Human Rights and the Multinational Corporation

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Introduction

A multinational corporation (MNC) is defined simply as a company that owns property or operates in at least two countries. Today, such corporations are common and take many forms (Muchlinski, 2007). Smaller MNCs may operate in only two countries and engage primarily in cross-border trade. Others may operate across a broader regional area. Increasingly MNCs do not merely own facilities or otherwise control production in multiple locations but operate subsidiary companies abroad. This may be for the purposes of selling in new markets, such as the parent company Starbucks coffee owning a subsidiary in China with the same branding and products. Subsidiaries also allow companies to enter new sectors, with Starbucks having owned subsidiaries producing bottled water, a record label, and a bakery chain. Subsidiaries can serve a third purpose of separating assets to reduce liabilities or to minimize tax liabilities, following the possibilities for profit maximization contained within company law. Another type of MNC is the investment fund or private equity firm. These are companies that invest in or purchase other companies, either because they are a good immediate investment or because the managers believe the company has untapped potential. Blackstone, a self-described 'investment business' that combines private equity purchases with hedge fund investments, claims on its website to 'support' over 200 companies. These firms will have a constantly rotating portfolio of companies under their management and the buying and selling, merging and splitting, of companies is a core part of their business strategy.

MNCs therefore move from simple mercantilist firms engaging in cross border trade to sprawling entities so diverse that directors may not know every company under their control. From the human rights perspective, this diversity of scale and form naturally entails differing possible impacts on human rights (Kinley and Joseph, 2002). One major distinction would be the feasibility of an MNC evading local home state regulation by outsourcing or relocating abroad, something of which not every MNC would be capable. The diversity of sectors is equally important, with MNCs operating across most business lines. Mining, agriculture, and factory production each carry well known human rights risks, while MNCs that produce or control essential resources such as pharmaceuticals or housing have an innate relationship with the fulfilment of human rights.

MNCs today display at least three major relationships with human rights. First, they are deeply involved in the production of essential human rights resources, from jobs to houses to medical care; second, they are frequently criticized for their impacts upon human rights; and third they increasing talk about human rights issues, from specifics such as racial justice in the US, to generalized 'respect' for human rights following international standards (Birchall, 2019). Other entries in this encyclopaedia talk about human rights as related to business in various ways, and so this entry will focus specifically on the nature of the large MNC, what it means to consider such business behemoths to hold human rights responsibilities, and how these powerful entities understand and construct their own responsibilities.

Main Text: MNCs and Respect for Human Rights

MNCs are asked by the most relevant standards to ‘respect’ human rights. But what exactly does it mean for a multinational conglomerate, that owns numerous subsidiaries, works with even more suppliers, and touches upon almost every industry, to respect human rights? Respect can mean many things. At its most basic, respect entails non-violation, or non-intrusion in the life of another. A landowner respects her neighbour’s land by not interfering with it in any way. But respect, including in the human rights context, often suggests more. Respect can mean recognizing the humanity, the dignity, of others, recognizing that the other is also valuable. Respect can take a broader perspective of the respectful citizen, the citizen that acts respectfully towards her whole community.

Respect meaning non-violation has the advantage of allowing neat delineations to be drawn. But neither an individual nor an MNC can legitimately claim to be ‘respectful’ by merely avoiding overt intrusion upon others. The primary reason for this is because social life entails the constant interaction of individuals with one another, and of MNCs with numerous people, places, companies and governments. Non-intrusion can work to set some limits, but lives intrude and intertwine by their nature. We respect our neighbours not by limiting our intrusions and attacks upon their dignity, but by fully recognizing and valuing that dignity. A homeowner is not respecting her neighbours by always keeping just below the legal minimums of noise levels, of home disrepair, and of littering. This person would be universally understood to be a bad, disrespectful, neighbour, and that she made sure she never quite breached a law would only make her more disrespectful, a calculated disrespect designed to maximize her own self-interest to the detriment of her community while carefully avoiding sanction.

Yet when it comes to MNCs respecting human rights, this is the general approach employed. It is publicly accepted that corporations will try maximize their self-interest within legal limits, including of pollution, of labour exploitation, and of profiting from reduced access to essentials. A corporation that, over many years, manages to tow this line without serious allegation of breach is to be regarded as a particularly good corporation, a leader in the field of responsibility, despite potentially serious community impacts (Bravo et al. 2020). One reason we make this distinction is because the corporation is too large and rootless to be held to any serious community standard. Labour supply chains for example, are rooted in a kind of original sin of companies abandoning their hometown workforces to pursue cheaper labour options in the developing world. Any attempt to enforce respect for the dignity of its new workforce is always going to be a limited by this context. Because free-moving capital with its ability to select a new labour force almost at will is a fundamental norm – as unchallengeable as laws of physics, it seems – respect for this labour force must fit within that labour force also being the most profitable (Baars, 2016).

Discrete definitions are often employed to construct a non-intrusion form of respect in innately intrusive situations, of which employment is the most obvious example. Minimum standard labour rights, including the prohibition on child labour and a basic needs wage do not come close to guaranteeing or even fostering a respectful workplace, but instead set limits on how far dignity can be intruded upon. The notion of 'freely-chosen' work bears a great deal of weight in such situations, with work that is not overtly coerced considered at least minimally non-intrusive, and the most progressive programmes encouraging decent wages and hour limits as well. None attempt to ensure comprehensive respect for workers, such as managers would be obligated to maintain in industries suffering labour shortages. What it means to 'respect' another can be highly circumstantial (Birchall, 2019a).

