of developing nations and transitional economies break the social contract, however defined, that Adam Smith incorporated into the core of the free-market system."[7]

Thanks in large part to the tax lawyers, accountants, and bankers who facilitate this system, corporate taxes as a percentage of total U.S. tax revenues have gone down significantly since the early 1990s. Baker also notes the sobering reality that many MNCs are using the same offshore facilities as drug lords, the mafia, and terrorists, and concludes that all these "free riders" on the global capitalist system represent a threat to sustainable free markets, and that these threats are clearly located in the world's tax havens, where both money laundering and MNC transfer pricing take place.

Yet, when it comes to tax avoidance, many shareholders would the practice cheer as long as it is not against the law. It seems like "good business" if it's (1) not illegal, and (2) saves shareholders money. So why not do it? The best answer is that we all have a stake in the success of capitalism, that is, in helping nation-states work within the international community to secure human rights, create social capital, and protect the natural environment. Those ends cannot be met by a system in which every corporation pursues its short-term, narrow self-interest regardless of the economic, social, and environmental consequences to others. The evidence for this is found in the familiar post-Cold War parade of horribles: rogue and failing states, severe environmental degradation, liquidity and credit crises that threaten systemic financial breakdown, starvation and disease, Al Qaeda, persistent slavery, and genocide.

These facts alone should be sufficient to persuade all governments, corporations, citizens, and institutions of civil society that they have a stake in seeing that the capitalist system is both well-understood and correctly regulated to enhance values of choice, merit, transparency, competition, and efficiency, both in developed and developing countries. If business embraces those values, it can be a global force for human rights, sustainability, and social equity. As Raymond Baker puts it in his final chapter, "Renewing Capitalism:"

> Western corporations can enjoy a competitive advantage in lawful operations. They cannot be as successful as others in lawless operations. Responsible business interests should understand that they have much more to gain from supporting and extending rather than from subverting and weakening legal structures…Illicit, disguised, and hidden financial flows create a high-risk environment for criminals and thugs. When we pervert the proper functioning of our chosen system, we lose the soft power it has to project values across the globe. Capitalism itself then runs a reputational risk…Our own security and prosperity are in part dependent on others having a solid stake in the legitimate free market system.[8]

Accordingly, if we believe in "good business"—where private enterprise is part of creating and maintaining a good society—we must recognize that business ethics must be consistent with the basic principles of a legitimate free market system. Thus, we must recognize that it is simply free-ridership—and *not* principled capitalism—when a company creates complex offshore transactions that deprive elected governments of revenues required to fund an adequate level of public goods.

The same ethical critique applies to market manipulations, anti-competitive practices that are legally proscribed such as price-fixing, market divisions, and the exercise of monopoly power to suppress competition. Even when not illegal, such practices are manifestations of a drive to profit unfairly beyond the moral boundaries of competitive capitalism. Similarly, the use of political power to gain private profit from public law—whether to secure subsidies, special favors, or no-bid contracts that could easily be placed on a more competitive basis—amounts to non-market, or political, manipulation. All such attempts to "rig the system" in favor of those with access, money, and power undermine the ethics of capitalism. In sum, if we believe in the benefits of a robust system of competitive capitalism, there is no ethical room for companies to undermine effective public governance through tax evasion, suppressing competition, using bribes to gain business, or engaging in political angling that amounts to favoritism over fair competition.

MNCs and Human Rights

While "human rights" is a an amorphous concept, there are a number of notable international treaties, conventions, and court decisions that signal where businesses should take special notice of the rights of their employees and the people in the communities in which they operate. For example, all members of the United Nations have ratified a number of important international human rights agreements ("conventions"), including the Universal Declaration on Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), The International Convention on the Elimination of All Forms of Racial Discrimination (1965), and the Convention on the Rights of the Child (1989). In addition, many companies have agreed to voluntary codes of conduct with regard to human rights, such as the Equator Principles and the European Parliament's Code of Conduct for European enterprises operating in developing countries.

Even if such conventions and guidelines didn't exist, businesses would find that respecting human rights is necessary to protect their overseas investments. For example, Talisman Energy Inc., a Canadian oil company, sought to expand internationally in the 1990s and cast its eyes toward the relatively new oilfields of Sudan, acquiring the African holdings of Arakis Energy. Because oil production in Sudan consistently exceeded expectations, Talisman quickly became Canada's top producing oil and gas company. However, Talisman's stock price did not reflect this success; it declined 11 percent in the first weeks after the company entered Sudan, and was unsteady throughout March 2003, when it sold its share in the country's oilfields.

