

Research note n° 1

From Business and Human Rights to Rights-Based Organizing **Florian Wettstein**

March 2024

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Introduction

There has been a focused and systematic discussion on the human rights responsibilities of corporations at least since the 1990s. By now, this discussion has turned into a full-fledged scholarly field with a distinct and growing scholarly community, and a scholarly association, an international academic journal dedicated to it.

However, the field has not only evolved in terms of its institutionalization, but advanced also in terms of the conceptualization and theorization of corporate human rights responsibility and particularly in shaping policy and practice on the matter. It has become one of the most important discussions in the corporate responsibility space in both the scholarly and practical domains.

The evolution and development of scholarly fields often comes with a narrowing of their focus, to enable clearer delineations from other scholarly discussions and communities. This can be observed also in the business and human rights domain. The publication of the UN Guiding Principles on Business and Human Rights (UNGPs) in particular have led to a centering of the ‘dominant’ discussion on an understanding of corporate human rights responsibility as narrowly negative, that is, as focused on the avoidance of harm, and as expressed through a process of human rights due diligence (Wettstein 2015). As such, the BHR agenda has been preoccupied with the mitigation of negative impacts on human rights, rather than with addressing the underlying root causes and the respective transformation of underlying harmful structures that lead to systematic violations of human rights through businesses in the first place.

This brief research note aims at outlining this narrowing of the BHR agenda, providing a more holistic vision of a rights-based economy, and pointing out some avenues for transformative research in this context.

From Accumulation to Violation: The Neoliberal Business Model

The logic underlying the modern market economy is to create more out of less. It is the logic of (accelerating) growth and thus of the creation and accumulation of wealth. Business corporations are the instruments with which to realize this growth and accumulation goal. They are specialized on maximizing the output with the lowest possible input. This idea of business efficiency runs on the extraction and exploitation of resources, both natural and human. Not the creation of long-term sustainable value, but recurring cycles of extraction of short-term maximum rents informs contemporary mindsets of businesses.

Such a maximization logic necessarily comes with social and environmental ruptures because maximization by definition means subordinating everything with a benefit-reducing potential to the accumulation goal. As Michael Jensen (2002) noted, shareholder value maximization only allows for one single overarching objective for corporations, while any sort of balancing multiple goals would result in a distraction from maximum profits – and by extension, from the maximization of wealth. In the same vein, Milton Friedman (1962; 1970) famously perceived the only social responsibility of business to be the maximization of profits.

Hence, human rights infringements have been a predictable and inevitable result – or, with a view on the extraction of oil, metals and minerals, and some other commodities, an actual condition – of running our economies based on these principles. Such violations range from exploitative and discriminatory arrangements of labor and employment to the contamination of soil and waterways sustaining local communities in proximity to, e.g., mining operations, all the way to the complicity of businesses in physical violence, obductions, and killings (for an overview see Wettstein 2022: 77-100).

From Violation to Mitigation: The Business and Human Rights Agenda

It is against the background of the reporting of an increasing number of such violations in the 1990s that a systematic discussion on BHR started to emerge. A number of prominent NGOs such as Amnesty International or Human Rights Watch started to investigate corporate involvement in human rights violations (Human Rights Watch 1999a; 1999b); others, such as Earthrights International, brought lawsuits against Western multinationals to the courts of their home states. This sparked the interest of International Organizations such as the UN or the OECD to introduce standards and guidance for businesses on the issue. And finally, a rapidly evolving academic discussion emerged, which, as mentioned above, has by now turned into a full-fledged scholarly field (Wettstein 2020; 2022).

Most momentous among these developments arguably have been the UNGPs (Ruggie 2011). The UNGPs were the result of the six-year mandate of the UN Special Representative on business and human rights, John Ruggie, who was appointed in 2005 and ended his mandate with their publication in 2011. The UNGPs have since become the authoritative standard on corporate human rights responsibility, providing orientation both for businesses and policy-makers.

The UNGPs, which were endorsed unanimously by the UN Human Rights Council, have fostered a broad consensus that businesses have a responsibility to respect human rights. They ought to do so by conducting human rights due diligence, a process of identifying, addressing, tracking and reporting on negative human rights impacts emanating from their operations and business relationships (Ruggie 2013).

Hence, while the UNGPs dramatically increased the prominence and influence of the business and human rights agenda, they also re-defined it in the narrow terms of non-violation and due diligence (Wettstein 2015). The logic of human rights due diligence is that of mitigation. As such, it addresses the negative impacts, that is, the results, of unsustainable business processes and operations, rather than their source, which are the extractive business mindsets and models leading to them.

In other words, the BHR agenda manifested in and through the UNGPs hardly questions the dominant neoliberal, extractive mode of business (Karp 2023). They merely aim at mitigating some of the most severe human and environmental costs emanating from it. This conventional role of business is defined by three elements in the UNGPs (Wettstein 2015): (1) The UNGPs refer to corporations narrowly as economic institutions, rather than as social or even political ones. (2) As a consequence, they define corporate human rights responsibility narrowly as a responsibility to do no harm. However, doing no harm is a general obligation that applies to everyone irrespective of their particular role in society. Hence, it is

entirely unspecific to the actual characteristics of corporations as specialized actors. (3) Thus, as a further direct consequence, the UNGPs ground such a responsibility to do no harm instrumentally; in other words, because corporations are seen as economic institutions, their responsibilities are justified by reference to their own economic interests. The bridging concept the UNGPs make use of in this regard is the ‘social license to operate’ (Ruggie 2008). The argument is that if companies misbehave, they will eventually pay the price by losing their social legitimacy and pay a reputational price in the ‘courts of public opinion’ (Ruggie 2008).