BlackRock and Respect for Human Rights

To look closer, this entry turns to one such MNC, the investment manager BlackRock. BlackRock is one of the largest investors in the world, owns numerous companies and is heavily invested in human rights-relevant areas. It is also famous for its CEO, Larry Fink, writing an annual letter that focuses heavily on the human rights responsibilities of BlackRock and of business and investors more generally. How does BlackRock understand its human rights commitments?

In a 2021 statement on their commitment to human rights, BlackRock wrote that '[i]t is our conviction that our clients, as long-term shareholders, benefit when companies operate their businesses responsibly. Unmanaged potential or actual adverse human rights issues can not only harm the people directly affected, but also expose companies to significant legal, regulatory, operational, and reputational risks.' Rogge (2021) argues that in BlackRock's approach 'human rights risks to people are treated instrumentally insofar as such risks have potential to rebound onto investors'. Human rights are relevant because they may adversely impact investor profits. While this approach is clearly ripe for critique, it must be remembered that BlackRock exists to make their investors money and owes fiduciary duties to ensure they attempt to do this as best they can. It may be unwise to expect too much. However, BlackRock is an interesting case because the organization claims to care strongly about human rights, to be trying to do good, and explicitly argues that human rights 'issues' are bad for business. This then begs the question of what BlackRock means by human right issues, of how they understand human rights risks as risks to business.

Although BlackRock does not provide a definitive list of human rights issues that it considers relevant, it highlights poor working conditions including forced labour, community harm such as infringing on indigenous peoples' rights, discrimination, and privacy issues. Because these issues are explicitly relevant because they may cause risks to the business, such as reputational harm, strikes or jeopardizing access to resources, we can assume that BlackRock is more interested in the more egregious forms of these problems, as well as those forms around which activism is more developed. If certain forms of harm to rights will not cause such risks, BlackRock may be content to cause that harm.

BlackRock clearly follows a business case understanding of human rights responsibilities and rationality. The business case for human rights is the idea that causing human rights violations is bad for business and respecting rights can be a boon for business, for reasons of consumer reputation, industrial relations, and community satisfaction. This is often juxtaposed to law as its antithesis, with law relying on coercive force where the business case relies on management incentives. However, at least in terms of the issues, of which human rights, and of which problems, are considered important, there is a strong degree of overlap between the two. Simply, the issues that are frequently prohibited in law are also the issues that business case instrumentalism is most likely to focus upon where they are not legally prohibited. Lawmakers operate within a similar normative paradigm to business managers, both groups seek to act over a similar group of issues, and to ignore the same groups of issues.

This is seen in one major recent policy shift by BlackRock, their investment in housing, particularly in the US and with an eye towards evictions and mortgage arrears following the end of COVID-related policies such as the moratorium on evictions. Following in the highly profitable footprints of investment firm Blackstone (Birchall, 2021), BlackRock has started buying up homes to be used as rental properties, from houses to apartment blocks, and attempting to purchase significant chucks of neighbourhoods. This business decision will limit access to affordable housing and will mean that many individuals who would have been homeowners building nest eggs will instead become lifelong renters without an asset to fall back on. It should be obvious to a human rights-focused company that this choice is not beneficial to access to housing. They are not building housing, they are merely using their enormous reserve funds to buy (over market value) as many homes as possible and to control those markets.

Such decisions reveal as much about human rights ideology as they do about BlackRock. BlackRock takes seriously those human rights issues that are popularly considered to be major problems. BlackRock considers that it can profit from reducing access to affordable housing, despite this being a core element of the human right to housing, because it does not generate a serious level of human rights condemnation. It is a more vexatious problem than some. Forced labour, for example, is a directly coercive act, while BlackRock's ownership of a large segment of a housing market does not directly coerce any individual. But it does create a structure in which home ownership is much more difficult, in which renting becomes much more common, and therefore in which lower income people are forced to devote a large portion of their incomes to funding BlackRock's profits rather than building their own assets. Such a structure generates poverty and economic insecurity and is one important causal factor in well-known trends towards rising in-work poverty, child poverty, and, in the UK, use of food banks. We cannot blame BlackRock or other housing investors for these trends in the same way that we can establish causal responsibility for forced labour, but equally it does not take an enormous leap of faith to see that such investment choices are one important element of a deleterious social matrix, in which investor profit takes precedence over social need.

The Contemporary MNC and Human Rights

BlackRock is emblematic of the contemporary MNC. It is vast, with tendrils in numerous sectors. Its investors reap huge profits and its directors are billionaires. It talks human rights, responsibility, and positive purpose with gusto. But BlackRock's core mission is to make profit. Human rights concerns are only relevant insofar as they threaten this profit. This allows for an enormous scope of activity that appears to threaten access to housing, or to exploit workers, or exacerbate climate change, but which, due to the matrix of norms that constitute human rights priorities, can be done without threatening profit. Nonetheless, BlackRock does respect human rights relatively well according to the contextual norms of what it means for an MNC to respect human rights.

BlackRock's engagement with human rights reveals the social structure of contemporary human rights concerns and their relationship with business self-interest (Chadwick, 2021). When BlackRock states that respecting human rights is good for business, it refers only to a specific set of well-known human rights abuses. As MNCs grow and take control of more and more elements of life, particularly supplying essential resources, it may become necessary to take a more comprehensive view of human rights responsibilities and social justice as connected to business.

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