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Guidelines on MNCs represents a significant victory for the ICC and the Business and Industry Advisory Committee to the OECD.

Despite the resistance of Trade Unions and the Global South, this vision of international corporate “obligations” occupied the space of global capital governance in the 1980s and 1990s. This grammar has remained dominant, reproduced and consolidated by the 2000 UN Global Compact, the 2006 demise of the UN Norms, the 2011 UN Guiding Principles on Business and Human Rights, and the ongoing resistance to a legally binding instrument to regulate the activities of MNCs. The ICC and some important MNCs, such as Royal Dutch Shell, participated in each of these battles to define the rules of economic globalization, promoting CSR as a response to the 1999 Battle of Seattle, the discontent with globalization, or as a more economically efficient alternative to international binding obligations.

For lawyers, this history of victories and defeats is highly relevant to the present struggle for law. Scholars often talk about business and human rights in terms of “governance gaps”<sup>50</sup> as a result of globalization complexities, yet the history of these legal struggles suggests that these “gaps” were carefully crafted by business leaders and lawyers. They played with legal concepts and language to produce non-binding obligations and self-regulation. There were numerous calls to create international mechanisms to focus on MNCs as sites of global regulation. What prevailed instead, however, is a grammar of investor rights, ISDS, investment facilitation, CSR, and business and human rights – a grammar, it is worth noting, that has created multiple business opportunities for local elites dedicated to what Surya Deva calls the “business” of business and human rights.<sup>51</sup>

Working hand in hand, lawyers and business historians can shed more light on the struggles over the grammar of global governance, the tactical moves, strategies, networks and multiple tools through which business associations, MNCs, and law firms created the international legal frameworks in which today’s companies operate. The goal, I believe, is not only to identify proposals, competing alternatives, contingencies, and critical junctures. We should also consider how business leaders and associations, such as Luce, Abs, and the ICC, helped create the conditions in which the dominant legal imagination could thrive and remain at the core of most present policy discussions concerning the global economy. The past and the present appear inherently intertwined here, at least to those progressive lawyers who continue believing that a more sustainable and inclusive future is possible.

## **Business and Global Capitalism: Continuities and Change**

### **Neil Rollings**

It is common for historians to focus their attention on turning points in the past. The risk with this is that it overstates how dramatic change was and the extent of stasis and stability in between those turning points, at its most extreme form in notions of punctuated equilibriums. We need to remember the importance of continuities across those turning points and transitions in order to understand the roots of change and have a more nuanced picture of the nature of change. This is as valid for the relationship between firms, governments and global governance frameworks as it is for any other historical subject.

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<sup>50</sup> See, e.g., John G. Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York, 2013).

<sup>51</sup> Surya Deva, “From business or human rights to business and human rights: what next?” in Surya Deva and David Birchall (eds), *Research Handbook on Human Rights and Business*. (Cheltenham, UK and Northampton, MA, 2020): 1, 5-6.

With that caveat, I would point to two key turning points in the historical relationship of business and governance. My long-standing response would be the Second World War and post-war reconstruction. A much wider range of international organizations emerged and, with it, a burst of growth in non-governmental organizations, including transnational business associations, on a scale never previously seen.<sup>52</sup> In addition, with trade liberalization, European integration, and the golden age of growth experienced by the advanced economies, the world for economic and political actors became totally different, and the assumptions on which these had operated no longer held. One example of this is the shift in trade from the exchange of manufactures for raw materials and foodstuffs to exchanging manufactured goods for other manufactured goods, which widened the gap between those economies which were part of this growth phenomenon and those that were not.

More recently, I have also become interested in the shifts which emerged in the 1970s. The decade was marked by the two oil crises, stagflation in many advanced industrial economies and the emergence of what is often depicted as the first neoliberal government with the election of Margaret Thatcher as the UK's Prime Minister in 1979. It was also then that the West's share of global GDP began to decline and the start of the rise of emerging economies, here, materially, in the form of the OPEC countries, but also with Deng Xiaoping becoming leader in China. Many of these changes had roots in the post-war period – for example the rise of neoliberalism - while others took time to have a significant effect, as in the case of China.

