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Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops

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Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops

Denis G. Arnold* & Laura P. Hartman**

ABSTRACT

Disputes concerning global labor practices are at the core of contemporary debates regarding globalization. Critics have charged multinational enterprises with the unjust exploitation of workers in the developing world. In response, some economists and “classical liberals” have argued that these criticisms are grounded in a naïve understanding of global economics. They contend instead that sweatshops constitute an inevitable and essential feature of economic development. To the contrary, we argue that there are persuasive theoretical and empirical reasons for rejecting the arguments of these defenders of sweatshops. In particular, we argue that respecting workers entail an obligation to adhere to local labor laws, and we demonstrate that it is feasible for multinational corporations (MNCs) to provide decent working conditions and fair wages to workers. The main conclusion of this essay is that there are compelling ethical and strategic reasons for MNCs to embrace voluntary codes of conduct.

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I. INTRODUCTION

The use of global sweatshops for the manufacture of consumer goods is an important feature of contemporary debates concerning economic globalization.¹ On university campuses throughout the United States, student activists have successfully lobbied administrators to require that manufacturers of university-licensed apparel adhere to codes of conduct that protect factory workers from unjust exploitation.² Human rights organizations and unions have led boycotts and have waged media campaigns against companies that they believe unjustly exploit factory workers in the interest of excessive profits. Consumers are becoming increasingly aware of the debate and are demanding changes to create greater alignment with the recommendations of intergovernmental organizations such as the International Labour Organization. Partially in response to such critics and inquiries, companies such as Nike and the Gap have made significant efforts to use their leverage to eliminate the worst forms of worker abuses from their contract factories. Meanwhile, some economists and proponents of "classical liberalism" wage a campaign of their own, arguing that these criticisms are grounded in a naïve understanding of global economics.³ They contend instead that not only do sweatshops constitute an inevitable and essential feature of economic development, but they also benefit the world's poor.

and standards, corporate governance and corporate culture, and the impact of technology on the employment relationship. She has been published in, among other journals, *Business Ethics Quarterly*, *Business & Society Review*, *Business Ethics: A European Review*, and the *Journal of Business Ethics*. She has written several texts, including *Rising Above Sweatshops: Innovative Management Approaches to Global Labor Challenges*, *Employment Law for Business and Perspectives in Business Ethics*.

1. For the purposes of this paper, we define the term "sweatshop" as any workplace in which workers are typically subject to two or more of the following conditions: income for a 48 hour workweek less than the overall poverty rate for that country (see Table 2 below); systematic forced overtime; systematic health and safety risks due to negligence or the willful disregard of employee welfare; coercion; systematic deception that places workers at risk; and underpayment of earnings. For an historical overview of the development of modern sweatshops, ELLEN I. ROSEN, *MAKING SWEATSHOPS: THE GLOBALIZATION OF THE U.S. APPAREL INDUSTRY* (2002). For an overview of the contemporary issues regarding sweatshops see THEODORE H. MORAN, *BEYOND SWEATSHOPS: FOREIGN DIRECT INVESTMENT AND GLOBALIZATION IN DEVELOPING NATIONS* (2002).
2. For a list of colleges that have signed on to codes of conduct that protect factory workers from unjust exploitation, see the Workers' Rights Consortium, www.workersright.org.
3. "Classical liberalism" is a term many libertarians use to refer to themselves in order to associate themselves with early modern liberal theorists such as John Locke and Adam Smith, while distinguishing themselves from contemporary liberals such as John Rawls. Libertarians typically share the following core beliefs: individualism, the idea that individual persons, rather than the community, should be regarded as the basic unit of social analysis; self-ownership, the view that individuals should be free to decide what is best for themselves so long as they respect this same freedom in others; free markets, the view that government intervention in market exchanges should be minimized in the interest of freedom and economic prosperity; and the minimal state, the view that the

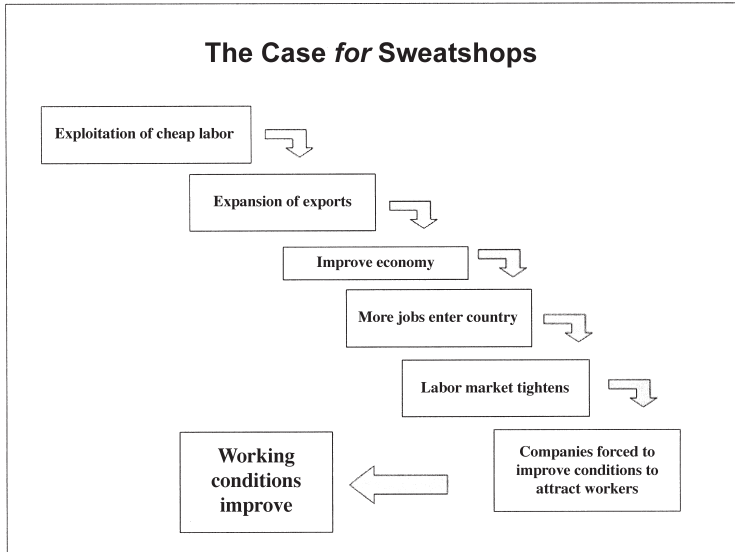
This essay provides an overview of arguments used to defend the existence and continued use of sweatshops. Section II argues that multinational corporations (MNCs) have an ethical obligation to respect the rights of their employees and contract workers. The next section argues that defenders of sweatshops fail to appreciate the range of ethical issues concerning working conditions. In particular, respecting workers entails an obligation to adhere to local labor laws, and it is feasible for MNCs to provide decent working conditions and fair wages to workers. Section IV argues that voluntarily improving legal compliance, working conditions, and wages will not inevitably lead to negative consequences. Section V argues that MNCs have good strategic reasons for embracing voluntary codes of conduct. The essay concludes that there are compelling ethical and strategic reasons for MNCs to respect local labor laws, to voluntarily improve working conditions, and to pay workers a living wage in their global factories.

II. THE CASE FOR SWEATSHOPS

Many individuals who are concerned with the welfare of workers in developing nations nevertheless disagree with the conclusion that sweatshop conditions should be improved. These individuals argue, with varying degrees of sophistication, that improving sweatshop conditions will result in greater harm than good.⁴ They point out that the exploitation of cheap labor supplies allows developing countries to expand export activities and to improve their economies. This economic growth creates more jobs, causing the labor market to tighten, which in turn forces companies to improve conditions in order to attract additional workers (see Table 1). Though an unpopular sentiment with the general consuming public, many economists argue that the maintenance of sweatshops conditions is well supported by economic theory. Furthermore, proponents of sweatshops argue that people work in

coercive influence of government should be severely restricted so as to ensure that the self-ownership of the individual persons is maximized. For discussion of contemporary libertarian views regarding business ethics, see Denis G. Arnold, *Libertarian Theories of the Corporation and Global Capitalism*, 48 J. BUS. ETHICS, 155 (2003).

