New “Architecture” and Revitalizing the UN Global Compact

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Abstract

Some advocates of sustainable development possess an almost theological faith in what I refer to as “rhetorical” sustainable development as the path to providing for the sound future of human civilizations and critical ecological systems. Simply put, if we try to think “too big” and “bite off too much” then the system we are trying to control or influence consumes us and our resources and we fail miserably. There is real and predictable danger in grandeur. This means we need to think about achieving sustainability in very specific and concrete terms applied to clear goals and an honest understanding of the processes, institutions, motivational elements and relationships that are involved.

I argue that at the rhetorical level of the kind set out by organizations such as the IISD where policy and practice on all levels from the “individual to the international” must change if sustainability is ever to be achieved, the so-called “ideal” of sustainability is a Trojan Horse, a delusional set of unworkable premises, and a cynical rhetorical device that guarantees real change implementing good strategies for resource preservation, human development, conflict avoidance and resolution, and social progress does not occur. “Rhetorical” rather than “operational” sustainable development allows politicians and international institutions to cover up their failures and corruption by paying lip service to the exuberant vision, hoping to deflect attention from their real behavior. It also provides “cover” for businesses who agree to the inflated and strategically unworkable rhetoric and in doing so obtain the blessing of their association with the “good guys”.

The problems go even deeper. Rhetorical sustainable development continues the flawed assumptions about human nature and motivation that provided the foundational premises of Marxist collectivism and centralized planning authorities. Such perspectives inject rigidity and bureaucracy into a dynamic, fluid and adaptive system that requires monitoring, flexibility and adaptation. Nor, in criticizing the failed Marxist-Leninist form of organization should this paper be seen as a defense of market capitalism. Like Marxism, market capitalism is little more than another quasi-religion. A result is the introduction of a destructive global trading system hidden inside rhetorical sustainable development.

Can a New Architecture Revive the UN Global Compact?

The theme of newly announced efforts to reinvigorate the slowed momentum toward significant progress in environmental, economic and social “sustainability” is to improve
the “architecture” of the system at all necessary levels. A recent report in London’s *Guardian* observes: “In collaboration with some 1,000 business allies, the UN today issued an updated “architecture” aimed at intensifying companies' role in advancing economic development, improving human health and reversing environmental degradation.”  

It reported that UN Secretary General Ban Ki-moon stressed the importance of private companies to coordinate their market efforts with those of the UN’s development goals. Ban stated that “business engagement architecture” contained in the UN’s just-released blueprint on the topic [*Building the Post-2015 Business Engagement Architecture*] is designed to “drive and scale up corporate actions to directly advance United Nations goals.”

Ban said progress has been made and that when the Global Compact was initiated in 2000, “there was no clear agenda for business”. At this point the Global Compact is the world’s has—on paper at least—participation by 8,000 companies and 4,000 civil society organizations representing 145 countries. “For the first time in the history of United Nations, UN goals, sustainability development priorities, are directly linked to long term corporate goals,” said Georg Kell, executive director of the Global Compact. [He added] “This is a genuine innovation and brings a strategic level of collaboration to the effort. We offer, for the first time, a comprehensive and integrated menu of opportunities for engagement.”

Even as Secretary Ban praises the success of the Global Compact, the analysis in the Guardian concludes: “Enthusiasm seems to be ebbing. A CEO survey released by Accenture during the conference found that most companies aren't integrating social, environmental and governance issues into their core strategies.”

The architecture that the UN released today, in collaboration with the World Business Council for Sustainable Development and the Global Reporting Initiative, formalizes three broad new programmes focused on education, agriculture and peace. The new Business for Peace platform, for instance, aims to help companies invest in conflict-affected and high-risk areas. *Long-term job creation, economic growth and infrastructure restoration are vital to nurturing peace in often-fragile conditions of post-conflict regions*, said Sir Mark Moody-Stuart, vice chair of the UN Global Compact board. These three new programmes join an existing pool of efforts focused on women’s empowerment, children’s rights, climate, water and anti-corruption. [emphasis added]

### The “Meaning” of Sustainable Development

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2. Aston, “Can a new architecture revive the UN Global Compact?”, id.
3. Aston, “Can a new architecture revive the UN Global Compact?”, id.
4. Aston, “Can a new architecture revive the UN Global Compact?”, id.
5. Aston, “Can a new architecture revive the UN Global Compact?”, id. Aston reports: “The poll of more than 1,000 global executives found that 45% of CEOs believe that sustainability will be "very important" to the future success of their business, a decline of nine percentage points from a similar study in 2010. As *GSB*’s Jo Confino pointed out in his assessment of this study, these findings bookend a pair of two earlier studies (from the [UNGC](https://www.unglobalcompact.org/) and [CDP](https://www.cdp.net/), formerly the Carbon Disclosure Project), that find progress slowing – or even backsliding – in corporate efforts.”
The International Institute for Sustainable Development (IISD) states that: “Sustainable development means different things to different people, but the most frequently quoted definition is from the report *Our Common Future* (also known as the Brundtland Report). “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” [The IISD goes on to say] “Sustainable development focuses on improving the quality of life for all of the Earth’s citizens without increasing the use of natural resources beyond the capacity of the environment to supply them indefinitely. It requires an understanding that inaction has consequences and that we must find innovative ways to change institutional structures and influence individual behaviour. It is about taking action, changing policy and practice at all levels, from the individual to the international.”

Some advocates of sustainable development possess an almost theological faith in what I refer to as “rhetorical” sustainable development as the path to providing for the sound future of human civilizations and critical ecological systems. Simply put, if we try to think “too big” and “bite off too much” then the system we are trying to control or influence consumes us and our resources and we fail miserably. There is real and predictable danger in grandeur. This means we need to think about achieving sustainability in very specific and concrete terms applied to clear goals and an honest understanding of the processes, institutions, motivational elements and relationships that are involved.

I argue that at the rhetorical level of the kind set out by organizations such as the IISD where policy and practice on all levels from the “individual to the international” must change if sustainability is ever to be achieved, the so-called “ideal” of sustainability is a *Trojan Horse*, a delusional set of unworkable premises, and a cynical rhetorical device that guarantees real change implementing good strategies for resource preservation, human development, conflict avoidance and resolution, and social progress does not occur. “Rhetorical” rather than “operational” sustainable development allows politicians and international institutions to cover up their failures and corruption by paying lip service to the exuberant vision, hoping to deflect attention from their real behavior. It also provides “cover” for businesses who agree to the inflated and strategically unworkable rhetoric and in doing so obtain the blessing of their association with the “good guys”.

The problems go even deeper. Rhetorical sustainable development continues the flawed assumptions about human nature and motivation that provided the foundational premises of Marxist collectivism and centralized planning authorities. Such perspectives inject rigidity and bureaucracy into a dynamic, fluid and adaptive system that requires monitoring, flexibility and adaptation. Nor, in criticizing the failed Marxist-Leninist form of organization should this paper be seen as a defense of market capitalism. Like Marxism, market capitalism is little more than another quasi-religion. A result is the

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development.

There is little question that uncontrolled market dynamics have caused or contributed to
serious problems in the spheres of human rights abuse, cultural degradation,
environmental decay and irrational natural resource depletion on an increasingly larger
scale. Any efforts to achieve a balance must, however, be institutionally and functionally
specific, adaptive and dynamic. The strategic context is one in which continual
adjustments are required to ensure no particular interest gains too much control and
managed as a dynamic rather than a static system.