What role did business play in these developments? The events of the 1940s offer some perspective. The years after WWII are often seen as the start of the hey-day of the nation-state, most famously by Alan Milward in his *European Rescue of the Nation-State*.<sup>53</sup> This framework downplays the role of non-state actors, including business. Yet, the more recent historiography of European integration has directly critiqued this aspect of Milward's framework and, in so doing, has emphasized the role played by business in contributing to the process of European integration.<sup>54</sup> Business was not simply an institution taker at this time.

Similarly, in the 1970s one common depiction of the oil crises is as a turning point in the relationship between Western oil companies and oil-producing countries with a shift in power to the governments of the oil producers. It was also in this period that leading oil companies, the so-called "Seven Sisters," permanently lost their grip on world oil. But, again, business played a key role in promoting these changes, here in the form of the oil trading companies. These and other commodity trading companies performed a crucial intermediary function around the world throughout the post-war period, be it in trading grain between Cold War enemies, assisting Russian oligarchs to build up their wealth in the aftermath of the collapse of the Iron Curtain, and opening up the Chinese economy by supplying it

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<sup>52</sup> Rollings, "The Development of Transnational Business Associations".

<sup>53</sup> Alan Milward, *The European Rescue of the Nation-State* (London, 1992 and 1999).

<sup>54</sup> Kaiser and Meyer (eds), *Societal Actors in European Integration*. Recent examples are: Sigfrido M. Ramírez Pérez, "Crises and Transformations of European Integration: European Business Circles During the Long 1970s," *European Review of History* 26, no. 4 (2019): 618-635; Alexis Drach, "Reluctant Europeans? British and French Commercial Banks and the Common Market in Banking (1977-1992)," *Enterprise & Society* 21, no. 3 (2020): 768-98; and Ballor, "Agents of Integration." See also the special issue "Business History and European Integration: How EEC Competition Policy Affected Companies' Strategies," *Business History* 62, no. 5 (2020), 717-878.

with raw materials to help sustain the extraordinary growth rates achieved by that country since its economic reforms.<sup>55</sup>

From an historian's perspective, I would see many of the same themes as relevant to global governance today. In general, an historical perspective can caution against some of the wilder claims sometimes made about the present and the novelty of developments: it is important not to ignore the ongoing continuities in the current world. There are plenty of ways in which globalization is continuing to develop, despite the emphasis today on deglobalization, nationalism, and populism. Global trade as a share of global GDP has not returned to the heights of just before the global financial crisis but it was only just over two percentage points below that peak in 2019 and for most of the period since the GFC had hovered above that level. Global foreign direct investment as a share of GDP in 2019 was higher than it was in any year between 1970 and 1996. Clearly the pandemic has impacted both of these but trade flows by volume are back above pre-pandemic levels. Similarly, in terms of global governance, 2021 marked the signing of the plan for revising international corporate tax rules by 136 countries. Now this is a long way from being implemented, but given the failure to reach agreement on reform for decades before, we need to be careful to assume that the wave of deglobalization and diminishing global governance is occurring across the board.

Similarly, it is possible to overstate the coherence of governance during the period from the late 1970s associated with the height of neoliberalism. Quinn Slobodian's recent article points to tendencies in business and beyond in the US calling for protection long before Donald Trump became President and to Ronald Reagan's use of trade quotas.<sup>56</sup> In the UK, Margaret Thatcher's government looked for ways to circumvent EEC regulations against state aid to industry as a way of supporting British business against foreign competition just as she was championing the need for the European single market.<sup>57</sup>