The disconnect between the success of Talisman's Sudan oil operations and its rapid exit from the country lay in its failure to recognize the need for a "social license" to operate in the developing world. While Talisman had a legal license from the government to operate, it ignored the needs and concerns of the Sudanese people in the oil concession areas. Talisman needed some of those people to be moved from their homelands in order to drill. The Sudanese government used this as an opportunity to increase its efforts to displace the non-Muslim population in the country's South, many of whom were killed or maimed as the government burned everything to ensure that the Christians and Animists would not return to the area. Most southern Sudanese drew a connection between this displacement and Talisman's access to the oilfields.

In addition to the displacement, revenues from the oilfield benefitted the Muslim population in northern Sudan rather than the local population, and the Sudanese government used a large part of those revenues to beef up its military, purchasing several helicopter gunships that were then used to attack villages and drive people out of the oil concession area. The government never took seriously the proposals to have the company's oil revenue placed in a trust fund to be administered by non-governmental institutions on behalf of the people.

As part of its operations, Talisman constructed roads into the oil concession area, and built an airstrip (used primarily for helicopters). As the government's actions against the population in the area increased, it began to use the infrastructure built by Talisman for its military operations. The roads facilitated military access to southern Sudan, resulting in more violence over a larger expanse of the country. The government also used Talisman's airstrip to launch helicopter attacks on villages in the south. That Talisman appeared to have sanctioned all of the above—whether true or not—made the company appear complicit in the government's human rights abuses, and led many southern Sudanese to view Talisman's operations as legitimate targets for physical attack.

Talisman also was attacked legally, sued by an NGO for aiding and abetting Sudan's alleged genocide in Southern Sudan. The lawsuit was ultimately dismissed, but the time and expense involved in litigating, coupled with the subsequent negative publicity, damaged both Talisman's reputation and its bottom line. Here's the lesson: Today, a MNC cannot rely on the traditional model of foreign direct investment in which local governments take whatever political or legal actions they see fit in their own territory, while companies "mind their business."

Moreover, not all MNCs escape legal liability for human rights violations. Under the U.S. Alien Tort Statute (ATS), corporate complicity with nation-states who violate "the law of nations" is actionable in U.S. courts by non-U.S. citizens. For example, in 1992, the French oil company, Total, S.A., entered into a production-sharing agreement with the Burmese government in the Yadana natural gas field, located in the Gulf of Martaban off the coast of southern Burma. The Yadana pipeline was designed to collect offshore gas and deliver it to markets in Thailand, with the intent of gas becoming Burma's single largest source of hard currency. Unocal, a U.S. corporation based in California, agreed to join the project as a joint venturer. The Burmese government—a military junta originally known as the State Law and Order Restoration Council, or SLORC—agreed to provide access to, and security in, the pipeline construction areas, and to guarantee the safety of Total and Unocal employees.

Almost as soon as the project began, allegations of human rights violations by the Burmese government's security forces began to surface. "The right to life," established by Article 3 of the Universal Declaration of Human Rights, allegedly was violated repeatedly by summary executions of rebels in the area, of workers who tried to escape, and of employees who failed to carry their work loads. Widespread acts of torture and brutality also were alleged, all in violation of Article 5 of the Universal Declaration. The military allegedly and repeatedly confiscated personal property and food from villagers living in the path of the pipeline, and prohibited people from using ancestral fishing areas where pipeline equipment was being stored. The leveling of entire villages in the path of the pipeline and forced relocations were allegedly common. Because of its collaboration with SLORC, Unocal became the target of protests and, eventually, legal action. After years of legal wrangling, a lawsuit filed in the United States (based on the ATS) was settled in December of 2004, for an undisclosed amount. Unocal, for its part, maintained throughout the proceedings that it did not authorize the actions of the military, and did not condone human rights violations.

Increasing protests and the threat of global boycotts have affected both the reputations and profits of corporations in recent years. This is partly due to the expanded role and increased powers of social NGOs. That NGOs exert more influence than ever is both a result, and a cause, of changing social expectations about the role of business. Initially, NGOs sought to expand their reach where they saw governments failing in their responsibilities to their citizens, becoming advocates for those ignored or abused by their own leaders. Noting the effects of the increasing power of the private sector over the public sphere, NGOs began to turn their focus to business, an early example of which was the South Africa divestment movement of the 1980s, when social activists pressured investors to divest from companies doing business in apartheid South Africa.

NGOs also played a significant role in Talisman's decision to sell its Sudan operations, pressuring institutional investors such as TIAA-CREF and CALPERS to sell their stock in the company. Although it is difficult to quantify the exact effect such movements have on stock prices, there is little disagreement that a well-organized divestment campaign will have at least some negative impact. Clearly, such campaigns can result in negative publicity for a corporation. In 2001, Talisman's CEO aptly summed up the situation for MNCs by noting that "[c]orporations…are increasingly being asked to step into roles that were once the domain of governments or international bodies such as the United Nations." This is certainly true in the area of human rights, where corporations are likely to be held increasingly accountable for their actions.