4. Ian Maitland, *The Great Non-Debate Over International Sweatshops*, reprinted in ETHICAL THEORY AND BUSINESS 593 (Tom L. Beauchamp & Norman E. Bowie eds., 7th ed. 2004) [first published in *British Academy of Management Conference Proceedings* 240–65 (1997)]; PAUL KRUGMAN, THE ACCIDENTAL THEORIST AND OTHER DISPATCHES FROM THE DISMAL SCIENCE 80 (1999); Nicholas D. Kristof, *Brutal Drive*, in THUNDER FROM THE EAST: PORTRAIT OF A RISING ASIA (Nicholas D. Kristof & Sheryl WuDunn eds., 2000); Academic Consortium on International Trade, Letter to University Presidents, 29 July 2000, available at <http://www.fordschool.umich.edu/rsie/acit/Documents/Anti-SweatshopLetterPage.html>; DAVID HENDERSON, MISGUIDED VIRTUE: FALSE NOTIONS OF CORPORATE SOCIAL RESPONSIBILITY (2001); JOHAN NORBERG, IN DEFENSE OF GLOBAL CAPITALISM (2003); JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION (2005).



sweatshop conditions because it is the most rational means available to them for furthering their own ends.⁵

Frequently, these arguments are supplemented by the claim that the views of North American and European critics of sweatshops are simply naïve, or worse, their views are grounded merely in an aesthetic distaste for sweatshops. The defenders of sweatshops argue that, if these critics would only be less self-indulgent, they would recognize the positive role that sweatshops play in improving the lives of workers in the developing world.⁶ The following passages are typical of the arguments deployed by those who defend sweatshops:

I have come to feel that campaigns against sweatshops are often counterproductive, harming the very Third World citizens that they are intended to help. The effect of these campaigns is to be twofold. First, in the short term they clearly raise the condition at existing factories producing branded merchandise for companies like Nike. Second, they raise labor costs and thus encourage mechanization, reducing the number of employees needed in the factories.⁷

[H]igher wages and improved labor standards are not free. After all, the critics themselves attack companies for chasing cheap labor. It follows that, if labor in developing countries is made more expensive (say, as the result of pressures

5. No one in this debate advocates forced labor.

6. KRUGMAN, *supra* note 4.

7. Kristof, *supra* note 4, at 129.

by critics), then those countries will receive less foreign investment, and fewer jobs will be created there. Imposing higher wages may deprive these countries of the one comparative advantage that they enjoy, namely low-cost labor.⁸

You may say that the wretched of the earth should not be forced to serve as hewers of wood, drawers of water, and sewers of sneakers for the affluent. But what is the alternative? . . . Should their own governments provide more social justice? Of course—but they won't, or at least not because we tell them to. And as long as you have no realistic alternative to industrialization based on low wages, to oppose it means that you are willing to deny desperately poor people the best chance they have of progress for the sake of what amounts to an aesthetic standard—that is, the fact that you don't like the idea of workers being paid a pittance to supply rich Westerners with fashion items.⁹

[Sweatshop critics seem] to ignore the well-established fact that multinational corporations commonly pay their workers more on average in comparison to the prevailing market wage for similar workers employed elsewhere in the economy. In cases where subcontracting is involved, workers are generally paid no less than the prevailing market wage. We are concerned therefore that if MNCs are persuaded to pay even more to their apparel workers in response to what the ongoing studies by the anti-sweatshop organizations may conclude are appropriate wage levels, the net result would be shifts in employment that will worsen the collective welfare of the very workers in poor countries who are supposed to be helped.¹⁰

At least some of these claims are not baseless. For example, workers in these factories often do make more than workers in the informal sectors of developing economies. Furthermore, there is evidence that workers at these factories often make more than the going rate at nearby non-MNC factories.¹¹ In summary, defenders of sweatshops argue that, though one may not like some of what one sees in the labor conditions of developing nations, this is the market at work, and the market works to generate overall improvements for individuals and society as a whole. So, more, not fewer, sweatshops are needed.

There are, however, a number of perplexing features of pro-sweatshop arguments such as those outlined above. First, proponents of sweatshops seem to believe that MNCs and their contactors have no ethical obligations to

8. Maitland, *supra* note 4, at 587.

9. KRUGMAN, *supra* note 4, at 85.

10. Academic Consortium, *supra* note 4. For a reply to this letter from academics with a different stance on sweatshops, see the statement by Scholars Against Sweatshops, Oct. 2001, available at <http://www.umass.edu/peri/sasl/>.

11. LINDA LIM, *THE GLOBALIZATION DEBATE: ISSUES AND CHALLENGES* (2001). It is important to note that wages at many MNC factories have risen only in response to critics of low wages. Thus, it may not be reasonable to point to particular MNC factories with fair wages as evidence that the critics of low wages are mistaken. Those wages may have been increased to their current levels mainly *because* of public criticism.

workers in the developing world. Second, defenders of sweatshops typically do not distinguish between issues such as the health and safety conditions in the factories, the number of working hours of employees, compliance with local labor laws, wages, and benefits. Indeed, these defenders appear to assume that improvements in any one of these areas will result in inevitable and dire consequences for workers. However, such assumptions are unwarranted. Third, despite the significant scholarly accomplishments of some defenders of sweatshops, they have failed to provide detailed arguments or analyses in support of their conclusions. Instead they tend to invoke basic economic theory or “classical liberal” ideology as a basis for their claims. However, without more detailed, empirically grounded arguments that focus on the labor markets in specific economies and the practices of specific MNCs, their arguments are unpersuasive.¹² Furthermore, there are good reasons for thinking that many of the arguments used to defend sweatshops are flawed on both theoretical and empirical grounds. Section III of this essay will defend these contrary conclusions.

III. THE ETHICAL OBLIGATIONS OF MULTINATIONAL CORPORATIONS

A remarkable feature of many of the arguments used to defend current conditions in sweatshops is the assumption that MNC managers have no ethical obligations to employees in the developing world. Defenders of sweatshops appear to presume that the wages and working conditions in the factories of MNCs and their contractors are the inevitable outcome of global economic forces.¹³ For example, economist Paul Krugman observes:

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12. For example, the Academic Consortium on International Trade sent its well-publicized letter defending sweatshops to university presidents in September 2000. In the preamble to that letter it promises to provide policy statements and papers defending sweatshops on its web site. Four years later, the sum total of research presented on the ACIT web site includes four newspapers, opinion page pieces and six working papers on general issues concerning globalization. None are detailed, empirically grounded arguments that focus on the labor markets in specific economies and the practices of specific MNCs or their contractors (the link to a promised paper on living wages is non-functional). The most prominent follow-up work to the ACIT letter by one of its signatories is the recent book, BHAGWATI, *supra* note 4. This article responds in detail to many of his arguments concerning sweatshops below.
 13. At least this was true at the early stages of the recent debate over sweatshops. The responses of MNCs such as Nike, adidas, the Gap, Mattel, and many others (some of which are detailed below) that began in the late 1990s and continue to this day, make it difficult for anyone familiar with these changes in corporate policy to hold that the treatment of workers in the factories of MNCs and their suppliers in developing nations is merely a matter of economic forces.