“All Solutions are Easy Once You Remove Humans from the Equation”

The observation that “the road to Hell is paved with good intentions” was rarely as telling
as in the context of the utility and consequences of voluntary codes of practice. Sustainability is a kind of “fabricated fiction.” By offering it as an ideal we seek to
convince ourselves, and others, that we stand for something noble. But an illusory ideal
aggravates the problems rather than generates workable solutions.²

Empty platitudes are counterproductive no matter how well intentioned. The ideal of
sustainability as it was introduced in the 1987 report of the Brundtland Commission and
institutionalized in the form of Agenda 21 at the 1992 Rio Earth Summit is unworkable. In
that ideal we are capable of perceiving, integrating, monitoring, organizing and
controlling our world on levels that are far beyond actual human capability. This applies
governmental, business and individual decision-making. Even if we could achieve that
“total information awareness” and fully integrated economic and political system such an
“ideal” implies we would not like the authoritarian and fully intrusive “monster” that
resulted.

Sustainability of the Agenda 21 kind is best understood as a utopian vision of the perfect
that truly is the enemy of the possible and the good. On paper we can always sketch
elegant pipedreams that appear to have the ability to do what we claim we desire “if
only” everyone would come together and behave in the way laid out in the “blueprint.”³

² John Gardner captured an important aspect of the situation in his comment that: “[o]ur tradition
tells us that we should be individuals, initiators, and creators, free and responsible…. But [he adds] the
trend … [instead] transforms individualists into specialist-links in larger systems, locked into their roles,
increasingly incapable of autonomous functioning….” John W. Gardner, "The Recovery of Confidence" at 44-
45 (1971).

³ Christoph Demmke, “Towards Effective Environmental Regulation: Innovative Approaches in
Implementing and Enforcing European Environmental Law and Policy,” Annual survey on the
Implementation and Enforcement of Community Environmental Law (1996/7)(SEC 1999/592, adopted as
Commission Services’ working paper on 27.4.1999).
http://www.jeanmonnetprogram.org/papers/01/010501.html#TopOfPage. Visited 12/2/05. Demmke
concludes: “In the field of environmental law at present, ineffective application and enforcement remains a
major problem and ranks higher than in any other policy (with the exception of the much bigger internal
market sector). In the environmental sector hardly one directive (be it in water, waste, soil or other sectors)
has been implemented and enforced by all Member States.”
am not saying that utopian thought is always bad or that it inevitably leads to abuse.\textsuperscript{10} But as people come to take a particular utopian vision for reality they become increasingly Draconian in their efforts to achieve an impossible end as their frustration grows. We need to be considerably more honest about whether a particular ideal is achievable or whether failing to understand it is not achievable, or even that it is a false ideal. Honesty enables us to avoid working on concrete and achievable solutions.

I admit that my perspective is anchored far more in a Hobbesian state of nature involving a “war of every man against every other,” or a Darwinian “survival of the fittest” ethos rather than in a belief in the innate goodness of the human species.\textsuperscript{11} This is not my preference but is the result of a significant body of professional experience. The beliefs being advanced here include that governments and businesses operate according to self-interest and harsh competitive rules within a social and institutional culture that can fairly be described as “red in tooth and claw.” In this sense I admit to not only being a Hobbesian but somewhat of a Machiavellian in my suspicions about the behavior of human institutions of virtually all kinds.\textsuperscript{12} This strikes me as having significant implications for strategies designed to achieve sustainability in a real and productive sense.

One certainly hopes such dark and dismal sentiments are overstated. But it is equally certain that such analyses are far too often close to the target when we honestly consider how governments and business actually behave as opposed to what they profess. Given the extremely short time frames within which effective actions must be taken to mitigate disastrous consequences, a strategy based on achieving fundamental changes in human nature and the restructuring of local, national and multilateral governmental and economic activity is doomed to failure. In slightly crude vernacular, “Not Gonna Happen.” Thus there is a critical need for a hard, pragmatic and honest discourse concerning specific actions and strategies aimed at achieving maximum positive actually achievable outcomes.

\textbf{The Impossible Dream}

I am seeking to be honest about the nature of human decision-making and motivation within critical environmental and social areas of emerging crisis where the consequences of failure to act produce large-scale harms for both humans and natural systems. The

\textsuperscript{10} On issues of utopian thought see, Russell Jacoby, \textit{The End of Utopia} (1999), and Russell Jacoby, \textit{Picture Imperfect: Utopian Thought for an Anti-Utopian Age} (2005).

\textsuperscript{11} See generally, Thomas Hobbes, \textit{The Leviathan} (C.B. MacPherson ed. 1968), for the proposition of a savage state of nature in which humans sought power in an eternal conflict. The solution Hobbes offered was authoritarian civil force to which everyone assented to escape the absolute insecurity of a war of everyone against all others. Hobbes tells us that: “men have no pleasure, (but on the contrary a great deale of griefe) in keeping company, where there is no power able to over-awe them all. For every man looketh that his companion should value him, at the same rate he sets upon himselfe: ... Hereby it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man.”

\textsuperscript{12} Niccolo Machiavelli, \textit{The Prince} 99, translated and with Introduction by George Bull (Penguin 1961). Machiavelli tends to be misunderstood and certainly undervalued as a thinker and strategist relevant to our time.
analysis begins with the fact that nothing humans create is “sustainable”. Change is both inevitable and irresistible whether styled as systemic entropy, Joseph Schumpeter’s idea of regenerative “creative destruction,” or Nikolai Kondratiev’s “long waves” of fundamental economic and social transformation.13

Self interest, power, fear and ignorance are at the center of the process by which human systems are unsustainable. Human self-interest is an insurmountable barrier that can be affected only to a degree by laws, by the promise of significant financial or career returns, or fear of consequences. In saying human nature is “insurmountable” I am simply saying that solutions predicated on desired behaviors that are contrary to our real motivations and functioning will not work.

As a corporate director, consultant, law professor and advocate of environmental, civil rights and human rights causes, I guarantee that the only way to change the behavior of governmental and business decision-makers is through the use of the “carrot” and the “stick” and the design of these incentives and disincentives must be individualized to specific action contexts and take into account the realities of those situations.14 This has never been as clear to me as it has been in observing the impact of a statutory scheme such as Sarbanes/Oxley (SOX) relating to abuses in the management of business enterprises.15

Although in theory corporate board responsibility has long incorporated the fiduciary obligation of corporate directors to shareholders, the reality is that the position of director has been a much abused privilege involving insider deals and special benefits. Directors and management often profited at shareholder expense without exercising any real oversight or being subject to accountability. Sarbanes/Oxley, however, altered the behavior of corporate boards and management to a degree. Ironically, the change toward greater director responsibility to shareholders arguably weakened the momentum toward


14 Rhys Jenkins, “Corporate Codes of Conduct: Self Regulation in a Global Economy,” UNRISD (UN Research Institute for Social Development), April 1, 2001, ISSN: 1020-8216, 12/3/05. Jenkins reports: “The 1990s saw a proliferation of corporate codes of conduct and an increased emphasis on corporate responsibility. These emerged in the aftermath of a period that saw a major shift in the economic role of the state, and in policies toward transnational corporations (TNCs) and foreign direct investment. Whereas in the 1970s many national governments had sought to regulate the activities of TNCs, the 1980s was a decade of deregulation and increased efforts to attract foreign investment. A similar trend occurred at the international level, where efforts at regulation had been unsuccessful. It is in this context that the recent wave of voluntary codes of conduct must be situated. US companies began introducing such codes in the early 1990s, and the practice spread to Europe in the mid-1990s. Voluntary codes of conduct range from vague declarations of business principles applicable to international operations, to more substantive efforts at self-regulation. They tend to focus on the impact of TNCs in two main areas: social conditions and the environment. A variety of stakeholders, including international trade union organizations, development and environmental NGOs and the corporate sector itself have played a role in the elaboration of codes of conduct for international business.”

improving the quality of decision-making consistent with what most would consider the principles of sustainable development.