MNCs and Environmental Integrity

There are only a few binding international environmental treaties. Instead, most environmental standards and regulations vary considerably from nation to nation; and for "the global commons," regulatory standards are rare. The Montreal Protocol, which effectively limits emissions of chlorofluorocarbons (CFCs) into the stratosphere, is a notable exception. Thus, corporations are tempted to take advantage of lenient standards, or lack of enforcement, in host countries, with the result that companies often put "profit above planet."

It is evident that existing laws, national and international, have not adequately addressed the entire range of environmental problems that plague the planet. Corporations thus may profit by: overfishing the oceans with drag nets, trading in endangered species or taking them for "scientific research" (killing of whales by Japanese and Norwegian crews), using the black market to trade in CFCs, engaging in bio-piracy, creating and selling products spawned by new technologies onto the market before an adequate risk/benefit assessment has been accomplished, depending on heavy use of fossil fuels (and opposing any limits to those activities), using chemicals or industrial processes in developing countries in ways that would be forbidden in developed nations, and destroying tropical forests for highly marketable wood (teak, mahogany).

MNCs are able to engage in such activities because there is no strong regulatory oversight. When such activities are challenged in courts, companies often work overtime to defend their actions. For example, a U.S.-based oil company that pollutes large areas of land in another country may be subject to tort litigation, either on the basis of negligence (breach of a general duty of care) or intentional tort (nuisance or trespass). That has been the case with Texaco's oil drilling activities in Ecuador, which allegedly spilled 16.8 million gallons of oil directly into the environment, and left behind 600 open waste pits. If the allegations are true, such spills amount to some six million gallons more than the amount of oil spilled by the Exxon Valdez in Alaska in 1989. In 1993, a group of Ecuadorian citizens in the Oriente region filed a class action lawsuit in U.S. federal court against Texaco and, in 1994, Peruvian citizens living downstream from the Oriente region also filed such a suit. Both complaints alleged that, between 1964 and 1992, Texaco's oil operations polluted the rainforests and rivers in Ecuador and Peru, resulting in environmental damage and damage to the health of those who live in the region. Both lawsuits were dismissed by a U.S federal court in 2002 on *forum non conveniens* grounds (meaning that the U.S. court found that Ecuador was a more appropriate venue for litigating the claims). In achieving this dismissal, Texaco argued that the Ecaudorian courts were "available and adequate" to hear the case and, in 2003, the trial was moved to a ramshackle court in Lago Agrio, a "nondescript, dusty town near Colombia's lawless frontier."[9]

The Ecuadorian litigation was in the form of a class action suit brought against Chevron, which had aquired Texaco. Judicial inspections by a court-appointed scientific team of the contaminated sites began in August 2004. In early 2008, a purportedly independent expert recommended to the court that Chevron pay $7 to 16 billion in compensation for the pollution. In 2008, Chevron reportedly lobbied the U.S. Government to end trade preferences with Ecuador over the lawsuit. In 2009, Chevron accused the Ecuadorian judge of bias, claiming that he had been bribed, and offering secretly videotaped footage as evidence. Even as the judge offered to recuse himself, Chevron made application for arbitration of the dispute under the rules of a U.S.-Ecuador investment treaty.

For their part, Chevron's website brings up a number of reasons why it is not legally, morally or financially responsible. By contrast, the documentary film "Crude," released in fall of 2009, claims that Texaco spent three decades systematically contaminating one of the most bio-diverse regions on Earth, poisoning the water, air, and land—effectively creating a "death zone" area the size of Rhode Island. Increased rates of cancer, leukemia, birth defects, and a multiplicity of other health ailments have devastated the indigenous population and "irrevocably impacted their traditional way of life."

While there may be legal arguments in Chevron's favor, the company does not claim to have been a careful steward of the Ecuadorian environment; instead, it blames the damage on the State oil company, Petroecuador, which still drills in the area. Chevron also argues that the legal-political system in Ecuador is now tilted to the left since the election of Rafael Correa, a U.S.-educated economist who has called the devastation a "crime against humanity," and who supports the plaintiffs in the case. But in gaining dismissal in U.S. court under the doctrine of *forum non conveniens* in 2003, the company took the position that Ecuadorian courts provided an "adequate and available" judicial forum that would best serve both private and public interests. However, once the Ecuadorian court seemed headed toward a multi-billion dollar judgment, Chevron switched grounds and argued that Ecuadorian courts were inadequate. The company also has tried to enlist U.S. diplomatic pressure, challenged the presiding judge's fairness, and requested arbitration in Europe to avoid a judgment from the Ecaudorian court.