Workers in those shirt and sneaker factories are, inevitably, paid very little and expected to endure terrible working conditions. I say "inevitably" because their employers are not in business for their (or their workers') health; they pay as little as possible, and that minimum is determined by the other opportunities available to workers.¹⁴

However, Krugman concedes too much. Insofar as business is a human activity, it is subject to the same rationally justifiable moral norms as any other human activity. While it is true that MNC managers have an ethical obligation to make a profit for the owners of the enterprise, this obligation does not automatically trump other ethical obligations. Indeed, one of the primary tasks of an ethical manager is to balance the competing ethical obligations of stakeholders.¹⁵

One core ethical obligation of MNC managers is to respect their employees. To fully respect a person, one must actively treat his or her humanity as an end, and not merely as a means to an end. This means that it is impermissible to treat persons like disposable tools. The Kantian basis for this claim is well established.¹⁶ Respecting people is an obligation that holds for every person qua person, whether in the personal realm or in the marketplace. Respecting people requires honoring their humanity; which is to say it requires treating them as ends in themselves. Thomas Hill argues that treating persons as ends in themselves requires supporting and developing certain human capacities, including the capacity to act on reason; the capacity to act on the basis of prudence or efficiency; the capacity to set goals; the capacity to accept categorical imperatives; and the capacity to understand the world and reason abstractly.¹⁷ In their recent discussion of the doctrine of respect for persons as it applies to global sweatshops, Denis Arnold and Norman Bowie make several additions to the list.¹⁸ They argue that treating people as ends in themselves requires that MNC managers and their contractors ensure the physical well-being of employees and refrain

14. KRUGMAN, *supra* note 4, at 83.

15. The arguments for this view are well established. See NORMAN E. BOWIE, *BUSINESS ETHICS: A KANTIAN PERSPECTIVE* 138–46 (1999). See also NORMAN E. BOWIE & PATRICIA H. WERHANE, *MANAGEMENT ETHICS* 21 (2005).

16. The classic works here are IMMANUEL KANT, *THE FOUNDATIONS OF THE METAPHYSICS OF MORALS* (L.W. Beck trans., 2d ed. 1990); IMMANUEL KANT, *THE METAPHYSICS OF MORALS* (Mary Gregor trans., 1991). For recent defenses of Kantian moral philosophy, see ONORA O'NEILL, *CONSTRUCTIONS OF REASON: EXPLORATIONS OF KANT'S PRACTICAL PHILOSOPHY* (1989); THOMAS E. HILL JR., *DIGNITY AND PRACTICAL REASON IN KANT'S MORAL THEORY* (1992); CHRISTINE M. KORSGAARD, *CREATING THE KINGDOM OF ENDS* (1996); BARABARA HERMAN, *THE PRACTICE OF MORAL JUDGMENT* (1993). For an application of Kantian moral philosophy to business, see *BUSINESS ETHICS*, *supra* note 15. For an application of the Kantian doctrine of respect for persons to sweatshops see Denis G. Arnold & Norman E. Bowie, *Sweatshops and Respect for Persons*, 13 *BUS. ETHICS Q.* 221 (2003).

17. HILL, *supra* note 16, at 40–41.

18. Arnold & Bowie, *supra* note 16, at 223–24.

from undermining the development of their rational and moral capacities. They argue that respecting workers in global factories requires that MNC factories, including contract factories, adhere to local labor laws; refrain from the use of coercion; provide decent working conditions; and provide wages above the overall poverty line for a forty-eight-hour work week.

The application of a Kantian approach to problems concerning poverty and economic development in underdeveloped countries is similar to the capabilities approach developed by Amartya Sen.¹⁹ Sen has famously argued that development involves more than an increase in people's incomes and the gross national product of the country. He argues that one must be concerned with certain basic human capabilities, the most important of which is freedom. Sen's perspective is similar in important respects to the Kantian perspective because both are concerned with providing work that enhances the ability of workers to exercise core human capabilities. The United Nations utilizes both the Kantian view and the capabilities view as the dual theoretical foundation for its defense of human rights. Among the rights identified by the UN are: freedom from injustice and violations of the rule of law; freedom to decent work without exploitation; and the freedom to develop and realize one's human potential. The UN argues that all global actors, including MNCs, have a moral obligation to respect basic human rights.²⁰ This general approach to poverty and development has recently been embraced by the World Bank.²¹ The World Bank identified "crucial gaps" in its efforts to encourage development and eliminate poverty through market liberalization. In particular, it notes its previous failure to pay "adequate attention to the quality and sustainability of growth." The World Bank now explicitly acknowledges that all major stakeholders have important roles to play in the process of promoting not merely economic growth, but sustain-

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19. Representative works by Sen of particular relevance to the arguments of this essay include Amartya Sen, *Well-being, Agency and Freedom: The Dewey Lectures 1984*, 82 J. Phil. 169 (1985); AMARTYA SEN, *ON ETHICS AND ECONOMICS* (1987); AMARTYA SEN, *INEQUALITY REEXAMINED* (1995); AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999). Martha Nussbaum has developed her own version of the capabilities approach, one that pays particular attention to the unique circumstances of women's lives. See, e.g., MARTHA NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* (2000).
 20. UNITED NATIONS DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT 2000* (2000) [hereinafter UNDP Report]. Two of the most important philosophical defenses of basic rights are ALAN GEWIRTH, *REASON AND MORALITY* (1978); and HENRY SHUE, *BASIC RIGHTS* (1980). For discussion of the obligations of MNCs with respect to basic rights of employees and other stakeholders, see THOMAS DONALDSON, *THE ETHICS OF INTERNATIONAL BUSINESS* (1992). For a discussion of the obligations of MNCs with respect to global labor practices see Denis G. Arnold, *Philosophical Foundations: Moral Reasoning, Human Rights, and Global Labor Practices*, in *RIISING ABOVE SWEATSHOPS: INNOVATIVE APPROACHES TO GLOBAL LABOR PRACTICES* 77 (Laura P. Hartman, et al. eds., 2003).
 21. See, e.g., VINOD THOMAS, ET AL., *THE QUALITY OF GROWTH* (2000); DEEPA NARAYAN, ET AL., *VOICES OF THE POOR: CRYING OUT FOR CHANGE* (2000); DEEPA NARAYAN, ET AL., *VOICES OF THE POOR: CAN ANYONE HEAR US?* (2000).

able economic growth that is sensitive to the needs of workers in developing nations. While holding that “[f]unctioning markets and liberalization are crucial” to poverty reduction, the World Bank acknowledges the “limits of the market” and the essential roles diverse stakeholders must play in the process.²² MNCs have significant interests in developing nations as sources of natural resources, inexpensive labor, and markets for their goods and services. As such, the World Bank properly recognizes MNCs as stakeholders with important moral obligations in the global reform process. Furthermore, it is not just non-governmental organizations (NGOs) that hold this view. Those familiar with the practice of business recognize that the view that MNCs have an ethical obligation to respect workers in their global factories has long been accepted and practiced by a select number of MNCs, including Motorola and Levi Strauss.²³

A second problematic feature of many of the arguments used to defend sweatshops is that they tend to blur the distinction between factories owned by MNCs and factories with which MNCs contract. Not all MNCs own their own factories; indeed, many MNCs use a substantial number of contractor factories to produce their products, and some use such contractors exclusively. Typically, employees of MNC contractor factories earn less than the employees of MNC-owned factories and work under more adverse conditions. Historically, most MNCs accepted responsibility only for that which fell within the boundaries of their own organizations and specifically did not regard themselves as accountable for those particular labor abuses that occurred within the operations of their contractors. This original conception of global supply chain systems was the outgrowth of traditionally insular domestic contracting relationships. When North American and European MNCs did business domestically, they were bound to domestic laws, as were their contractors and other stakeholders. When they began to globalize, most MNC managers did not at first consider the need to be accountable for the actions of their contractors since that was not the case in their domestic business operations, where comprehensive and well-enforced legal systems were already in place. In addition, part of the allure of overseas contracts was a lower cost structure, in part the result of fewer legal requirements and lax regulatory regimes. This conception of a global supply chain system changed for some MNC managers as awareness grew regarding working conditions in these factories and the lack of adequate legal protections for workers. The emerging alternative conception of supply chain systems

22. UNDP Report, *supra* note 20, at XVII–XVIII.

23. See R.S. MOORTHY, ET. AL, UNCOMPROMISING INTEGRITY: MOTOROLA’S GLOBAL CHALLENGE (1998); KARL SHOENBERGER, LEVI’S CHILDREN: COMING TO TERMS WITH HUMAN RIGHTS IN THE GLOBAL MARKET-PLACE (2000); Tara J. Radin, *Levi Strauss & Co.: Implementation of Global Sourcing and Operating Guidelines in Latin America*, in RISING ABOVE SWEATSHOPS 249, *supra* note 20.

involves a network of relationships among diverse stakeholders such as the MNCs, contractors, factory workers, NGOs, governments, and consumers. Each of these entities contributes to shaping the social-political and economic environments in which the MNCs operate, and helps define the boundaries within which the MNCs consider and reach decisions regarding the labor challenges they face.²⁴ At the core of this new conception of the supply chain system is the recognition by MNCs that they have ethical obligations regarding the practices of their contractors. Defenders of sweatshops have tended to ignore these changes in the global supply chain.

