
Corporate Human Rights Obligations: Moral or Political?

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A COMMENT ON Florian Wettstein (2012), “CSR and the Debate on Business and Human Rights: Bridging the Great Divide,” *Bus Ethics Q* 22(4): 739–770.

ABSTRACT

This discussion reviews Florian Wettstein’s conclusion that multinational corporations should assume greater “positive” obligations to protect against and remedy violations of human rights. It thereafter suggests an alternative to his defense that remains open to his conclusion, but sketches a moral, rather than political, grounding of those obligations.

FLORIAN WETTSTEIN’S (2012) most recent piece, “CSR and the Debate on Business and Human Rights: Bridging the Great Divide,” examines the extent to which multinational corporations (MNCs) possess positive duties to protect against, as well as remedy, violations of human rights in their operational environments. He addresses two important issues. The first of these is methodological, having to do with the conceptualization of MNCs’ human rights obligations within the corporate responsibility and human rights literatures, and the second is substantive, focusing on why MNCs have special responsibilities to take positive steps to protect and advance human rights when state institutions do not. I will examine each of these in turn, with an eye toward understanding how they are interrelated.

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Wettstein's article deserves attention because of its attempt to clarify the relationship between different subfields within business ethics. He is specifically concerned with why scholars in the field of corporate social responsibility (CSR) have paid little attention to the importance of MNCs' obligations with respect to human rights and why legal theorists, human rights advocates and other authors in the field of business and human rights (BHR) have failed to capitalize on the conceptual tools of CSR to further their aims.

It is fair to say that Wettstein's disappointment cuts in both directions; his diagnosis for the lack of conversation between the CSR and BHR movements rests with some entrenched assumptions on the part of authors within both camps. First, he maintains that those working in the area of CSR have a limited understanding of "social responsibility," at least if we look at the history of the CSR literature. Despite the normal connotations of the term "responsibility," most CSR theorizing remains stuck on the idea that corporations' social responsibilities represent voluntarily accepted norms of conduct that go beyond legal compliance and represent a company's aspirations for doing good by addressing some social or environmental problem. This understanding of social responsibility is too limited to capture the types of obligations associated with respecting human rights because human rights obligations are: (a) not usually understood as voluntary in nature; and (b) are typically seen as legal or quasi-legal obligations enforced by the state or other international organizations engaged in transnational governance. This has the effect of separating the concerns of CSR scholars from the perceived concerns of their BHR colleagues. CSR involves voluntary, beyond-compliance matters, and corporate human rights obligations involve required, legally binding matters.

Second, those working in BHR, most notably the United Nations' Special Representative, John Ruggie (2011), have put forth what Wettstein calls a "minimalist" account of what responsibilities MNCs have with respect to human rights. While MNCs have the obligation to respect human rights in their operations, i.e., to refrain from violating human rights that are within the purview of their operations, they neither have any obligations to take steps to generally protect individuals against rights violations (e.g., by engaging foreign govern-

ments in efforts to reform the legal system or by working toward industry-wide labor standards) nor to help remedy situations where rights are being violated (e.g., by financially supporting national programs to improve social and economic development). Protecting individuals against rights violations and remedying the conditions that give rise to human rights violations are, for Ruggie, obligations of the state, not of corporations.

This tripartite framework – respecting, protecting and remedying – is the “state of the art” within the BHR literature; but Wettstein maintains that, in designating MNCs’ human rights obligations as only concerned with respecting rights, Ruggie has narrowly focused the domain of corporate responsibility regarding human rights on the negative obligation to refrain from violation, rather than on the positive obligation to facilitate the conditions under which human rights might be more fully realized. This has the effect of separating discussions between BHR from CSR because of the latter’s emphasis that socially responsible business is aspirational, characteristically involving positive initiatives to address underlying social problems.

Wettstein deserves credit for drawing out a reasonable explanation as to why these two groups have not been engaged in conversation when, in fact, they share common concerns. His observation is important for CSR scholars concerned about human rights as well as BHR scholars looking to expand their exposure among those involved in CSR. Both camps, it seems, need to enrich the terms they use and imagine how they might conceptualize corporate responsibility differently.

Wettstein’s response to all of this is perhaps even more interesting, which brings me to the article’s second central contribution. His solution to this impasse between the CSR and BHR movements is to invoke recent work in “political CSR” that conceives of corporate responsibility as derived from the governance roles that MNCs have assumed in international business environments (Baur 2011; Scherer and Palazzo 2011). For Wettstein, if MNCs are not simply economic actors, but political actors with quasi-state roles tied to managing a broad range of public affairs, then it seems plausible that MNCs possess not only the obligation to respect human rights but also the

obligation to protect against, and provide remedy for, rights violations. He ends the article by exploring how the technological, geographic, financial and political “capabilities” of MNCs help demarcate the exact contours of corporate responsibility for protecting rights and remedying rights violations in particular operational contexts.

