

Human Rights and Business Ethics

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Introduction

The phrase ‘human rights’ commonly refers to the rights that all human beings have simply in virtue of being human (Griffin, 2008). The idea is rooted in the notion of ‘natural rights’, which in turn is grounded in the belief that ethics is immanent and, at least to an extent, objective and universal in nature. This belief has been characteristic of several religious and spiritual traditions since ancient times (e.g. God-given rights in Abrahamic religions, laws of Nature in Stoicism). For the better part of the human history, however, natural rights were understood as being unequally distributed among people, as is exemplified by the plethora of kings throughout history who inherited the crown by reference to their divine right to rule. The Enlightenment period secularized the notion of natural rights and conceptualized the idea of human rights that every human being is entitled to regardless of race, sex, nationality, ethnicity, language, religion, and status. Following the end of the Second World War, the newly formed United Nations adopted the UN Declaration on Human Rights (UDHR), codifying a set of global human rights that would soon become a mainstream variant of ethics and obligations.

Within the discipline of business and management, the body of literature that adopts a human rights lens has in recent decades grown into a distinct field called business and human rights (BHR). It is a field that crosses, at least, law, global governance, and business ethics. In its legal form, BHR is concerned with access to legal remedy for victims of human rights abuses by business, and is often critical of elements of domestic law, including aspects of ‘corporate personhood’ and the legal construction of rights-relevant markets. As a global governance practice, BHR has generated numerous soft laws, codes of conduct, and polycentric regulations designed to regulate diverse businesses operating in diverse contexts.

As related to business ethics, and noting possible overlaps, two areas of BHR are most relevant. First, the normative element of BHR, which asks questions of whether businesses can hold human rights responsibility, and how and to what extent these responsibilities should be perceived. Second, a more empirical element that studies how managers can implement human rights responsibilities, and how different implementation methods, such as codes of conduct, function in practice. This chapter will first introduce BHR generally, and then look at each of these business ethics-related areas in turn.

Glancing at the History of BHR

BHR has proceeded through a series of institutionalizing innovations. The 1977 Sullivan Principles in apartheid South Africa – which encouraged businesses to pledge equal treatment of non-white

employees - are often credited as the first BHR initiative, prior to the term BHR being used. The UN Code of Conduct for Transnational Corporations, which was first discussed from the late 1970s to 1992 but never ratified, was the first attempt to regulate businesses in international (soft) law. This emerged from the sovereignty concerns of the post-colonial states behind the New International Economic Order (NIEO), rather than human rights, and aimed at ensuring sovereign control of corporations and resources. A series of labour-related initiatives including the Fair Labor Association developed in the 1990s in response to sweatshop scandals in developing world factories manufacturing for global brands such as Nike. The Global Compact was the first formalization of a BHR agenda within an intergovernmental organization, and in 2011 the UN Guiding Principles on Business and Human Rights (UNGPs) were endorsed at the UN.

The publication of the UNGPs heralded a new era with BHR now having a firm doctrinal basis, rather than being constituted of myriad human rights-related concepts and tools. The UNGPs are organized around three pillars, the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy in case of breach. This means that states are obligated – as both a matter of pre-existing international law and social obligation emanating from the new framing of the UNGPs – to protect rights-holder from harm by business. Businesses are expected – a ‘socially-binding’ responsibility – to respect rights, meaning to do no harm to rights-holders. The UNGPs did not create new legal obligations but has led to significant new laws and policies, such as State National Action Plans to implement the UNGPs and domestic laws enforcing human rights due diligence (HRDD). HRDD is a means by which companies should proactively investigate the ‘human rights risks’ within their own operations to avoid causing ‘adverse human rights impacts’. France has had a law based on HRDD – the ‘Duty of Vigilance Law’ since 2017, and many states plus the European Union are developing similar laws, with Germany and Switzerland most advanced.

The UNGPs have been severely critiqued for their lack of ambition. These critiques include the ‘socially-binding’ nature of the business responsibility, which makes respecting human rights optional for managers and assumes that social expectation, perhaps ethical obligation, will be enough to ensure good management practices. They also included that businesses did not have a responsibility to protect or fulfil rights, and various concerns over a lack of clarity. Most such concerns met the same response. The UNGPs were as ambitious as was feasible. The result of ‘principled pragmatism’, representing only ‘the end of the beginning’. Moreover, the ‘strategic ambiguity’ of the UNGPs make them potentially more ambitious than they appear at first sight. Included in this is that ‘human rights impacts’ cover a far wider range of harm to rights-holders than any legal definition of ‘human rights violation’, covering, for example, a business reducing access to an essential service such as healthcare through price increases (Birchall, 2019).

Human Rights in Normative Business Ethics

Acknowledgment of the existence of human rights has immediate normative implications because rights come with correlative responsibilities upon relevant duty bearers. Traditionally, this responsibility was assumed to fall sole on governments, and this remains generally true of legally binding international law. However, towards the end of the twentieth century it became increasingly clear that multinational corporations can have significant influence over individuals, societies, and governments. This realization was coupled with a stream of revelations of serious human rights violations in large, renowned corporations, which has become a regular and expected part of the business section of the news. As a result, there has been increasing agreement that governments alone cannot guarantee that human rights are protected, and calls have been mounting for business organizations to recognize their own human rights responsibilities. This is where normative scholarship in business ethics steps in to clarify how the roles and responsibilities of businesses in relation to human rights must be defined.