The justification for the claim that MNCs have ethical obligations regarding the practices of their contractors is grounded in the moral claims discussed above, together with a recognition that the relationship of power between many MNCs and their contractors and suppliers is significantly imbalanced in favor of the MNCs. One researcher describes the relationship in the following way:

[A]s more and more developing countries have sought to establish export sectors, local manufacturers are locked in fierce competitive battles with one another. The resulting oversupply of export factories allows U.S. companies to move from one supplier to another in search of the lowest prices, quickest turnaround, highest quality and best delivery terms, weighted according to the priorities of the company. In this context, large U.S. manufacturer-merchandisers and retailers wield enormous power to dictate the price at which they will purchase goods.²⁵

MNCs that dictate the price at which they will purchase goods from contractors also have considerable influence regarding working conditions. In many cases, contract factory owners may not have the resources to improve working conditions and wages without assistance from the MNC.²⁶ Given

24. For a more detailed examination of the ways in which the exercise of moral imagination lead to the transformation of the global apparel and footwear supply chain systems in the apparel and footwear sector, see Denis G. Arnold & Laura P. Hartman, *Moral Imagination and the Future of Sweatshops*, 108 *BUS. & SOC'Y REV.* 425 (2003).

25. *THE SWEATSHOP QUANDARY: CORPORATE RESPONSIBILITY ON THE GLOBAL FRONTIER* 95 (Pamela Varley ed., 1998).

26. Michael Santoro has defended a similar view concerning the duty of MNCs to ensure that their business partners respect employees by ensuring that human rights are not violated in the workplace. Santoro argues as follows:

[M]ultinational corporations are morally responsible for the way their suppliers and subcontractors treat their workers. The applicable moral standard is similar to the legal doctrine of *respondeat superior*, according to which a principal is "vicariously liable" or responsible for the acts of its agent conducted in the course of the agency relationship. The classic example of this is the responsibility of employers for the acts of employees. Moreover, ignorance is no excuse. Firms must do whatever is required to become aware of what conditions are like in the factories of their suppliers and subcontractors, and thereby be able to assure themselves and others that their business partners don't mistreat those workers to provide a cheaper source of supply.

MICHAEL A. SANTORO, *PROFITS AND PRINCIPLES: GLOBAL CAPITALISM AND HUMAN RIGHTS IN CHINA* 161 (2000).

this imbalance in power, MNC managers are well positioned to help ensure that the employees of its contractors are respected. In addition, MNCs can draw upon substantial economic resources, management expertise, and technical knowledge to assist their business partners in creating a respectful work environment.

Defenders of sweatshops tend to presume that there are only two choices: permit, or even encourage, existing sweatshops to maintain poor working conditions and wages in order to retain desperately needed jobs in developing economies, or mandate improvements in working conditions, allowing wages to drive up unemployment. As this essay will discuss, this is a false presumption. There is a third option. Morally imaginative MNCs can voluntarily opt to improve the conditions in their global factories, without laying off workers, while remaining competitive within their industry.

IV. THE RANGE OF ETHICAL ISSUES

Another remarkable feature of the arguments used to defend sweatshops is that they tend to join together a variety of distinct criticisms of global labor practices. Critics of sweatshops charge MNCs and their contract factories with providing unsafe and unhealthy working conditions; with near starvation wages; with forced-overtime paid at standard wages; with a failure to provide legal or contractually required benefits; with the disruption of lawful collective bargaining; with the sexual harassment of female workers; and with disregard for local environmental laws which worsens the conditions in which their workers live and work. Defenders of sweatshops appear to assume that improvements in any one of these areas will result in inevitable and dire consequences for workers.²⁷ However, this assumption is unwarranted. Because it is not possible to discuss the complete range of ethical issues regarding global sweatshops in the space of this essay, we will restrict our discussion to three categories of these issues: violations of local labor laws; working conditions; and wages.

A. Legal Compliance

Those who advocate some form of intervention to improve working conditions in sweatshops claim not only that MNC managers permit unjust working conditions in factories, but that they often do so in violation of the labor laws of host nations. Local laws relating to wages and benefits, forced overtime, health and safety, child labor, sexual harassment, collective

27. BHAGWATI, *supra* note 4, does the best job of separating these issues and taking them on individually.

bargaining, discrimination, and environmental protection are often violated with impunity. Typically these laws are violated in the interest of economic efficiency, often with the knowledge of local authorities. Such violations of the law are typically permitted by local government authorities in order to prevent the MNC factory from shutting down and moving elsewhere. Some defenders of sweatshops deny that violations of local labor laws are widespread. For example, Bhagwati writes that not only is it “highly unlikely that multinational firms would violate domestic regulatory laws” since those laws “are not particularly demanding,” but that “[s]ince the laws are often not burdensome in poor countries, it is hard to find evidence that violations are taking place in an egregious, even substantial fashion.”²⁸

There is, however, overwhelming evidence of the widespread violation of the legal rights of workers by many MNCs and their contractors. Examples include the following:

- Human Rights Watch reports that in Mexican maquiladoras, or export processing zones, US companies such as Johnson Controls and Carlisle Plastics require female job applicants to submit to pregnancy screening; women are refused employment if they test positive. Human Rights Watch also reports that in Guatemalan maquiladoras the vast majority of the female job applicants and employees in the 80,000 person apparel manufacturing sector must submit to pregnancy screening and are denied employment or terminated if they test positive. Employment discrimination based on pregnancy is a violation of both Mexican and Guatemalan law.²⁹
- A Guatemalan Ministry of the Economy study found that less than 30 percent of maquiladora factories that supply MNCs make the legally required payments for workers into the national social security system which gives workers access to health care. The report was not made public by the Ministry of the Economy due to its “startling” nature.³⁰
- An El Salvadoran Ministry of Labor study funded by the United States Agency for International Development found widespread violation of labor laws, including flagrant violation of the freedom to organize and unionize, in maquiladora factories. The report was suppressed by the Ministry of Labor after factory owners complained. A second report by Human Rights Watch verified these findings.³¹

28. BHAGWATI, *supra* note 4, at 173.

29. Human Rights Watch, *A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector* (1998), available at <http://www.hrw.org/reports98/women2/>; Human Rights Watch, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force* (2002) available at <http://hrw.org/reports/2002/guat/>.

30. THE SWEATSHOP QUANDARY, *supra* note 25, at 131.

31. Republic of El Salvador, Ministry of Labor, Monitoring and Labor Relations Analysis Unit, *Monitoring Report on Maquilas and Bonded Areas* (2000), available at <http://www.nlcnet.org/campaigns/archive/elsalvador/0401/translation.shtml>; Human Rights Watch, *Deliberate Indifference: El Salvador's Failure to Protect Worker's Rights* (2003), available at <http://www.hrw.org/reports/2003/elsalvador1203/>.