Let’s look at this solution a bit more. Wettstein maintains that positive human rights obligations on the part of corporations are not just a matter of virtue in the conduct of business, but a matter of how corporations are involved in the maintenance of justice. Thus, he writes (2012: 750):

[W]hile CSR has traditionally focused on the domain of virtue and beneficence and thus may have tended to put the emphasis predominantly on what is desirable (and thus optional) rather than imperative, human rights claims deal with the indispensable [sic] and thus with what is owed to human beings; they are, in other words, located squarely in the realm of justice.

I think this premise – that human rights are a fundamental element of justice not simply some set of constraints on virtuous conduct – is what leads Wettstein to think that a political interpretation of corporate responsibility is naturally aligned with a more expansive, positive set of human rights obligations for MNCs. Corporations have assumed various governance roles similar to that of the state due to the weak state institutions characteristic of some emergent economies. States are distinctively responsible for the administration of justice. Since human rights are a fundamental element of justice, the full range of human rights obligations, including protection and remedy, is potentially part of the domain of corporate responsibility. Ruggie’s “minimalist” account of corporations’ human rights obligations is therefore too limited. It relies on the outdated notion that corporations are private, economic actors. But in a globalized world where they are political actors, corporations begin to take on greater positive obligations tied to the administration of justice, including those associated with human rights.

Critics of the political conception of CSR will have a basic concern with this analysis. Such a view takes down a cherished, well-conceived division of responsibility between market actors and state actors. Shifting governance roles to corporations carries with it not

only the possibility that corporations will become overburdened with demands that are unrelated to their economic purpose – thereby reducing their incentives to invest in certain markets – but it seems open to doubt whether profit seeking corporations are the best agents to protect and institutionalize justice in fair, impartial and collectively beneficial ways (cf. Baumol 1991).

A systematic exploration of these problems is beyond the scope of this discussion; for now I wish to provide one comment that supports Wettstein's insights about expanded corporate responsibilities with regard to human rights without necessarily invoking the political conception of CSR.

A more attractive starting point might be one where virtue and justice are more interrelated than Wettstein suggests. Within the Kantian tradition there is a rehearsed difference between duties that agents have to respect others' moral personhood and the duties that agents have to comply with enforceable mandates of the state. The former are referred to as duties of virtue and the latter as duties of justice (Wood 1999). Duties of virtue are those duties that we have as moral beings. They define our moral excellence in our interpersonal conduct. Duties of justice, however, are more functional duties because they are what enable us, as imperfectly moral beings, to live, work and socialize together in peace. They are necessary for all of us to live freely and can be enforced by the state. Some obligations are obligations we have towards others in order to achieve higher levels of moral excellence (virtue) whereas other obligations (justice) are obligations that are necessary to create the conditions possible for us to live together cooperatively under conditions of freedom and thereby enable us to become moral beings.

But what if the state neglects or intentionally refuses to consistently enforce duties of justice? Or what if the state's administrative or judicial apparatus is weak? In these cases it may be tempting to think that individuals or corporations become agents to administer justice, as Wettstein and other advocates of political CSR would have us do; however, there is a more cautious inference that we can make about the moral obligations tied to situations when justice is imperfectly realized. Rawls (1971), for example, is one who speaks about the duty to further justice. This is a duty to contribute to the development of

just institutions (Dubbink and Liedekerke 2009). It is not a duty to replace the state's independence or to assume the tasks of the state, but it is a recognition that when the conditions for justice are imperfectly realized, then individuals have a responsibility to craft social responses to help shore up just institutions and practices. This is a decidedly moral responsibility. In Kantian terminology it is a duty of virtue to help constitute the necessary background conditions needed for individuals to become full moral beings. Virtue itself prescribes that the conditions for virtue, i.e., justice, need to be secured.

The suggestion I am making is that the capabilities corporations have to protect rights or remedy rights violations give rise to certain moral responsibilities because of the requirement to further justice. This places concern for human rights and justice in the domain of morality (virtue) without requiring that MNCs be seen as replacements to the state or otherwise assuming the responsibilities associated with so-called "political actors." This is only possible, however, if we view the domain of morality (virtue) as containing an overarching responsibility to help constitute justice, should it break down in specific environments. This alternative, at once, challenges Ruggie by questioning the assumption that corporate responsibilities are always negative, and not positive, but it does so under the heading of corporate moral responsibility, not corporate political responsibility. This thereby avoids the need to conceptualize corporations as state-like actors and the attendant controversy and skepticism that such rhetoric inevitably stirs up.

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