I have many criticisms of its actual design and implementation because SOX was written hurriedly in the midst of intense concern about situations such as ENRON and fear of market collapse. SOX is overbroad, costly and strategically inept in numerous aspects. But the combination of its reporting requirements, internal audits, informational transparency and the new potential it creates for significant civil and criminal liability for corporate directors has undeniably changed directors’ sense of responsibility, reawakened their sense of fiduciary responsibility, and increased the extent of directors’ oversight of management activities.

Corporate governance has become a hot topic in law and business schools. But the obligations SOX imposed and the fear by corporate executives and directors about enhanced governmental monitoring related to corporate “architecture” that heightened fiduciary responsibilities with expanded reporting and auditing “locked in” traditional kinds of behavior in ways that made it less likely that decisions would be taken that involved risks due to pursuing sustainable development that arguably weakened the investors’ Return on Investment (ROI).

The point of even thinking about the structure of systems and the operating principles and processes by which they work (their “architecture”) is that decision-makers do not act as isolated individuals but operate inside a culture that establishes rules of decision, including incentives and disincentives. The only way to change the decision-making behaviors in a culture of self-interest is to use “real” law and clear policies tied to “real” incentives and disincentives to alter the terms of that culture. It is also a form of “nudging” and gradual change rather than dramatic transformation that requires people to act radically different from what they know and prefer. This change can be achieved through a variety of “carrots” and “sticks” in the design of incentives and disincentives.

But unless the concrete terms and the probability of being held accountable are altered, decision-makers’ behavior will not change. A corollary is that without change on the part of key policy and decision-makers an organization’s “soldiers” and “support group” will not alter their behavior. Even if “policy” pronouncements are issued at the highest levels of an organization the changes will not be consistently implemented at the operational levels without strong support, understanding, tools and resources. One reality of human nature is that people resist changing the way they do “business as usual” and

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16 See, Rhys Jenkins, supra, n. 14: “Codes of conduct can be divided into five main types: company codes, trade association codes, multi-stakeholder codes, model codes and inter-governmental codes. Codes vary considerably in scope. Many do not even cover all of the International Labour Organization’s core labour standards. Company codes and trade association codes often have a more limited scope than those developed in conjunction with other stakeholders. There are also differences in the coverage of codes. Although many do cover the firm’s suppliers, they often do not extend all the way along the supply chain, and very rarely cover home-based workers. Provisions for the implementation of a particular code, and for effective monitoring, are crucial if it is to have any real impact. Here, too, one finds weaknesses, with only a small proportion of codes making provision for independent monitoring.” [Emphasis added]
hate things outside their “comfort zone”. Any concessions concerning sustainability, even those made at the highest level of an organization—public or private—will not be internalized and converted into institutional operations without a great deal of education, stimulus and clear insistence that the changes be made throughout the system. This insistence must be on the part not only of top leaders but critical on-line managers. Without such support and pressure the new approaches will be ignored or sabotaged.

In saying that “real law” and real incentives and disincentives are the only ways to alter cultural behavior I want to be clear that I am including in this term not simply the words of codes of practice, national legislation or multilateral treaties. “Real law” and “real policy” means a total package of investigation and monitoring capabilities, information transparency, well-funded and independent enforcement systems, and the existence and willingness to apply significant sanctions when violations are detected. All these factors are critical to the effective implementation of law. But the design of those mechanisms must be done in such a way that there is a “fit” between the specifics of the interacting elements of a finite system rather than some overwhelming universe of “everything is connected to everything else” or a “Butterfly Effect” in which the beating of an insect’s wings millions of years ago invisibly determines the nature of our present reality.

The Emergence of Transnational Corporate, Multilateral and Governmental Oligopolies Operating in a Global Competitive Hyperspace

On the global level uncontrolled market dynamics in which unregulated economic activity has been freed to cause or contribute to serious problems in the spheres of human rights abuse, cultural degradation, environmental decay and irrational natural resource depletion on an increasingly larger scale has created an independent system of power beyond historical models of free trade or political governance. At this point there is little connection between the idea of market capitalism and the reality of the large-scale system masquerading behind its symbolic facade.\(^\text{17}\)

Whatever one thinks of Capitalism or the Free Market in theory we have allowed an almost untouchable global corporate structure to arise that has only passing resemblance to the abstraction of free market competitiveness. This form of oligopolistic governance through corporatism is comprised of a mixture of state actors, international institutions and extremely powerful business systems best described as corporate quasi-states that rival or exceed many countries in wealth and power. These corporate quasi-states transcend the traditional private sector. Working with governmental and multilateral actors, they have created a new form of political organization operating outside the scope of traditional rules and restrictions. The corporate quasi-states work to dominate trade and suppress competition while using arguments of comparative advantage and the legitimacy of outsourcing to reconfigure the social landscape to fit their preferences.

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\(^{17}\text{See, e.g., George Monbiot, “They bleat about the free market, then hold out their begging bowls: It’s not just the common agricultural policy: the entire corporate sector relies on state handouts that dwarf their profits,” Guardian, Tuesday, December 13, 2005.}\)
A great deal of the rhetoric used to justify the creation of market-driven institutions and governmental policies that strongly favor economics and trade over all else is orchestrated propaganda. As with all propaganda, there are some truths within the distortions. There is, for example, a compelling need for economic growth and trade. There are needs for the alleviation of poverty and the creation of new jobs and opportunities essential to attaining greater social justice. Those themes, however, are being used to gloss over the harms of the processes. They also conceal the fundamental shift in power and the transformation of political systems that is occurring.

The phenomenon referred to as globalization is a key element in the unfolding process. Globalization is altering our institutions and cultures. Globalization and information systems allow management of enormous quantities and complexities of information, and this alters the economies of scale that previously constrained private and public institutions. Because globalization has altered the rules of political, economic, and social activities, it has increased our ability to create benefit and harm. Although some people want the effects of globalization to go away it is something with which we must deal. Globalization cannot be reversed; it can only be mitigated or used strategically.

Globalization has created a tier of economic actors endowed with powers greater than those possessed by many national governments. Through technologies of information acquisition and management and the resulting economies of scale, there has been a quantum shift in the ability of powerful institutions to concentrate and mobilize resources. This process has been going on for decades but has accelerated over the past decade due to the exponential growth of information and communication systems that allow us to experience the entire world in “real time.” This is coupled with the dynamics of global economic behavior that has extended the reach of nationally-based business entities to a global competitive hyperspace within which a great deal of decision-making, action, capital transfer and deal making is conducted. This creates a critical problem for legal regimes because this competitive hyperspace is outside the reach of most law. This is due to coverage gaps, jurisdictional holes, and the ability to create ambiguity regarding the applicability of law, as well as the use of political influence to avoid obligations. The discretionary power this has bestowed on corporate networks and the governments with which they work is immense and ominous.