In a similar situation, U.S. fruit and chemical companies argued repeatedly throughout the 1990s that Central American courts were adequate to deal with claims from banana workers made sterile by DBCP (a pesticide banned in the U.S. but used in Honduras, Nicaragua, and elsewhere). When U.S. courts ruled that worker plaintiffs could just as well sue in their home countries, the fruit and chemical companies did not expect that Nicaragua's legal system then would take the cases of Nicaraguan plaintiffs, allow class actions, and actually impose substantial penalties. When it did, the companies convinced the U.S. Department of State to exert pressure to undo what the Nicaraguan legislature and courts had done, and have resisted enforcement of Nicaruaguan judgments in the United States.

In short, multinational companies are prone to use "political influence" and "legal compliance" as strategies to modify their moral responsibilities, whether those relate to the environment, human rights, or the health of workers abroad. For environmental issues in particular, it is undoubtedly tempting for firms to seek short-term economic benefits by damaging the natural environment when they can do so legally. But here again, such a strategy ignores the social license aspect of doing business abroad, affects company reputation in negative (if hard to measure) ways, and risks large damage awards in foreign courts. An eventual judgment against Chevron from the courts of Ecuador in the billions of dollars would be a non-trivial sum in anyone's accounting. In contrast, there are often market advantages that accrue to those MNCs who infuse their strategies with a realistic understanding of the environmental problems their operations create. That's good business.

MNCs and Social Equity

Social equity means that the populace in a developing country has a fair opportunity to earn a living wage, receive an appropriate education, and have access to other resources and rights vital to human well-being. Lack of social equity (social injustice) occurs when oppressive regimes deny full political rights and participation—although social injustice can exist in democratic regimes, as well. The concept of social equity is that each society has a stock of "social capital," that, when invested properly, can create the possibility of human thriving, not just merely surviving. The concept of social equity is not normally on the radar of MNCs seeking profitable new markets in developing nations. Historically, such issues have been regarded as purely governmental responsibilities.

In fact, too many developing nations suffer from inadequate education, health resources, and poor physical infrastructures. Hence, when corporations invest in developing nations, they often find that local expectations are raised that they will provide needed roads, hospitals, schools, bridges, and clean water—the list can be endless. Because MNCs cannot expect a clear division of responsibilities between the public and private spheres in developing nations, they face increased expectations with regard to questions of social equity. When governments cannot, or will not, take care of these basic needs, the local populace sees the provision of such public goods as part of the company's mandate.

Even when companies are not forced to make infrastructure investments in hospitals, schools, and roads, there are numerous other areas in which they will be seen as having social responsibilities. For example, a U.S. company may be expected to: follow higher worker safety standards than the host country allows; refuse to hire children even when it is legal to so; hire women or members of a discriminated against race or ethnicity; and, refuse to use local contractors whose practices are unethical or unsafe. Even freedom of speech issues may be seen as involving social equity: when a company like Google or Yahoo enters the Internet service market in China, and submits to government controls and turns over the IP address of an anonymous blogger protesting political or social injustices, it affects the social order by agreeing to web censorship, and thus limits free speech and political participation.

Dealing with social equity issues isn't easy, and we offer no simple answers. Nor is it clear that a company generally risks a significant loss of profit, or reputation, in "doing as the Romans do" with regard to social equity issues involving labor practices or freedom of speech. But there are notable exceptions where such costs have been incurred: Unocal lost reputational capital in using forced labor in Burma, and several firms suffered moral condemnation for doing business in South Africa while complying with the racially discriminatory practices of the apartheid regime. On the positive side, there may be unexpected benefits for an MNC that looks closely at a host country's cultural, political, and legal environment—and then discerns what practices and policies are consistent with the company's core principles, the need for sustainable profit, and widely accepted social standards. For example, Arvin Meritor, a parts supplier to the global auto industry, found that worldwide monitoring of the safety of their workers improved employee morale and productivity, and also lowered operating costs.[10] And MNCs who work toward ISO certifications are saying, implicitly, that certain standards will not be compromised, regardless of the location of their operations. In sum, the art of international business ethics is for MNCs to find a middle way between unthinking and unblinking acceptance of "local norms," on the one hand, and the different, and often higher, standards of their own home countries, on the other.

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[6] Robert Kuttner, "How Corporate Tax Evaders Get Away with Billions," *Business Week*, June 23, 2003, at 24.

[7] Baker, note 5, p. 138.

[8] Baker, note 5, p. 369.

[9] Juan Forero, "Rain Forest Residents, Texaco Face Off in Ecuador." National Public Radio, Morning Edition, April 30, 2009. Available at http://www.npr.org/templates/story/story.php?storyId=103233560

[10] ChipMcClure, CEO of Arvin Meritor, speech on "Business Ethics" at Oakland University, School of Business Administration, Rochester Michigan, April 2006.