One further aspect that is highlighted by an historical approach is the importance of incorporating uncertainty into our understanding of the world. If there is one lesson the current set of crises has shown it is this. Many social scientists have moved away from what might be termed 'the uncertainties of uncertainty' to the 'certainties of risk' and their probabilistic measurement. But these certainties are dependent on stable relationships which do not take contingencies into consideration, nor do they attend to dynamic interdependencies and the role of actors in bringing about the unexpected. The assumptions that underpin the measurement of risk have been shown to be too sweeping and have only added to the problems of effective governance.<sup>58</sup>

Looking forward, I see great potential for increasing our understanding of the role of business in the history of global governance. I often like to talk about the ubiquity of business – not just today, but also in the past. Yet it always astonishes me how infrequently it is incorporated into broader historical

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<sup>55</sup> Javier Blas and Jack Farchy, *The World for Sale: Power and the Traders Who Barter the Earth's Resources* (Oxford University Press, 2021). See also the 2022 Princeton University Ph.D dissertation by Rob Konkel "Building Blocs: Raw Materials and the Global Economy in the Age of Disequilibrium."

<sup>56</sup> Quinn Slobodian, "The Backlash Against Neoliberal Globalization from Above: Elite Origins of the Crisis of the New Constitutionalism," *Theory, Culture and Society* 38, no. 6 (November 2021): 51-69.

<sup>57</sup> For example, M. Kilroy to Malcolm Day, "Micros for GPs", 1 October 1982 and Alan Paul to Day, "Micros for GPs", 6 October 1982, UK National Archives, CAB193/342.

<sup>58</sup> Peter Katzenstein and Lucia Seybert (eds), *Protean Power: Exploring the Uncertain and Unexpected in World Politics* (Cambridge, 2018).

accounts as an actor. Global governance is one area where to some degree this situation is changing, perhaps because of the less central role afforded to the nation-state. I am very optimistic and genuinely excited about the future. The emerging generation of business historians, including the organizers of this roundtable, seem highly engaged with the role of business in society and in global governance more specifically. This has always been one element of business history research, but I think it is becoming significantly more pronounced and this provides a great opportunity to develop a better dialogue with other historians and, in particular, those researching the history of global governance.

The situation is more problematic when it comes to archives. Rodney Lowe used to refer to the period after the Second World War as the golden age of archives because there was just so much material preserved from government.<sup>59</sup> But, at the same time, there are now increasing issues about the impossibility of preserving more than a very small proportion of records and the challenges, including the cost, of preserving digital records in an accessible form. Equally, despite freedom of information legislation, governments can be less than willing to release information. For example, in the UK the Cabinet Office response to a FoI request for material on the Advisory Committee on Business Appointments, set up in the 1970s to vet ministers and civil servants joining companies related to their government work, was that it held no such material despite being the responsible department.<sup>60</sup> For business records there is the ongoing issue of reputation management where it can be simpler to keep records closed than to have the prying eyes of historians locating behind the scenes lobbying, let alone illegal activities like cartels. Again, businesses sometimes preserve records even on their illegal activities.<sup>61</sup> Another useful source in this respect is the Industry Documents Library hosted at UC San Francisco.<sup>62</sup> Originally created in the 1990s as the then Legacy Tobacco Documents Library, it now covers records from other industries related to health such as food, chemicals, fossil fuels, opioids, and drugs. Other cases of litigation and investigation can also provide source material.

In other words, while difficult, this type of research is possible and can prove extremely informative. Here Vanessa Ogle's work on tax havens stands out as a prime example of what can be achieved.<sup>63</sup> The historical development of tax havens is clearly an important and contemporarily relevant topic, but one which is difficult to study because of the secrecy involved in those activities. Yet, in her articles, and no doubt in the book to follow, she has been able to construct meaningful and illuminating narratives, based on material from a host of different archives.

To sum up, there is one common theme relating to the past, present, and future which certainly informed my research: the concept of interdependency. Too often studies of global governance argue that, with globalization, state power has been replaced with business or corporate power in some simple zero-sum game. Rather, I would argue, we need to understand the interdependencies between these states, international organizations and companies. Here I strongly endorse the argument made recently by Babic et al.: "The specific dynamics playing out within these power relations need to be

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<sup>59</sup> Rodney Lowe, "Plumbing New Depths: Contemporary Historians and the Public Record Office," *Twentieth Century British History* 8 (1997): 239-65.