These changes in the scale, speed, and mobility of private capital activity have transformed economic actors. In many instances they have become unaccountable for their actions. Private-sector actors are using their global power to manipulate national policy making; to influence corrupt and honest political leaders; and to move resources and their bases of activity freely from one country to another if they see better deals elsewhere or find themselves frustrated in their efforts to gain concessions. These interest groups have lobbied to create mechanisms such as the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO). This has

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19 There are numerous critiques of the WTO and NAFTA. One offered from the perspective of a
transferred power from national governments and the internal constituencies of nations, including the United States, to smaller groups. We have allowed these smaller but disproportionately powerful institutions to possess an increasingly large amount of power relative to domestic interests.

The WTO as an Obstacle to “Proper” Sustainable Development

In both the WTO and NAFTA there are provisions that apply to environmental and social conditions that weaken the ability of countries use laws to protect social and environmental matters in ways that are considered to interfere with trade. With the WTO the rules of trade are interpreted in ways that trump all but minimally necessary environmental protections, and are also geared to the quality of the products traded in international commerce, not to potential abuses or questionable practices involved in production processes. The system operates much like the Commerce Clause of the U.S. Constitution in which state’s efforts to regulate matters within their borders are frequently trumped by federal courts applying a very diffuse and virtually all-encompassing logic centered on undue restraint of trade or burdens imposed on interstate commerce. The difficulty is not that some state actions do not deserve to be treated in this way under a fair legal analysis but that the Commerce Clause has been extended by the federal courts far beyond legitimate zones of applicability.

The ability of the WTO to trump national rules deemed to be interference with fair trade policies not only risks results similar to the sweeping power assumed by Congress under its Commerce Clause authority, but also may lead to further intrusions of national power into state domains in the U.S. as state laws are challenged by companies based outside the U.S. on grounds of being inappropriate barriers to trade.

A result—and a serious obstacle to achieving even realistic strategies for sustainable development—is that power has been transferred on a global scale through “privatization” to “small” (relative to government) enterprises. These “smaller” entities work within their own global networks to control power that once belonged to national governments that suddenly find themselves disempowered. The transfer of power from democratic nations to private hybrid institutions (such as the WTO) that strive to maintain the illusion that they are public institutions is a profound shift in the nature of developing country is: Jagdish Bhagwati, “From Seattle to Hong Kong,” Foreign Affairs, December 2005. Tom Friedman describes what has happened as a “flattening” of the world’s competitive and cultural environment. See, Thomas L. Friedman, “It’s a Flat World, After All,” NYT, 4/3/05.

20 On the product/process distinction in the GATT/WTO system, see, Robert Howse and Donald Regan, The Product/Process Distinction, An Illusionary Basis for Disciplining Unilateralism in Trade Policy, 11 European Journal of international Law 2, 249 - 290 (2000). See also, the analysis offered by the WTO Committee on Trade and Environment (CTE) in discussing not only the product/process issue in general terms but applying it a specifically to the environmental protection context. This is found at: “Environment: CTE Agenda Part 3” “CTE on: how environmental taxes and other requirements fit in.” It discusses “The relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes; and (b) requirements for environmental purposes relating to products, such as standards and technical regulations, and packaging, labelling and recycling requirements.” http://www.wto.org/english/tratop_e/envir_e/cte03_e.htm, Visited 1/20/06.
democracy, sovereignty and the Rule of Law. If the WTO and similar diversions of public power were perceived accurately as coalitions of private interests, the legitimacy of the transfer and surrender of public power would be considered unacceptable by many interests. The public-private distinction central to our governmental system has become blurred and threatened as a result of the transfer of power.

This system feeds on what David Ricardo called comparative advantage to the extent it uses its dynamics to undercut humane social policies in both the developed and developing worlds. It does so outside the reach of national governments and with the cooperation of governments. This has created a new form of political system far beyond the simple conception of business ventures competing in real markets based on the quality of their products and services. These entities determine the market, control regulatory institutions and financial institutions for their own benefit, and extract immense profits. This system of quasi-corporate states controls the supposedly “public” institutions through which power and wealth are allocated. This includes the World Trade Organization, the World Bank and the International Monetary Fund, as well as the lesser regional development banks, financial subsidization and insurance institutions such as OPIC, the Export/Import Bank, the Bank for International Settlements, and much more.

An interesting analysis is offered in Razeen Sally, “What Future for the WTO in a Changing International Order?”

http://www.lse.ac.uk/collections/internationalTradePolicyUnit/Razeen_articles/worldtradebriefcancun.doc. Visited 1/19/06. Sally suggests: “What is really missing in trade policy is an eye for the big picture. In and around the WTO, a pea-soup fog of details and techniques obscures a wider view, a strategic sense of how the international trading system is poised and where it is heading. Momentous forces whirl around the WTO.” Sally argues the WTO faces four main problems. These include: 1. regulatory overload and a drift toward increasing harmonization of standards that can impose costs that nullify the comparative advantages of developing countries, 2. the incentives for governments to “fill in regulatory gaps in WTO agreements through litigation, 3. increasing politicization and internal fissures to the point the WTO resembles the UN with: “Windy rhetoric, adversarial point-scoring, political grandstanding and procedural nit picking seem to have substituted for serious decision-making”, and 4. regionalization of the world economy that is producing “the accelerating spread of discriminatory bilateral and regional trade agreements.” Sally, id.

David Ricardo formalized the idea of comparative advantage in the 1817 publication of On the Principles of Political Economy and Taxation. He demonstrated that the net productivity of the economy increased if countries with relative advantages in the production of one product concentrated on that activity while other nations with advantages in other products focused on the production of what they enjoyed advantages in relation to other countries. His analysis focused on labor costs and did not take into account the array of competitive factors that are involved in determining production and competitiveness.

A chilling example of such partnerships is reported in Jonathan Watts, “Microsoft helps China to censor bloggers,” The Guardian [online], Wednesday, June 15, 2005. Watts describes: “Civil liberties groups have condemned an arrangement between Microsoft and Chinese authorities to censor the internet. The American company is helping censors remove ‘freedom’ and ‘democracy’ from the net in China with a software package that prevents bloggers from using these and other politically sensitive words on their websites. The restrictions, which also include an automated denial of ‘human rights’, are built into MSN Spaces, a blog service launched in China last month by Shanghai MSN Network Communications Technology, a venture in which Microsoft holds a 50% stake. Users who try to include such terms in subject lines are warned: ‘This topic contains forbidden words. Please delete them.’ Even the most basic political discussion is difficult because ‘communism’, ‘socialism’, and ‘capitalism’ are blocked in this way, although these words can be used in the body of the main text.”
The newly emergent system makes a mockery of the traditional public/private distinction thought has long been thought to define the difference between the appropriate realms of governmental and business activity. In the scale on which the quasi-state corporate systems operate the lines that were assumed to separate the public and private spheres are conveniently blurred and policies and positions co-opted. This made it possible for former US Vice President Dick Cheney to move seamlessly between the public and private sectors while amassing at least $44 million in five years as head of Halliburton.24 After Cheney went back inside government, Halliburton and its subsidiaries were awarded no-bid contracts worth over $11 billion, even while engaging in a consistent pattern of billing fraud.25

“Steady State”, “Circular”, “Rapacious” Economies: What does “Sustainability” Really Mean?