To articulate the human rights responsibility of business organizations, the first step is to define what exactly human rights are. Even if it is agreed that there is such a category as human rights that represents the rights that every human being is entitled to, there is considerable diversity among scholars with respect to what those rights are. Two broad camps can be distinguished within business ethics: 1) The universalist camp argues that human rights must be defined and protected irrespective of cultural differences among societies (as attempted in, for example, the UDHR); 2) The relativist camp argues that different cultures define human rights differently based on their respective histories, values, and traditions (as attempted in, for example, the Cairo Declaration of Human Rights, which is based on Islamic teachings). The debates between these camps are part of the animated ongoing discussions in the literature of normative business ethics (Brenkert, 2016).

Aside from this debate, the next step is to define what exactly is the responsibility of business organizations in relation to human rights. Core disagreements can occur around which human rights businesses hold responsibilities, and the extent of responsibility towards these rights. These responsibilities are commonly partitioned according to a tripartite framework that includes a) respecting rights by not infringing upon individuals' rights; b) protecting individuals against infringements by third parties; and c) fulfilling access to rights. With respect to the right to health, for instance, most scholars agree that business organizations should respect the right through refraining from harming their workers; but most scholars agree that business organizations are not responsible for protecting the bodily integrity of their workers beyond what can be reasonably considered work-related; and it is not agreed that businesses have any responsibilities to provide their workers with the education to enable them to improve their bodily integrity. Defining the exact scope of responsibility of business organizations with respect to human rights is at the core of current discussions in normative business ethics (Hsieh, 2017).

Another important question for normative business ethics to address is why businesses should take a responsibility for human rights. What are the reasons, motivations, or justifications underlying

the human rights responsibility of business organizations? Some scholars highlight a business case for respecting human rights, positing that enlightened self-interest is a sufficient rationale for the responsibility. Others argue that accountability is the key distinguishing feature between human rights and other moral norms and that therefore binding rules and institutionalized sanctions and remedies are necessary to enforce corporate responsibility towards human rights. And yet others argue that morality must be the core driver because human rights are basic moral rights grounded in human autonomy and agency. One critical implication of these discussions is determining if human rights responsibilities of business must be understood as voluntary or obligatory, and if some of those responsibilities are obligatory, at what level (international or national law) they must be enforced (Brenkert, 2016).

Normative business ethics is a realm of articulation, analysis, and reasoning, and the ever-expansive discourse of human rights has exposed it to a new domain full of questions, puzzles, and indeterminacies. A lot of progress has been made and scholars are approaching a phantom of consensus in some areas. Yet a lot has remained to be debated.

Human Rights in Empirical Business Ethics

The contemporary discourse of human rights has emerged out of international and national law. Consequently, research on human rights has to date been largely dominated by conceptual and normative scholarship with strong legal flavour. Within the much smaller literature of empirical business ethics on human rights, the majority of work have been case studies focused on documenting violations of human rights in bounded organizational settings with limited implications beyond the studied incidents. The dearth of empirical research on human rights in business is recently called out as one of main problems that need to be addressed (Deva, Ramasastry, Wettstein, & Santoro, 2019).

The significant contributions that empirical business ethics can make to BHR is visible in the parallels and connections of empirical work with the core concerns of normative business ethics literature on human rights. The debates between universalist and relativist camps can be informed by empirical studies of different societies to see if there really is some common denominator to culturally varied understandings of human rights. This enables researchers to discuss the already existing similarities and differences of the notion of human rights across societies and cultures rather than engaging in endless abstract arguments. Considering human rights as part of the broader morality in a society or culture, the literature of empirical business ethics has a lot to offer to the discussion of universality versus relativity of moral understandings (Melé & Sánchez-Runde, 2013).

Similarly, the discussions on the breadth of the scope of human rights responsibility of businesses can be enriched by empirical investigations of how this responsibility is perceived among business practitioners. There are studies that show the subset of human rights that most business

practitioners consider relevant are labour rights and workplace health and safety (Ruggie, 2007). There are also studies that highlight the stark difference between extractive and nonextractive sectors when it comes to interpreting and reacting to human rights abuses with business managers in the extractive sector showing a status quo bias justifying their support of repressive rulers (Vadlamannati, Janz, & Soysa, 2020). The guidance and recommendations of normative research for businesses cannot ignore these empirical findings that represent the reality on the ground.

With respect to the question of reasons, motivations, and justifications that drive businesses to take responsibility for human rights, empirical business ethics can shed light on the cultural repertoire that drives decision making. So instead of unwarranted presuppositions about what are the motivations of business practitioners (e.g. the financial bottom-line), empirical studies can identify the range of factors that are at play for any single decision by business practitioners (Shadnam, in press).

In short, while empirical business ethics research has to date remained underutilized in BHR, it can make an indispensable contribution by clarifying how business practitioners in different cultural contexts understand human rights and business responsibility, and what makes them take or avoid responsibility. It elucidates the variation, dynamics, and politics of drawing the lines between moral, immoral, and nonmoral categories in matters related to human rights in business (Shadnam, Bykov, & Prasad, 2021).

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