

Human Rights and Corporations

Edited by David Kinley

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Human Rights and Corporations is a collection of previously published essays focusing on 'the social implications of commercial enterprise' (p xii). It is published as part of a series — *The International Library of Essays on Rights* — with each separate volume representing the editor's selection of the most seminal recent essays on rights in a particular field. Thirty or even 20 years ago, an editor might have struggled to come up with a list of essays on human rights and corporations as interesting as these, but while this remains a relatively 'youthful genre' (p xii) of (predominantly) legal writing, there is now a multiplicity of articles to choose from. The articles chosen encapsulate the social, political and legal developments in the field of business and human rights in recent decades and, while not new, form a handy collection for any enthusiast in this field to have at their fingertips.

The editor, David Kinley, notes at the outset that he has deliberately chosen more recent articles in this field, with half of them published only in the last five years. In this rapidly changing field of study, this provides the reader with a fairly up-to-date assessment of the status quo of how corporations have become entangled in the rather complex human rights web. In the ensuing period since the first of these articles was published (in 1999), the debate concerning the human rights responsibilities of corporations has sharply increased in volume — both in general media discourse and in academic circles. Thirty years ago, discussions focused on the relevance (if any) of human rights for corporations. Now such relevance and responsibility are largely assumed and the appointment in 2005 of the first ever United Nations Special Representative on business and human rights has solidified the application of human rights to business. However, the level of responsibility and, more importantly, accountability of corporations for human rights remains a matter of serious debate. The continuing ambiguity of how corporations might be made accountable, or what form such accountability might take, and the diversity of approaches which could be applied to tagging corporations with human rights responsibilities are well reflected in this collection of essays.

There are 14 articles in this book loosely divided into three separate but overlapping sections. The first section, containing six articles, focuses on framing the relationship between human rights and corporations. The second section includes three articles devoted to expounding the conceptual boundaries of this relationship. The final section of the book contains five articles describing the practice, problems and potential of the human rights and corporate relationship.

The first article, by Peter Muchlinski (previously published in *International Affairs*, 2001), poses the pertinent questions of 'whether there is indeed a major problem of human rights abuses by corporations on the international stage and, if so, how, legally, is it to be addressed' (p xiii). Fortunately (for the remaining articles), Muchlinski answers his initial query in the affirmative and spends the majority of his time articulating why human rights responsibilities do extend to corporations. He briefly canvasses the view that corporate conduct might be 'regulated' by both soft and hard law options to improve adherence to human rights, but the fact that this article is dominated by 'why' rather than 'how' human rights are relevant to corporations marks it as one of the earlier offerings in the book. This article is a timely reminder of how far the debate has advanced in just the last decade, as the 'why' is now largely assumed and the debate focuses on 'how' such responsibilities might be more firmly attached to business.

Beth Stephens's offering (previously published in the *Berkeley Journal of International Law*, 2002) remains, along with Stephen Ratner's piece (previously published in the *Yale Law Journal*, 2001), among the most influential writing in this field. Stephens provides a pertinent reminder of the historical developments in connecting human rights and business by taking as her starting point the involvement of corporations in the Holocaust, and questioning where human rights fit in the amoral pursuit of profits. Stephens examines the limitations of current mechanisms to hold corporations accountable for human rights abuses and argues that 'voluntary codes that ask business entities to refrain from committing genocide or to avoid profiting from slave labor are weak concessions to the enormous economic and political power of multinational corporations' (p 47). This debate over the effectiveness of 'soft' (such as codes of conduct) versus 'hard' (such as regulation via treaty or domestic law) law continues today, with more disagreement than convergence of academic opinion. There is no doubt a place for both in the human rights and corporate responsibility movement, but such accountability mechanisms continue to be dominated by discussions more about their limitations than their effectiveness. As Stephens notes, 'the task ahead is to find effective mechanisms to enforce those [international] norms, to ensure that the amorality of profit does not permit corporate human rights abuses to fester for another fifty years' (p 66).

Ratner's article (contained in the second part of the book, focusing on conceptual perspectives) is perhaps the most remarkable contribution to this collection, in part because of its influential effect on many subsequent essays produced in this genre. Ratner adopts a doctrinal approach to the subject matter and firmly grounds his theory supporting the attribution of human rights responsibilities to corporations in international law. His article remains compulsive reading for newcomers and oldcomers alike in this field and the development of his theory is reflected in some of

the ongoing approaches taken by businesses in delineating their own responsibility for human rights. Ratner foresees that self-regulation and NGO scrutiny might prove insufficient in improving corporate adherence to human rights, and suggests that national governments may need to develop 'a regulatory scheme through statutes, regulations and policy directives ... [that] could monitor corporate human rights activity in the same way they monitor corporate environmental, anticompetitive, securities, or bribery-related activity' (p 321). Such approaches, while legally possible, remain a matter of ongoing political debate.

The article by John Conley and Cynthia Williams (previously published in the *Journal of Corporation Law*, 2005), featured in the third section of the book, accurately encapsulates many of the practical problems of the broader corporate social responsibility movement — part of which seeks to integrate human rights responsibilities within the corporate sphere. Conley and Williams's article, based on their empirical research, asks the basic question of how far the corporate social responsibility movement has come, and whether corporate willingness to more firmly participate in human rights dialogue and practices is ultimately more about the development of improved corporate communication skills than a willingness to engage and embed human rights within the corporate realm. Such a question remains intensely significant, given the preponderance of corporations which appear to remain deaf to the relevance of human rights to their businesses. With over 75,000 multinational corporations estimated to be in existence and only 4700 of these even willing to sign up to the relatively soft demands of corporate responsibility initiatives such as the United Nations Global Compact, it continues to be pertinent to ask: Do human rights really matter to corporations? Or will they only matter when corporations have no choice but to be held accountable for the impact of their activities on human rights?

While there may be essays that one considers ought to have made the cut in this fine collection — and, no doubt, such a book, if revised in the next five years, might contain a number of new thought-provoking pieces — most of these 14 articles will stand the test of time. This collection provides the reader with not only a useful and insightful summary of where the human rights and business movement has come, but also signs of where it might be headed — although the jury is still well and truly out on this latter issue. ●

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