The argument introduced here is that rhetorical sustainability ignores the fact that nothing humans create is “sustainable.” Entropy grinds down on all of us and erodes, undermines and alters every system or institution we create, sometimes for the better and frequently for the worse. In the face of inevitable non-sustainability we need to focus on strategies aimed at adaptation and the mitigation and buffering of unacceptably harsh consequences for those most affected by change. The intensity of our self-centered motivation obstruct our ability to invent new institutions of the kind required to achieve rhetorical sustainability or to make fundamental behavioral changes incompatible with human nature.

In part the problem is a function of the combination of scale, of the cyclical dynamism that is part of any human system, of energy loss and the ultimate emergence of dominant self-interest in all human power structures. There is an irremediable disconnection between individual decision-makers, the consequences of their actions for others, and their ability to bring about desired consequences on a scale that matters in terms of “fixing” a critical situation or taking advantage of positive opportunities.

Our failure is also a problem of our naturally limited intellectual and emotional capacity, the inevitable tendency to act in one’s self-interest, and the formal and informal system of rewards and sanctions that come with different kinds of behavior. Although some


25 In this context it is amusing to consider Halliburton’s Code of Business Conduct. It states: “Beyond legal compliance, all Company employees and agents are expected to observe high standards of business and personal ethics in the discharge of their assigned duties and responsibilities. This requires the practice of honesty and integrity in every aspect of dealing with other Company employees, the public, the business community, stockholders, customers, suppliers and governmental and regulatory authorities.” ILO, http://www.itcilo.it/english/actrav/telelearn/global/ilo/code/hallibur.htm#P. Visited 12/21/05. Convincing one’s self that voluntary codes of benign practice will have an effect on actors such as Halliburton is deluded, as is the belief that they are not capable of sabotaging the application and implementation of virtually any law and receiving no more than a wrist slap if caught.
environmentalists and ecological economists argue in favor of a Steady State Economy, the concern must be about the ability of the system to meet reasonable needs of the billions of inhabitants living on this planet. I share an appreciation for harmony and interconnectedness, but from a humane perspective we need to ask what is impossible and what is possible and vital if enormous numbers of people, species and the like are not to be abandoned.

If we are morally committed to creating the hundreds of millions of decent jobs required to alleviate poverty as well as fair opportunities for historically disadvantaged and unjustly treated people then it is fair to ask, what are the trade offs and what will it take to do that? What degree of economic growth is essential to keep our system of job, resource and wealth creation from collapsing? As the Great Depression of the 1930s demonstrated, there may well be a “tipping point” or chaos component in the global economic realm that can be triggered if certain fundamentals aren’t understood and protected. We haven’t focused on such questions but it seems vital that we do before we take actions that could shut down a core part of the economic engine on which we depend.

We therefore need to better understand how to increase the likelihood of achieving productive solutions on the scale of the possible rather than by dreaming grand but unachievable visions that blind us to our limitations. Our failure to be effective in protecting our critical ecological and social systems while making economic and political decisions is a problem of corruption, callousness, greed, ignorance and wrong intentions. It is also a reflection of our hubris as well as our limited cognitive and perceptual capacities. Sustainability cannot be achieved because it is impossible to convert humans into the wise, selfless, and nearly omniscient creatures required to build and operate a system that incorporates sustainability writ large. Even if it were ultimately possible (and it is not) it would take many generations to achieve and we are running out of time.

Even if we somehow developed the capacity to master the complexity implied in the concept of sustainable development, we will never have the willingness to do so. Nor would we want to if we understood the centralized power structures, enormous national and transnational bureaucracies, and inevitable use of unrelenting power and force that would be required to compel compliance from the recalcitrant “malingers”, “profiteers”, “free riders” and “black marketers” who would inevitably resist the imposition of such a political system.

Agenda 21: Longing for a Return to Eden?

Many environmentalists and ecological economists desire to create a static world in which there is a careful and sustainable balance between human needs and natural systems. Some environmentalists and ecologically oriented economists perceive the

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26 The United States Society for Ecological Economics (USSEE) describes its aim in the following words: “Ecological economics is a transdisciplinary field of inquiry that facilitates understanding between economists, ecologists and many others interested in real solutions to environmental problems and the integration of new ideas to create a sustainable world. It includes a preanalytic vision of the economy as a
Earth as *Gaia*, a living entity that we foul almost by our very existence and certainly by our behavior. In many ways this perspective is a dream quite similar to the desire to return to the pristine state of the Garden of Eden at a point where we replay and avoid the entry of sin into the world. Those who think they can slow the world down to a point of elegant stasis simply do not understand the consequences that would flow from their positions if the nightmare they mistake for a dream were accomplished. The naïve attitudes underlying such positions are similar to the “deep ecology” movement where nature is accorded only benign intentions. The fact that we inhabit a savage and unheeding natural world where species consume each other, earthquakes destroy, tsunamis overwhelm, and volcanoes spread ash and create years without summers is ignored.

Of all of the agreements and documents adopted at the 1992 Rio Earth Summit—the UN Conference on Environment and Development (UNCED)—the most ambitious was *Agenda 21*. This 400-page document contained thousands of specific part of the relevant whole, i.e. planet Earth, which is a thermodynamically closed and non-materially growing system. Consequently the field addresses the optimal scale of the economy, efficiency in the allocation of resources (goods & services), and the equitable distribution of this resource flow among alternative people, and between humans & other species.” See, http://www.ussee.org/, visited 12/14/05.

For an introduction to the Gaia Hypothesis see, http://www.oceansonline.com/gaiaho.htm. Visited 12/12/05. It is explained that: “James Lovelock, in collaboration with another eminent scientist, the microbiologist Lynn Margulis, first explained the Gaia hypothesis as such: "Life, or the biosphere, regulates or maintains the climate and the atmospheric composition at an optimum for itself.” Inherent in this explanation is the idea that biosphere, the atmosphere, the lithosphere and the hydrosphere are in some kind of balance -- that they maintain a homeostatic condition. This homeostasis is much like the internal maintenance of our own bodies; processes within our body insure a constant temperature, blood pH, electrochemical balance, etc. The inner workings of Gaia, therefore, can be viewed as a study of the physiology of the Earth, where the oceans and rivers are the Earth's blood, the atmosphere is the Earth's lungs, the land is the Earth’s bones, and the living organisms are the Earth’s senses. Lovelock calls this the science of geophysiology - the physiology of the Earth (or any other planet).”

See, e.g., the Center for the Advancement of the Steady State Economy, http://www.steadystate.org/, visited 12/14/05, where CASSE’s critique is stated as: “Economic growth is an increase in the production and consumption of goods and services. It entails increasing population, per capita consumption, or both. Economic growth leaves a larger ecological footprint [sic] causing civil strife and bringing nations into conflict…. Laws of physics, principles of ecology, and our own common sense tell us that nothing grows forever. Economic sustainability, national security, and international stability require the establishment of a steady state economy with stabilized population and per capita consumption. In a steady state economy, society focuses on goals more noble than economic growth.”