Additionally, NGOs responsible for monitoring global labor practices on behalf of MNCs, as well as the MNCs they work with, report widespread violations of local labor laws in host-nation factories. For example, the Fair Labor Association reports that significant violations of local laws concerning wages and benefits occurred during the period from 1 August 2001 to 31 July 2002 at factories it monitored belonging to seven MNCs in the apparel and footwear industry.³² More recently, Gap, Inc. released a report regarding respect for worker rights at its own contract factories. It reported that, in 2003, between 25 percent and 50 percent of its contract factories lacked full compliance with local labor laws in the following regions: North Asia; Southeast Asia; the Indian Sub-Continent; Sub-Saharan Africa; Mexico, Central America and the Caribbean; and South America. In China, more than 50 percent of its contract factories lacked full compliance with local labor laws.³³ In interpreting these reports, it is important to keep in mind that the Gap and the companies that work with FLA are working diligently to achieve compliance with local labor laws and MNC codes of conduct in the factories that manufacture their products. In cases where factories do not improve upon their compliance with local labor laws and MNC codes of conduct, their contracts may be canceled. For example, in 2003 the Gap terminated relations with 136 factories for noncompliance. Given the pressure for compliance placed upon the managers of these contract factories, it is reasonable to assume that noncompliance with local labor laws is significantly more widespread at factories that manufacture products for companies that are not actively attempting to ensure legal compliance and respect for the rights of workers.

The reasons that violations of local labor laws occur vary among industries and regions, but include the following:

- Lack of local government enforcement. There may be a lack of resources on the part of host-nations' authorities to ensure compliance with their labor laws. Furthermore, host-nations may be fearful that the enforcement of labor laws will drive away MNCs who are not willing to expend resources to ensure compliance with local laws.
- Ignorance of laws. Given lax enforcement by the host-nation regulatory agencies and a lack of resources expended by MNCs to ensure compliance, host-nation factory managers may be ignorant of applicable laws.

32. Fair Labor Association, *First Public Report: Towards Improving Worker's Lives* (2003), available at http://www.fairlabor.org/all/transparency/charts_2002/PublicReportY1.pdf. FLA is an organization created by NGOs, MNCs, and university administrators in 1999 to work with MNCs to help ensure that the rights of workers in their overseas factories are protected.

33. Gap Inc., Social Responsibility Report 14 (2003), available at <http://ccbn.mobular.net/ccbn/7/645/696/index.html>.

- Unclear laws. Given the lack of resources on the part of the host-nation regulatory agencies and a lack of resources expended by MNCs to ensure compliance, host-nation managers may be confused about how to enforce unclear or contradictory labor laws.
- Ignorance of how to adhere to laws. Given the lack of resources on the part of the host-nation regulatory agencies and a lack of resources expended by MNCs to ensure compliance, host-nation contractors may be confused about how to implement labor laws. For example, local managers may not properly understand how to protect workers from the adverse health affects of toxic chemicals used in the manufacturing process.
- Cost. Given a lack of resources expended by MNCs to ensure compliance with local labor laws, a contract factory may be unwilling or unable to absorb the cost of compliance with local labor laws. Even in cases where the MNC provides additional resources by, for example, increasing the amount they pay for the factories' products, avaricious factory managers may prove unwilling to use the additional income to improve working conditions.

The difficulty of ensuring compliance with local labor laws that many MNC managers now confront may be traced to their own past practices. MNCs such as Nike and the Gap are currently at the forefront of the movement to ensure that the rights of workers in overseas factories are respected. This has not always been the case. Previously, most MNCs simply did not concern themselves with the welfare of the workers in the overseas factories that produce the goods that they design and sell. If the managers of those factories are currently unwilling or unable to change their operations, it is partly attributable to the norms and expectations that the MNCs imposed previously. Those previous expectations focused on low costs, good quality products, and short production schedules, irrespective of the human costs or the law. It should not be surprising that factory managers who have historically regarded employees as disposable tools utilized for the most efficient possible production of goods should find it difficult to reorganize their factories in ways that demonstrate respect for the laws that are intended to protect workers. Further, many MNCs have yet to embrace a respect for the rule of law in those nations where their products are manufactured. Indeed, many government officials in the nations that host factories remain convinced that aggressive enforcement of existing labor laws will simply cause the factory to shut down and later reopen outside their jurisdiction. In reflecting upon why the El Salvadoran Ministry of Labor does not stop the systematic violation of labor laws by MNC contract factories, a Ministry official explained:

I, on the inside, ask, "What happens here? Why don't we prevent these violations?" . . . We are not going to do it, in the end, because we should not discredit an employer. We need our jobs. We have to let everything go.³⁴

34. *Deliberate Indifference*, *supra* note 31, ¶ V.

The violation of host nation labor laws by MNCs and their contract factories, especially those that are not proactively seeking to ensure compliance, should be condemned. First, the violations are hypocritical in that MNCs rely on the rule of law to ensure, among other things, that their contracts are fulfilled, that their physical property is secure, and that their intellectual property rights are protected. When violations of the legal rights of MNCs take place, MNCs and business organizations protest vociferously, relying on the rule of law to ensure the protection of their own interests. It is therefore inconsistent for an MNC to demand that its own rights be protected while at the same time it permits the violation of the legal rights of its workers.

Second, respect for the autonomy of host-nation governments, especially those that are freely elected, mandates that MNCs not use economic coercion to undermine the rule of law. It is well established that lawlessness contributes to poverty, and that respect for the rule of law contributes to increased prosperity.³⁵ Those who are genuinely interested in the welfare of the citizens of developing nations ought to demand that MNCs and their contractors respect local labor laws, rather than excusing those MNCs that violate local laws in the name of economic efficiency.

B. Decent Working Conditions

Workers in the MNC factories to which this article refers are vulnerable to workplace hazards such as repetitive motion injuries, exposure to toxic chemicals, exposure to airborne pollutants such as fabric particles, exposure to excessive noise pollution, malfunctioning machinery, and workplace fires. The evidence for such conditions is incontrovertible.³⁶ This article acknowledges that substantial costs must sometimes be borne by MNCs and their contractors in order to provide improvements like industrial quality exhaust systems; plumbing to provide water for the comfort use of workers; appropriate equipment for handling toxic chemicals; canteens; and health clinics for large factories. Many MNCs have accepted the cost of improving working conditions in their global factories as a necessary business expense. For example, in 1997 Mattel announced the creation of a global code of

35. Better rule of law is associated with higher per capita income. See World Bank, *World Development Report 2000/2001: Attacking Poverty* 103 (2000), available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/0,,contentMDK:20195989~pagePK:148956~piPK:216618~theSitePK:336992,00.html>.