<sup>60</sup> A small number of files have subsequently been released.

<sup>61</sup> For example, Neil Rollings, "Babcock and Wilcox Ltd., The 'Babcock Family' and Regulation 17/62: A Business Response to New Competition Policy in the Early 1960s," *Business History* 62, no. 5 (2020): 743-62.

<sup>62</sup> See: Industry Documents Library, (accessed 28 June 2022): <https://www.industrydocuments.ucsf.edu>.

<sup>63</sup> Vanessa Ogle, "Archipelago Capitalism: Tax Havens, Offshore Money, and the State, 1950s-1970s," *American Historical Review* 122, no. X (December 2017): 1431-58 and "Funk Money: The End of Empires, The Expansion of Tax Havens, and Decolonization as an Economic and Financial Event," *Past & Present* 249, no. 1 (2020): 213-49.

understood and explained in their actual context: even though we live in a world of transnational capitalism, state power has not disappeared but merely been transformed. Contemporary phenomena in international politics are in this sense determined by neither state nor corporate power, but they need to be examined as shaped by power relations between the two of them,” continuing, “[t]he concrete (empirical) constellations in which they meet, compete or cooperate for power should be analyzed without pre-determining these power relations.”<sup>64</sup>

Taking this further, these interdependencies blur the distinction between public and private actors engaged in all forms of governance. The work of James Rosenau is particularly helpful here. He is probably most associated with the notion of “governance without government,” but the work I have found most helpful is *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World*.<sup>65</sup> Here he develops the concept of the frontier rather than the border or boundary, highlighting the porosity and permeability of supposed dividing lines underpinned by the resulting interaction and interdependencies. In that sense, it is not so much governance itself that matters, but understanding the combination of relationships amongst actors, the fluidity of those relationships and how they change over time, that helps us understand phenomena. Rosenau’s idea was presented in spatial terms, but it can also be applied effectively between groups of actors and across time in thinking about turning points.

### **Competing Projects in Global Governance** **Quinn Slobodian**

The twentieth century is a fascinating time to follow the relationship between global governance and firms because of the persistent tension between principles of mass democracy and private ownership and control. It is possible to narrate the entire century as a series of contestations between firms and international organizations. At times, firms have had the upper hand. At other times, the principle of popular sovereignty has threatened the self-perceived rights and prerogatives of business. In my own work, I have homed in on ruptures at two main points.

The first is the First World War, when governments first gained access to the inner workings of firms. The total war footing of belligerent powers broke down the long-standing public-private divide as all of the nation’s available resources were mobilized for the military effort. The outcome was a new horizon of what the Germans call *Machbarkeit*, or doability, that one can witness in political economic projects from Soviet communism to the U.S. New Deal to the breakneck pace of Nazi rearmament. Business leaders feared, with good reason, that their autonomy had been compromised permanently in a new era of mass politics. We can see the interwar efforts of organizations like the International Chamber of Commerce as what they saw as a rearguard attempt to defend the sovereignty of business, the interdependence of the world economy, and the priority of property rights over projects of nationalization and expropriation.<sup>66</sup> I adopt the categories of midcentury intellectuals to describe this as a conflict between the principle of dominium—the domain of ownership and the government of

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<sup>64</sup> Milan Babic, Jan Fichtner, and Eelke M. Heemskerk, “States versus Corporations: Rethinking the Power of Business in International Politics,” *The International Spectator* 52, no. 4 (2017): 29.

<sup>65</sup> James Rosenau, *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World* (Cambridge, 1997). See also James Rosenau and Ernst-Otto Czempiel (eds), *Governance without Government: Order and Change in World Politics* (Cambridge 1992).

<sup>66</sup> David and Eichenberger, “A World Parliament of Business”.