For an overview of the Deep Ecology philosophy, see, http://www.context.org/ICLIB/IC22/Zimmrman.htm. It is described there by Michael Zimmerman as being: “founded on two basic principles: one is a scientific insight into the interrelatedness of all systems of life on Earth, together with the idea that *anthropocentrism* - human-centeredness - is a misguided way of seeing things. Deep ecologists say that an *ecocentric* attitude is more consistent with the truth about the nature of life on Earth. Instead of regarding humans as something completely unique or chosen by God, they see us as integral threads in the fabric of life. They believe we need to develop a less dominating and aggressive posture towards the Earth if we and the planet are to survive. The second component of deep ecology is … the need for human self-realization. Instead of identifying with our egos or our immediate families, we would learn to identify with trees and animals and plants, indeed the whole ecosphere.”

recommendations for action and was the result of two years of international discussion and numerous negotiations. *Agenda 21* and its concept of how environmentally sound and humane economic development should occur were offered as a “blueprint for sustainable development.” The Secretary General of the United Nations Commission on Environment and Development (UNCED), Maurice Strong, told the assembled leaders that *Agenda 21* must be translated into policies, saying the presidents, prime ministers, and delegates are responsible for doing that when they return to their home countries. In fact, numerous nations created so-called national sustainable development strategies, nearly all of them little more than cosmetic public relations fluff. For a few years after Rio quite a few countries also filed annual reports with the UN Commission on Sustainable Development (UNCSD) but the momentum diminished rapidly and the information flow ultimately died.

The negotiators of *Agenda 21* “dreamed the impossible dream.” But while the quest was noble on the part of the well-intentioned their chosen methodology of action was a delusion. The more cynical among us might argue that while there were unquestionably numerous visionaries and virtuous dreamers involved in the UN’s Rio process, the enormity of *Agenda 21* and its almost three thousand separate recommendations for action represents a political strategy of “killing with kindness”. It is not an uncommon tactic of international diplomacy to make eloquent promises without any real expectation

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31 Maurice Strong “spoke of the need to coordinate efforts in development and environmental protection within the UN system. Strong also stated that the ultimate test of the success of Rio and the efficacy of *Agenda 21* will be the extent to which it is translated into changed policies and practices within countries to achieve sustainable development.” See, Iqoree in <en.unced.news>, ENB Vol. 1 No. 2 UNCED-PC IV, Mar 3, 1992, *Earth Summit Bulletin No. 2*: “Strong Delivers Keynote Address to Plenary: Emphasizes Agenda 21 and Financial Resources,” [http://www.iisd.ca/download/asc/emb0102.txt](http://www.iisd.ca/download/asc/emb0102.txt). Visited 12/21/05.

32 “Earth Summit 2002 - Heading for Failure?: Deputy Prime Minister John Prescott is giving oral evidence to the Environmental Audit Committee on Monday 4th March at 4.20 pm.” 28 February 2002. Visited, 12/2/05. [http://www.foei.org/media/2002/02282.html](http://www.foei.org/media/2002/02282.html). Prescott remarked: “The Earth Summit is less than six months away. It will be the first major summit addressing sustainable development since the Rio Earth Summit in 1992. The 1992 Earth Summit firmly put sustainable development on the map. However, despite gains in some areas, it failed to deliver the real changes necessary to protect the environment for future generations. Political will has waned, corporate influence has grown and the poorest have suffered.” He goes on to ask: “Will the 2002 Earth Summit succeed where the 1992 Earth Summit failed? The omens are not good: On 26th February the EU Environment Commissioner Margot Wallström said that we must “inject a sense of urgency into our preparations”. She also stated that “we cannot keep coming back from world gatherings with impressive commitments and fine words that we then leave in the corner of our offices to gather dust. Our implementation deficit will quickly turn into a credibility gap...” The results from the second preparatory session held in New York at the end of January were poor to say the least. It was characterised by nations pushing vested interests and refusing to countenance any new binding agreements … The Global Ministerial Environmental Forum (GMEF) in February agreed draft guidelines on compliance and enforcement of multi-lateral agreements … lack any real teeth and without strong political leadership to push for strong compliance mechanisms in existing and new agreements the guidelines will achieve little. This political leadership is lacking.”

33 While working for NRDC I spent considerable time reviewing the national Agenda 21 reports submitted by governments and doing follow up contacts with numerous governments to clarify some of the updates. I also served as the Special International Consultant to the government of Mongolia writing much of the *MAP (the Mongolian Action Programme) 21 Report’s Executive Summary and Strategic Analysis*, and editing the English language version of the main report.
that they will be implemented. Agenda 21 imposed so many responsibilities that it was impossible to achieve.

One of the problems we confront when trying to grasp the meaning of sustainability is failing to comprehend that it represents a wide and diverse variety of functions, methods and values. On many levels these factors are incompatible depending on context, resources and scale. On the idealized plane this includes the values of ecological, economic, social and political harmony. These values are used to support an argument in favor of a form of economic and social stasis wrt large on the global stage. As an ideal, this form of sustainability stands for such principles as the precautionary principle, a warning about overuse of resources similar to Garrett Hardin’s tragedy of the commons, the Club of Rome’s limits to growth or Lester Brown’s twenty-ninth day where Brown argued that an exponential progression in abuses and overuses of natural resources will generate a seemingly sudden and catastrophic collapse of systems that will overwhelm our ability to respond. Brown’s message, of course, is that intervention in the “fundamentals” of the system needs to occur long before the crisis becomes manifest.

The challenge, however, is that the perspectives of our leaders are short term and crisis oriented rather than reflective, wise and strategic in the larger sense. Because conditions appear relatively normal almost to the moment at which the so-called chaos effects manifest and the systems on which we rely fall apart, it is extremely difficult to mobilize the political power or will to make changes at a point where the consequences can be avoided or at least mitigated significantly.

Intelligent, strategic responses of the kind we are thinking of when applying the concept of sustainable development are even more difficult to achieve given the fact that many key figures and institutions are benefiting from the existing arrangements. Even though their actions are ultimately responsible for harming others they refuse to surrender what they consider their rightful gains. Not only do they seek to reap economic and political profits, they undermine and sabotage others’ efforts to avoid the impending harm because of the vast economic benefits of “sustaining” business-as-usual. One tactic in this is labeling those who warn of collapse and disaster as doomsayers and Cassandras.

The fact that the timing of our modern “prophets of doom” has been off and that new technologies and natural events may have delayed or ameliorated some of the effects does not mean the trends they describe are not serious. Some will be catastrophic for large segments of the planet’s population and disadvantaged groups in national societies. It is axiomatic that those holding wealth and power are able to escape the consequences of their actions, while others are left behind to suffer. Yet it is those holding that wealth

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and power who are setting the policies and making the political, legal and economic decisions that affect the lives of others.

Environmentalists and Sustainable Development Advocates are Often Their “Own Worst Enemy”

Many of the solutions that are being suggested to deal with the problems ignore or fail to understand the reality of human systems. The “solutions” far too frequently depend on achieving fundamental changes in institutional and personal behaviors of the kind that simply are not going to occur—if at all—without us experiencing some substantial degree of crisis and collapse that actually impacts on decision-makers to the extent they come to fear for their jobs or worse. Even when crises do occur in sufficient intensity and on a scale where people demand responses, any changes will be grudging at best, always partial, and will require a significant amount of governmentally-mandated and enforced compulsion to be even partially effective. Because we operate in the short term in the political sphere the point at which action is taken will be sufficiently far along in the process of harm and systemic degradation that for many of the sufferers it will be “too little, too late,” and the consequences already imposed.  