36. See, e.g., THE SWEATSHOP QUANDARY, *supra* note 25; ROSEN, *supra* note 1. International Labour Organization, *Labour Practices in the Footwear, Leather, Textiles and Clothing Industries* (2000), available at <http://www.ilo.org/public/english/dialogue/sector/techmeet/tmfi00/tmfi00.htm>; S. PRAKASH SETHI, SETTING GLOBAL STANDARDS: GUIDELINES FOR CREATING CODES OF CONDUCT IN MULTINATIONAL CORPORATIONS ch. 2 (2003).

conduct for its production facilities and contract manufacturers. It has spent millions of dollars to upgrade its manufacturing facilities in order to improve worker safety and comfort. Furthermore, it has invited a team of academics to monitor its progress in complying with its self-imposed standards and to make their findings public.³⁷

What defenders of sweatshops nearly always fail to recognize is that the cost of improving working conditions varies significantly depending upon such factors as the problem being addressed and the size of the factory. Some problems can be addressed with little cost. Suppliers have worked with MNC contractors to identify low-cost, high-impact safety measures and modifications to the working environment. In one Nike factory, a worker submitted an idea through the suggestion box to reduce the extraordinary noise at the factories by using rubber waste as a cushion for iron molds so they would not slam against the furnace.³⁸ In facing another challenge, suppliers suggested slight modifications to the stencil press machine that cuts the foam core for sneaker insoles. Workers would normally use one hand to push the core through the machine and the other to press the stencil to cut it, all too often catching the inside hand in the stencil cutter. The supplier suggested installing a mechanism that required two hands to cut the stencil, thus preventing one hand from being inside the machine while the cutter slammed down. The manufacturer of the cutting machines charged the same for the two-button version as for the one-button version.³⁹ Even providing written machine instructions, as well as additional materials such as the code of conduct, in the workers' native language can drastically and positively alter the working environment at a relatively low cost.⁴⁰

It is also possible for MNCs to improve the lives of people who live in the communities around the factories, but who do not themselves work in those factories. For example, in connection with health and safety and in partnership with Nike and Pentland, adidas-Salomon established the Business Links Initiative in Vietnam ("the Initiative").⁴¹ The purpose of the Initiative was to identify extremely low-cost measures by which non-contract factories could significantly improve the safety of working conditions. In this way the lives of workers in factories that do not supply MNCs could also be improved. In one situation, for example, illiterate workers were protected from mixing dangerous chemicals simply by virtue of a color-coding process that was installed at

37. For an excellent overview of Mattel's initiatives see SETHI, *supra* note 36, at ch. 13.

38. See generally RISING ABOVE SWEATSHOPS, *supra* note 20.

39. *Id.*

40. Laura P. Hartman & Richard E. Wokutch, *Nike, Inc.: Corporate Social Responsibility and Workplace Standard Initiatives in Vietnam*, in RISING ABOVE SWEATSHOPS 145, *supra* note 20.

41. Laura P. Hartman, et al., *adidas-Salomon: Child Labor and Health and Safety Initiatives in Vietnam and Brazil*, in RISING ABOVE SWEATSHOPS, *supra* note 20.

almost no cost at all.⁴² Nike established another relatively low cost initiative in many of its supplier factory communities—a micro-enterprise loan program (“the loan program”).⁴³ Conceived in 1997 and started in 1998, the purpose of the loan program is to provide some support for women in the communities surrounding its suppliers. The loan program allows women a chance to build small businesses that will ultimately boost their families’ economic well-being, as well as contribute to the community’s overall development. Though there is no direct financial gain for Nike, former coordinator Chris Helzer reports that “the microloan program helps to create a more healthy community, which then provides other sources of income in the community, better workers, and additional sources of support for the families of current workers, raising the whole village’s standard of living.”⁴⁴ There have been more than 3,200 loans made with an average loan of approximately US \$65 and a repayment rate of 97 percent. The total Nike investment has been just under US \$250,000—a total investment of around .0025 percent of its annual revenue for 2001 (almost US \$10 billion).⁴⁵

C. Fair Wages

Perhaps the most controversial issue in the debate over global sweatshops is that involving wages and benefits. As mentioned above, sweatshop proponents contend that raising wages will have disastrous effects on both the contractor, as well as the domestic economy of the host-country. However, in previous work, Arnold and Bowie have provided a Kantian defense of the claim that MNC managers and their contractors have a moral obligation to provide a living wage to employees working a 48-hour work week, and they have provided a country-specific method for determining what that wage should be.⁴⁶ The living wage that they defend is comparatively modest

42. RISING ABOVE SWEATSHOPS, *supra* note 20.

43. Hartman & Wokutch, *supra* note 40.

44. *Id.* at 154.

45. Conversation between Laura P. Hartman and Chris Helzer, date unknown.

46. Arnold & Bowie, *supra* note 16. The issue of defining a living wage is complicated, but it does not present an insurmountable obstacle to MNCs. For discussion of this issue see MORAN, *supra* note 1; Robert Pollin, et al., *Global Apparel Production and Sweatshop Labour: Can Raising Retail Prices Finance Living Wages?*, 28 CAMBRIDGE J. ECON. 153 (2004); John J. McCall, *Defending the Right to a Livable Wage*, presented at Voluntary Codes of Conduct for Multinational Corporations: Promises and Challenges, Baruch College, (13 May 2004), available at <http://info.worldbank.org/etools/docs/voddocs/625/1228/hi/htm#>; adidas-Salomon, *A Fair Wage Strategy* (2004) available at http://www.adidas-salomon.com/en/sustainability/transparency/fair_wage_study/fair_wage_study.asp; Chris Manning, *Promoting Fair Wages, Productivity, and Jobs in Garments and Footwear in Indonesia*, available at http://www.adidas-group.com/en/sustainability/_downloads/fair_wage_study/ManningPositionPaper.pdf.

TABLE 2
Levels of Poverty

<i>Types of Poverty</i>	<i>Deficiencies</i>	<i>Measures</i>
Extreme Poverty (also known as Absolute Poverty)	Lack of income necessary to satisfy basic food needs	Minimum caloric intake and a food basket that meets that requirement
Overall Poverty (also known as Relative Poverty)	Lack of income necessary to satisfy basic non-food needs	Ability to secure shelter, energy, transportation, and basic health care, e.g.
Human Poverty	Lack of basic human capabilities	Access to goods, services, and infrastructure, e.g.

UNDP, Poverty Report 2000: Overcoming Human Poverty (2000).

in comparison to some, in that it seeks to ensure only that employees do not live under conditions of overall poverty by providing adequate wages for a 48-hour work week in satisfaction of both basic food needs and basic non-food needs.

In economies where the minimum wage for a forty-eight-hour work-week allows workers to avoid overall poverty, employers will have no obvious moral obligation to pay their lowest paid workers any more than the minimum wage.

An increasing number of companies are implementing living wage policies in their global operations. For example, the Swedish pharmaceutical company Novartis reports that it pays 100 percent of its global workforce a living wage.⁴⁷ Adidas-Salomon has undertaken an initiative to ensure that its contract workers are paid a “fair wage,” one that will both meet the needs of workers and provide for discretionary spending.⁴⁸ Adidas is working on a program that has as its goal the establishment of a wage-setting mechanism with the following characteristics:

- Is transparent and has the direct input by the workers, ideally through negotiation or collective bargaining, or through alternative legal means, such as a workers council or welfare committee; [sic]
- Benchmarks basic pay at a level that is higher than the local minimum wage;

47. Klaus Leisinger, *Implementability of the Draft UN Norms in the Pharmaceutical Industry: The Case of Novartis*, presented at Voluntary Codes of Conduct for Multinational Corporations: Promises and Challenges, Baruch College (2004).

48. Adidas-Salomon, *supra* note 46.

- Acknowledges and rewards workers for productivity gains;
- Includes and takes into account data on general cost of living and workers' needs;
- Is part of a broader and much improved human resource management system;
- Meets in full all legally mandated benefits; and, where practicable:
- promotes and supports the development of worker cooperatives.⁴⁹

By 2006, adidas expects each of its contractors to have such mechanisms in place.