It is within such a context I argue that even taking the good intentions of the creators of Agenda 21 at face value it is unworkable in practice. An all-encompassing model of political decision-making and governmental action underlies the rhetoric of sustainability and Agenda 21. The Agenda 21 process takes as a given that the world and individual nations can be captured in a strategic plan of complete thoroughness; that decision-makers are capable of understanding that plan and creating rational institutions that comprehend, value, and are committed to the vision inherent in implementing that massive blueprint on the national level—and that this can be done efficiently and openly. It may be argued that this model is an entirely reasonable characterization of how governments ought to make decisions in a “perfect world” but the system that would be required to operate in this way is unattainable, undesirable and “unsustainable” in everyday life.

My concern here is related to the speed at which societies are approaching various kinds of large-scale dislocations, injustices, strife and even disaster. I don’t want to resort to

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36 See, e.g., Athol Yates, “The nexus between regulation enforcement and catastrophic engineering failures.” [http://www.ieast.org.au/policy/res/downloads/publications/regulation-failure.doc](http://www.ieast.org.au/policy/res/downloads/publications/regulation-failure.doc). Visited 1/19/06. Yates reports: “12,000 people died in the 1999 earthquake in Turkey. New buildings toppled over, others concertined. Turkey has a sound building code which was last updated in 1997…. So how can the building failures be explained? 20,000 died in the 2001 earthquake in India. About 183,000 houses were completely flattened and 420,000 suffered severe damage. A very large number of engineered structures, such as reinforced concrete and precise concrete buildings, also suffered catastrophic collapse. India uses IS 18931, IS 43262 and other codes for seismic design and construction of buildings. So how can the building failures be explained? In 1997, the Canberra hospital demolition went tragically wrong. One person was killed when she was hit by debris among a watching crowd of 30,000. The planned implosion was governed by a Demolition Code of Practice and Occupational Health and Safety legislation. So how can this tragedy be explained? In 1998, the Esso Longford gas plant in Victoria blew up killing 2 workers. Just 6 months prior to the explosion, Esso’s health and safety management system was audited by a team from Esso’s owner, Exxon. The system, called the Operational Integrity Management System, is internationally renown [sic]. So how can this tragedy be explained?” Yates concludes: “A common element to all these tragedies is a failure to enforce the existing regulations.”
doomsday prophecies or set a clear date on which critical resources will be irreversibly depleted such as done in the Club of Rome’s *Limits to Growth* report in 1972. In addition to being destructive and careless, humans are also adaptive and resilient. Placing hard and fast deadlines on when chaos occurs and the worst effects generated is unwise and chancy at best. But if it is unwise or at least extremely difficult to make accurate and detailed predictions involving “doom and gloom” scenarios, it is equally unwise and foolhardy to ignore that the equivalent of ecological and social tectonic plates with massive disruptive potential are shifting underneath the surface of our national and global systems. Failing to prepare for the most likely consequences reaches the level of gross stupidity.

**Small is Not Beautiful: The Need for Continuing Economic Growth**

Grand utopian visions and even smaller utopias based on an ideal of pastoral communities harmoniously husbanding local resources simply aren’t reflective of the reality faced by the vast majority of people. E.F. Schumacher’s argument that “small is beautiful” may appear to be an elegant solution for how we can all live comfortable and rewarding lives within enriching community bonds but it is not going to happen.

The crises we face are a combination of ecological, social and economic needs and conditions. They are located in not only natural systems but social systems involving the ability to fund social benefits, health care, education, pensions, poverty alleviation, etc. as well as incur the massive expenditures required to “fix” what we have already broken. In the U.S. and Europe we have made fiscal promises that we cannot keep. We also have vast economic needs for wealth generation globally as a precondition to achieving social equity on both national and global scales. Figuring out how to reduce some of those obligations, eliminate others and rebuild the core and vitality of our system must become a part of any honest social discourse. There should be no doubt, however, that there will be pain and sacrifice in any action we take. But failing to take prompt and effective action will produce catastrophic results for many people and nations. The question is simple--whether the situation is one that “gets worse before it gets better or worse before it gets worse.” We still have the ability to determine the answer.

“Small is beautiful” has become an impossible dream for all but a few communities. The impossibility is driven by population growth, the breakdown of local communities through migration, the infusion of multicultural diversity, and a materialistic ethos that has altered our sense of what constitutes quality of life. The most obvious driving forces include increasing urban densities and coastal development requiring massive infrastructures and supportive supply systems, overall population levels and the distortions of population distribution and age demographics. To these can be added quality of life demands caused by the ability of people to see how material life is led in richer countries. This produces envy and enmity.

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There is also the rapid spread of interdependent economic systems that allow the tendrils of global production and distribution systems to penetrate what had been largely closed economic systems. Once new resources, technologies and higher incomes enter a system that system begins to alter its nature. Because local rural and agricultural contexts are typically of limited scale and opportunity a community’s youth often see the “vision” of wealth and opportunity in larger urban environments and migrate to those locations. In doing so they alter the demographics and relations of that local community and the urban systems to which they move. These dynamic conditions are not reversible. In America the saying to describe this as the country shifted from an agricultural/rural system to an urban one was “How you gonna keep ’em down on the farm after they’ve seen Paris?”

Of course it is possible for isolated pockets of activity to exist within niches, and for “sustainable” lifestyles to be supported for a limited number of people. But local self-sufficiency is no longer an option for the great majority of the earth’s people. While people still engage in low level, low impact and integrated sustainable production systems that fill a demand/supply niche for natural or organic products or meet the needs of a small and largely closed community these will never be adequate for general supply purposes on any significant scale given that our major urban areas are like giant resource vacuums that suck up goods, services and resources.

Many American and European industries are artificially uncompetitive with competitors allowed to follow different rules of competition. Producers in China, India and elsewhere enjoy low taxes or special tax breaks, face fewer regulatory obstacles, and have lower costs for labor and raw materials. This is not because they are superior competitors but because their social and economic systems have lagged behind those of Western Europe, North America and Japan. Businesses in the U.S., Japan and Western Europe, on the other hand, have been successful to the extent that their wealth generation capacities have allowed the development and funding of expensive and fully integrated social and economic systems. The ability to continue funding those systems of social justice is being degraded.

What are needed are concrete, workable, and pragmatic strategies that produce effective and intelligently designed economic activity in specific contexts.\footnote{“Enforcement and Sanctions in Environmental Law,” Nordic Environmental Law Network (NELN) Workshop, Stockholm, 19-21 October 2005. (Stockholm Environmental Law and Policy Centre organised the 6th NELN Workshop, funded by Nordforsk, on 19-21 October 2005.) \url{http://www.juridicum.su.se/smc/eng/neln.asp} [vis. 12/2/05]. Topics discussed include: 1.Institutions for Enforcing Environmental Law: Courts and Alternative Dispute Resolution, 2. Instruments for Enforcing Environmental Law: Permits, Liability and Information, 3. Enforcing Environmental Law Through Penal Sanctions, 4. National Cases of Environmental Laws Enforcement, and 5. Comparative and International Outlooks.} It should be understood, however, that the scale of social needs, including the need for expanded productive activity, has grown so large that it cannot be shut off abruptly. It can’t even be ratcheted down in any significant fashion without producing harm to human societies and hundreds of millions of people. Even if it were possible to shift back to such a system of local self-sufficiency, the consequences of the transition process would be catastrophic for many people and even deadly to the point of continual conflict, resource
wars, increased poverty and strife. The transition costs in human, social and environmental terms are too dire to risk taking the chance.

The imperative of economic growth applies to the needs and expectations of people in economically developed societies and to people living in nations that are currently underdeveloped in the economic sense. Opportunities must be created, jobs must be generated in huge numbers, economic resources expanded to address the tragedy of poverty and inequality, and, unfortunately, natural systems must be exploited to achieve this. We can’t return to Eden. The question is not how to achieve a static state but how to achieve what is needed to advance social justice while avoiding and mitigating the most destructive consequences of our behavior.

In our system, one described inaccurately as free market capitalism, economic activity not only breaks down existing systems, it creates new systems and—as Joseph Schumpeter observed—continually repeats the process through cycles of “creative destruction.” 41 This pattern of creative destruction unfolds as necessarily and relentlessly as does the birth-maturation-death-rebirth cycle of the natural environment. This occurs even in a self-sufficient or autarchic system capable of managing all variables within its closed dominion. But when the system breaks out of its closed environment the ability of a single national actor to control the system’s dynamics erodes and ultimately disappears in the face of differential conditions, needs, priorities and agendas. This is an unavoidable consequence of globalization.

Globalization’s ability to help in one area produces harms to different people and interests and in any event generates often chaotic and unfair resource redistribution within existing cultures. Hilary French argues globalization is: “a broad process of societal transformation in which numerous interwoven forces are making national borders more permeable than ever before, including growth in trade, investment, travel, and computer networking. ‘Ecological globalization’ is . . . the collective impact that these diverse processes have on the health of the planet’s natural systems.” 42

Tom Friedman concludes: “globalization involves the inexorable integration of markets, nation-states and technologies to a degree never witnessed before – in a way that is enabling individuals, corporations and nation-states to reach around the world farther, faster, deeper and cheaper than ever before, and in a way that is also producing a powerful backlash from those brutalized or left behind by this new system.” 43

Because it has altered the rules of operation of political, economic and social activities, globalization multiplies our ability to create benefit and harm on a large scale. While some understandably want the unsettling and often chaotic effects of globalization to go

41 Schumpeter, *Capitalism, Socialism and Democracy* 162, supra, n. 12. “The capitalist process not only destroys its own institutional framework but it also creates the conditions for another. Destruction may not be the right word after all. Perhaps I should have spoken of transformation.”


away, it can only be dealt with, not reversed. The system in which we live and work is no longer closed. There are few contexts not connected to the dynamics of some important aspect of the larger and extended economic and social systems. This means the wide ranging and incompatible variables of a global economic, human rights, and social fairness system are resulting in conflicts and unanticipated interpenetrations that no one fully understands, anticipates or controls.\footnote{Susan Ariel Aaronson, “Oh, Behave! - voluntary corporate codes of conduct: Voluntary Codes Can Make Corporations Model Citizens,” \textit{The International Economy}, March 2001. \url{http://www.findarticles.com/p/articles/mi_m2633/is_2_15/ai_73232547}. Aaronson argues: “Globalization puts governments in a bind. On the one hand, policymakers want to encourage further economic integration. All nations--rich and poor alike --need the investment, technology, employment, and cost efficiencies global firms bring to national economic growth. At the same time, most policymakers want to ensure that such corporations don't despoil the environment, produce defective products, or abuse workers. Yet while they must act to cushion citizens from the side effects of capitalism, such as environmental degradation, policymakers are less able to regulate at the national level because such regulation may make their nations less attractive to global investors. Thus, those activists and policymakers who want to promote global business citizenship must find a strategy that holds corporations accountable without thwarting the many benefits that such companies bring to their stakeholders. As a result, a growing number of policymakers have focused on promoting global corporate citizenship.”}

\textbf{Conclusion}

Thousands of treaties exist that impose no real requirements of compliance or no sanctions for violation or non-compliance. Self-regulation does not work except when there are serious and likely consequences for non-compliance. Voluntary codes are public relations gimmicks. “Best Practices” are often expensive and complex, requiring the expenditure of more capital than the specific affected actor can or will invest. The human tendency to resist change or to continue doing what has worked reasonably well in the past prevents experts’ recommendations about best or better practices from being adopted in the field. This is also tied to the point in the investment cycle at which a particular manufacturer or producer resides. If a substantial investment has recently been made it is unlikely that economic actors will be willing to sink more capital at a point prior to receiving an acceptable return on the existing investment.

Voluntary codes and unenforced laws and treaties are the enemies of effective action. They are a pretense that action is being taken even while they mask the fact of continuing harm. There is a need for pragmatic and honest discourse concerning specific actions and strategies aimed at achieving maximum positive outcomes in areas of greatest vulnerability. At the levels where policy and practice from the “individual to the international” must change, the so-called “ideal” of sustainability operates as a Trojan Horse, as a delusional set of unworkable premises, and even as a cynical rhetorical device that allows politicians and international institutions to cover up their failures and corruption. They do this by paying lip service to the exuberant vision of sustainability, while deflecting attention from their real behavior, agendas, and failure to make effective changes.

The problem is that such a fundamental change is not going to occur. If solutions are to be found they must be based in our reality rather than our ideality. Part of this reality is that the connections between the business and governmental sectors represent a powerful
and coherent political system considerably stronger than the fragmented alternative system comprised of environmentalists and other social activists whose only common point of intersection occurs at the level of grand rhetorical proclamations. As politics it is a combination of the “art of the possible” and the inevitability of compromise as a precondition to achieving reasonably effective solutions. Environmentalists and social activists generally fail to understand either the reality of business decision making or the depth and permanence of the connection between money, law and the political process. To the extent they do understand the connections they reject them as morally invalid.

The problem is that the power of these systems and connections is immense relative to the systems created by activists. Not only is the power immense, the interests involved have resources, staying power, and the ability to influence key aspects of the policy making, regulatory and legal processes. Faced with such forces environmentalists and social activists may be tacitly aware they face overwhelming odds. This may be why so many public interest advocates are satisfied with being involved in meaningless “dialogues” with industry, governmental and multilateral institutions centered on possible solutions. This produces grand proclamations based on empty rhetoric that lack teeth and produce little positive change. But if you can’t actually achieve anything positive you can at least travel to interesting places, feel that you are part of an exciting movement, and justify future foundation grants or membership contributions.

A similar process takes place in the creation of treaties. Consider who negotiates the treaties, typically members of a country’s or multilateral institution’s diplomatic corps. They are not the people who will be responsible for implementing the agreement. Their mission is to achieve a “product” in the form of a treaty. In such a situation concessions are made with the purpose of achieving diplomatic agreement to the treaty. This process often requires significant compromise, including the dilution of language in order to achieve agreement. Once that is done the diplomats’ task is finished and the details of implementation are others’ responsibility. The problem is that one of the easiest ways to obtain agreement is to have that agreement mean little or nothing, impose no costs or consequences, but still allow the appearance that action has been taken in order to reap the political benefits.