Non-wage benefits are an important and neglected aspect of the debate over global sweatshops. In many instances such benefits can provide an advantage to both the worker and the employer. For example, an MNC factory that provides free health checkups and basic health care services to workers through a factory clinic will typically have a healthier and more productive work force than factories that lack such benefits. Levi Strauss & Company provides medical services to employees, their families, and members of the surrounding communities. The company currently offers medical, dental, and optometry clinics. Beginning in 1999, the company's factories also sponsored vaccination, nutrition, and mental health campaigns. Since public healthcare in the locations where the Levi Strauss factories are located is generally poor, particularly in smaller cities and remote rural areas, companies play a vital role in providing additional assistance. Levi Strauss is not the only company to provide a medical clinic, but one of the few to reach out to the community to explore areas of implementation and integration.⁵⁰

V. SWEATSHOP ECONOMICS

Contrary to the contentions of the defenders of sweatshops, voluntarily improving legal compliance, working conditions, and wages will not inevitably lead to the negative consequences they predict. First, with regard to the lowest paid formal sector wage earners in developing countries, the assumption that productivity is independent of wage levels is mistaken. The wage which, if reduced, would make the firm worse off because of a decrease in worker productivity is known as the efficiency wage.⁵¹ The most

49. Adidas-Salomon, *supra* note 46. See also Manning, *supra* note 46.

50. Radin, *supra* note 23.

51. For an overview of the issues, see ANDREW WEISS, *EFFICIENCY WAGES: MODELS OF UNEMPLOYMENT, LAYOFFS, AND WAGE DISPERSION* (1990). See also essays collected in GEORGE A. AKERLOF & JANET L. YELLEN, *EFFICIENCY WAGE MODELS OF THE LABOR MARKET* (1986).

obvious ways in which wages affect productivity are captured by nutrition models. Put simply, workers whose minimum daily dietary requirements are met and who have basic non-food needs met will have more energy and better attitudes at work; will be less likely to come to work ill; and will be absent less frequently.⁵² In order to ensure that workers' minimum daily caloric intake is met, it may be necessary to pay workers two to four times the amount necessary to purchase adequate food and health care for the employee. This is because the employer cannot prevent the worker from spending wages on food and healthcare for the employee's family.⁵³ A second economic model emphasizes the gift-exchange nature of employment relations, as opposed to the pure market exchange of such relations.⁵⁴ On this model, employers who compensate workers at rates significantly higher than the wages demanded by the market are seen as bestowing a gift on workers, who reciprocate with greater productivity and greater loyalty. Increased productivity and employee loyalty alone may offset the cost spent to respect workers' basic rights through adherence to local labor laws, providing comparatively safe and healthy working conditions, and paying workers a living wage.

Second, it is economically feasible for MNCs to raise wages and to improve working conditions in factories in developing economies without causing increases in unemployment. MNCs may choose to improve wages and working conditions while maintaining existing employment levels. In cases where increased productivity and loyalty do not completely offset increased labor costs, these costs may be passed on to consumers. A recent study of this issue found that

[l]arge mandated wage increases, as a feature of a decent labour standards regime in the apparel production industry, could be financed through increases in retail prices—certainly through price increases within the range that US consumers say they are willing to accept to ensure “good” working conditions in apparel production.⁵⁵

Increased labor cost may be offset by the value added to the good insofar as consumers demonstrate a preference for products produced under conditions in which the rights of workers are respected.

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52. See, e.g., C.J. Bliss & N.H. Stern, *Productivity, Wages, and Nutrition, 2: Some Observations*, 5 J. DEV. ECON. 363 (1978); Christopher Bliss & Nicholas Stern, *Productivity, Wages, and Nutrition, 1: The Theory*, 5 J. DEV. ECON. 331 (1978); Partha Dasgupta & Debraj Ray, *Inequality as a Determinant of Malnutrition and Unemployment: Theory*, 96 ECON. J. 1077 (1986); Partha Dasgupta & Debraj Ray, *Inequality as a Determinant of Malnutrition and Unemployment: Policy*, 97 ECON. J. 177 (1987); Weiss, *supra* note 51.
 53. Although, it is possible to provide meals and healthcare for the employee at work as part of an overall compensation package.
 54. See, e.g., George A. Akerlof, *Labor Contracts as Partial Gift Exchange*, 47 Q. J. ECON. 543 (1982); Akerlof, *Gift Exchange and Efficiency Wage Theory: Four Views*, 74 AM. ECO. REV. 79 (1984); Weiss, *supra* note 51.
 55. Pollin, et al., *supra* note 46, at 169.

Third, it should also be noted that profit margins vary among products. For the manufacturers of brand name retail goods, a significant increase in labor costs may be readily absorbed as an operating expense, as in the case of Nike. However, there may be cases where increased labor costs are not offset by greater productivity, where the increase in costs cannot be passed on to consumers, and where the increased costs cannot be readily absorbed as an operating expense. For example, manufacturers of generic goods with low profit margins may find it difficult to absorb the cost of increased labor expenses. In such cases, the added cost of labor may instead be balanced by internal cost-cutting measures. One set of obvious targets for expense reduction is the cost of supporting significant numbers of home-country managers in the country of the supplier. While some presence may be necessary, it will often be more cost effective to employ host-country nationals in this capacity. Another attractive set of targets is executive perks. While such perks vary significantly among firms, it does appear morally inconsistent to argue that improving the welfare of the factory workers is cost prohibitive while executive perks remain substantial. Given the frequently fierce competition among the manufacturers of generic products targeted at cost-conscious consumers, it may be difficult for one retailer to remain competitive while raising prices to cover increased labor costs, while others do not. For this reason, industry-wide standards concerning labor practices may prove valuable as a way of distributing costs equitably. Finally, the cost may be passed on to the owners of the business enterprise via lower return on equity. In such cases, the costs of respecting workers must be regarded as a necessary condition of doing business. This point should not be problematic for any manager who recognizes the existence of basic human dignity. For, insofar as one recognizes the dignity of workers *qua* persons, one has an obligation to respect that dignity.

VI. THE IMPORTANCE OF VOLUNTARY CODES

The best means by which to improve working conditions is through MNC adoption and implementation of voluntary codes of conduct. "Code of conduct" refers to the codification of a firm's values as they are interpreted and applied to the workplaces in which the firm's goods are produced. These codes are created voluntarily by MNCs and are not based on the laws of any one nation but are instead designed to help managers and suppliers embrace and implement a core set of values regarding the treatment of workers. These codes are intended to transcend cultural and geographical borders.⁵⁶

Sometimes the workplaces where the firm's goods are produced are wholly-owned by the MNC but, more often than not, they are owned and

56. Even Bhagwati now acknowledges a role for voluntary codes of conduct. BHAGWATI, *supra* note 4 at 193–94.

managed by third-party suppliers. Given the power differential discussed earlier, the MNC often has significant influence over the contractor that enables them to require adherence to the MNC's codes of conduct. Note that the mere drafting of a code of conduct is insufficient. Instead, it is the voluntary adoption and full-scale implementation of a code that is encouraged. A firm that merely produces a code without further action sends a message that the same lack of attention is all that is expected from its workers, suppliers, and other contractors. To the contrary, effective integration of a code throughout an organization's culture requires that a firm hold its contractors to the same standard regarding respect for employees to which it holds itself.

The remainder of this section explains the significant strategic value a firm can experience through the integration of a voluntary code of conduct for itself and its suppliers. Though this essay encourages an enlightened motivation for the development and integration of a code—one that respects and protects the basic rights of workers—this essay recognizes that some firms may simply proceed down this path on the assumption that cohesive, clear expectations about conduct and values through a code can support long-term business strategies and, ultimately, the firm's bottom line. Firms might also be motivated as a result of intense media scrutiny or other external pressure, or as a deterrent to the imposition of more stringent involuntary controls. Under any of these models, notwithstanding the basis or motivation for the code integration, the MNC as well as its suppliers and workers may still reap a benefit. However, a firm that undertakes code development and integration as part of a larger scheme of corporate global citizenship, and in an enlightened and concerted effort to recognize the rights of all workers involved in the production of its goods, is more likely to reap greater overall value from its effort than one that is limited to a basic adoption of the code itself in order to ensure positive bottom-line impact.

In her recent work on codes, Deborah Leipziger explains that effective codes can support a firm in the short-term (during crisis management), mid-term (perhaps prevent a crisis from arising), and long-term (enhance stakeholder value). In particular, effective codes can:

- Raise awareness about corporate responsibility within the company
- Help companies to set strategies and objectives
- Assist companies with implementation and control of values
- Help companies avoid risk
- Foster dialogue and partnerships between companies and key stakeholders and
- Enhance utility and identity among divergent companies⁵⁷

57. DEBORAH LEIPZIGER, *THE CORPORATE RESPONSIBILITY CODE BOOK* (2003).

These benefits are reinforced by research and are repeatedly articulated as valid, credible results of successful code implementation. For instance, in its report, "Creating a Workable Company Code of Ethics," the Ethics Resource Center contends that "every organizations, regardless of size, focus or status, should have a code of conduct in place" for several reasons, including (1) communication with stakeholders and definition of desired behavior; (2) compliance with recent and anticipated legislation; (3) financial risk mitigation through a good faith effort to prevent illegal acts; and (4) benchmarks against which individual and organizational performance can be measured.⁵⁸ In recent years attempts have been made to measure the bottom-line impact of encouraging ethical decision-making and, in particular, the financial returns on the development and implementation of codes of conduct. Researchers have found that in emerging markets, cost savings, productivity improvement, revenue growth, and access to markets were the most important business benefits of "sustainability activities"; and the role of codes of conduct in perpetuating these activities was found to be significant.⁵⁹ Similarly, a landmark study found that firms that were ranked highest in terms of their records on a variety of social issues (including charitable contributions, community outreach programs, environmental performance, advancement of women, and promotion of minorities), which often find their foundations in codes of conduct, had greater financial performance as well. Financial performance was better in terms of operating income growth, sales-to-assets ratio, sales growth, return on equity, earnings-to-asset growth, return on investment, return on assets and asset growth.⁶⁰

In exploring the implementation of a voluntary code, research recently undertaken by the Human Rights Research and Education Centre shows that there are essentially five "generations" of issues of ethical and social responsibility dealt with in most business codes of conduct and corresponding management systems:

- First generation: conflict of interest
- Second generation: commercial conduct
- Third generation: employee and other third-party concerns
- Fourth generation: community and environmental concerns
- Fifth generation: accountability and social justice

58. ETHICS RESOURCE CENTER, *CREATING A WORKABLE COMPANY CODE OF ETHICS* 3 (2d. ed. 2003), available at http://www.ethics.org/ercbooks_workablecode.html.

59. Persuasive evidence of impact comes from a sustainability study, Ethos Institute and the International Finance Corporation, *Developing Value: The Business Case for Sustainability in Emerging Markets* (2002), available at <http://www.ifc.org/ifcext/sustainability.nsf/Content/DevelopingValue>.

60. JOEL MAKOWER, *BEYOND THE BOTTOM LINE* 70–72 (1994).

The business case for codes of conduct is related most closely to the third generation of issues and involves respect for employee rights as well as rights of others in direct relationship with the corporation: "[t]he business case for implementing these principles includes improved corporate relations, a motivated work force, and satisfied customers."⁶¹ The threshold issue is to determine whether the presence of a code is an accurate indicator of genuine ethical commitment. The Institute of Business Ethics conducted a study to validate this supposition by reviewing "good practices" at a sample of UK companies.⁶² They evaluated "good practices" by looking at a) a rating for risk management; and b) a peer evaluation which included, for example, competent management, financial soundness, and quality of goods and services and found a positive relationship.⁶³ The second stage of their research was to determine the relationship between ethical commitment and financial performance:

- Regarding financial performance, it was found that those companies in the sample with a code of ethics had, over the period 1997–2001, out-performed a similar sized group who said they did not have a code.
- Companies with a code of ethics generated significantly more economic added value and market added value in the years 1997–2000, than those without codes.
- Companies with a code of ethics experienced far less P/E volatility⁶⁴ over a four-year period than those without them. Other research has suggested that a stable P/E ratio tends to attract capital at below average cost; having a code may be said to be a significant indicator of consistent management.⁶⁵

This study gives credence to the assertion that "you do business ethically because it pays." However, the most effective driver for maintaining a high level of integrity throughout the business is "because it is seen by the board, employees and other stakeholders to be a core value and therefore the right

61. Errol P. Mendes & Jeffrey A. Clark, *THE FIVE GENERATIONS OF CORPORATE CODES OF CONDUCT AND THEIR IMPACT ON CORPORATE SOCIAL RESPONSIBILITY* (1996) available at <http://www.cdp-hrc.uottawa.ca/publicat/five.html>.

62. Simon Webley & Elise More, *Does Business Ethics Pay?*, available at www.ibe.org.uk/DBEPpr.htm (2003).

63. *Id.*

64. A P/E ratio is one of the fundamental means by which to measure a company's stock price in relation to the company's earnings. The P/E ratio is determined by dividing the current stock price by the earnings per share. Investors use the P/E ratio to compare the value of various investments that might have widely different stock prices; higher ratios often indicate higher investor expectations. While a ratio alone does not reflect volatility and two companies of unequal risk could have the exact same P/E ratio, a volatile P/E ratio may represent a riskier investment or one more vulnerable to shifting conditions.

65. Webley & More, *supra* note 62.

thing to do . . . a sustainable business is one which is well managed and which takes business ethics seriously.”⁶⁶ Leaders of this type of business do not need any assurance that their approach to the way they do business will also enhance their profitability, because they know it to be true.⁶⁷ The study concluded that “having a code . . . might, therefore, be said to be one hallmark of a well managed company.”⁶⁸ Defenders of sweatshops have yet to take seriously the positive role that a carefully crafted and well enforced voluntary code of conduct can have on the success of MNCs.

VII. CONCLUSIONS

There are persuasive theoretical and practical reasons for rejecting the arguments of the defenders of sweatshops. In particular, there are compelling ethical and strategic reasons for MNCs to respect local labor laws, to voluntarily improve working conditions, and to pay workers a living wage in their global factories. The evidence shows that MNCs can respect the rights of workers without decreasing overall welfare. However, there remain important areas for further research. For example, how can smaller firms that purchase only a portion of a supplier factory’s production exert influence over that factory so that it adheres to the firm’s code of conduct? To what extent will industry wide codes of conduct support or hinder respect for the rights of workers? How can firms that ignore workers rights in the interest of economic efficiency best be identified and sanctioned? And how can those firms that actively seek to respect their workers best be identified and rewarded? These are some of the questions that remain to be taken up by scholars interested in enhancing the welfare of the global workforce.

66. Simon Webley, *Towards a Business Case for Business Ethics*, 3 NEW ACAD. REV. (2004).

67. *Id.* at 33.

68. *Id.*