From Mitigation to Transformation: Toward A Rights-Based Business Paradigm

BHR has evolved from a broad exploration of the intersection between corporate activity and human rights to a targeted approach of mitigating negative human rights impacts in the form of human rights due diligence. While this narrowing of the debate has certainly contributed to more focused and concerted efforts to advance human rights concerns among businesses, it has also established clear limits to it at the same time. While the concern and attempt to control for and mitigate negative human rights impacts emanating from business activity is warranted, it addresses the consequences of problematic business activities, rather than the root causes of them. In other words, what is missing is a transformative perspective that addresses unsustainable business models and processes at their very core. Mitigating the symptoms of the neoliberal business paradigm while leaving the underlying logic untouched may thus even lead to its strengthening and legitimization. As such, the business and human rights perspective, which initially was meant to be a critique of the mainstream business paradigm, may turn into its opposite, that is, a foundation for its legitimization (Wettstein 2021; Karp 2023).

Therefore, this brief research note calls for adopting a more foundational perspective on business and human rights, that is, a view on business and human rights as a transformational perspective to change the current business paradigm, rather than as a mere approach to mitigate its negative impacts. Human rights, from such a perspective, would not serve as mere side-constraints to economic activity and thus as external limits to ‘business as usual’, but as both the objective and foundation of it (Wettstein 2009). Hence, business and human rights is fundamentally about the building of a rights-based economy. The following paragraphs shall briefly trace the contours of such a rights-based economy and outline a respective research agenda.

Rights-based economy: foundations

In his work ‘Development as Freedom’, Amartya Sen (1999) has outlined the contours of such a paradigm shift. Rather than focusing on proxies such as economic growth – understood in the categories of Gross Domestic Product (GDP) -, which are assumed to advance the development of societies, Sen calls for re-centering human beings in the development process. Development, as he argues, ought to focus on the expansion and qualitative enhancement of human freedom, rather than on the accumulation of monetary value. Thus, we have become preoccupied with a focus on the means, rather than the substance of human freedom and thus lost sight of what really matters in the development process. For example, while GDP growth may indeed be a condition for the enhancement of human freedom and well-

being up to a certain point, human well-being is multi-dimensional and inter-related, which is hardly captured by one aggregate measure. Furthermore, GDP growth says little about distribution and inequality, both of which can affect well-being and freedom both at a social and individual level too.

Sen defines freedom through the lens of human capabilities. That is, the development process should essentially focus on the enhancement of human capabilities as well as on creating the conditions in which such capabilities can be actualized for the sake of a free and dignified human life.

Without dwelling much on the relation between human rights and human capabilities, one can note that they both connect to the notion of freedom. While human rights commonly are seen to protect the most basic human freedoms, capabilities are its foundation (Wettstein 2009). What seems essential is that putting freedom at the center of development means both, to protect people's capabilities as well as to progressively expand them, not least by creating contexts in which people can make good use of them. Rights, in other words, ought to serve both as side-constraints to protect people from harm, as well as goals to formulate aspirations to progressively expand on the capabilities of people (Wettstein 2009). However, what it means to truly put human rights at the core of economic activity, organization and systems, is yet to be spelled out in detail. However, such foundational research has all but disappeared from the business and human rights discourse as of late and should urgently be re-integrated.

Rights-based economy: the regulatory level

Building a rights-based economy is essentially a regulatory task at its core. Ulrich (2008) conceptualizes the necessary paradigm shift in this regard as one from predominantly competition-oriented to life-serving, or what he calls 'vital' policy. That is, conventional economic policy under the neoliberal paradigm aims at preserving and facilitating competition within the market by removing obstacles and inefficiencies. Such a neoliberal mindset tends to be expansive, that is, since competition is perceived as societally beneficial per se, the general aim is to deregulate and expand, rather than restrict free markets.

Life-serving policy from a rights-based perspective would imply that the protection and realization of human rights are the core objectives of economic and social policy. Human rights due diligence legislation as we have seen it develop in a growing number of jurisdictions are a step in this direction, but they often remain isolated within a regulatory environment that still adheres to the neoliberal paradigm and thus at best limits, and at worst undermines, the proper and effective functioning of such laws. Hence, economic policies and regulations that prevent economic activities from harming the rights of people are a first and critical step within the given economic system, but in and of themselves, they won't be sufficient to kick-start a rights-based transformation of our economies. John Ruggie had called on governments to ensure policy coherence when implementing the UNGPs. At the very least, this means that other policies should not undermine the intended effects of the UNGPs and their implementation. Truly life-serving policy from a rights-based point of view, however, would imply that policies need to be redesigned to put the protection and realization of human rights at their center. In other words, we need to move from isolated BHR laws to truly embedded markets.

Rights-based economy: the organizational level

Asimilar logic as for the regulatorylevel ought to guide the creationof rights-basedorganizations. While human rights due diligence processes are a much needed first step in the direction of companies becoming more aware of and responsive about their human rights impacts, as isolated instruments, their potential remains limited and will not suffice to transform the dominant mode of doing business into a more sustainable, rights-respecting endeavor. For this to happen, such processes need to be embedded into holistic, rights-oriented business philosophies. For otherwise, the same effect as outlined above, may occur. That is, mitigating some of the more severe impacts through human rights due diligence, but without changing the actual mode of doing business, may inadvertently legitimize, rather than do away with unsustainable business models and practices.

For the sake of this brief research note, three areas of further investigation on the way toward rights-oriented organizations stand out.

Rights-oriented business models: the reflection on rights in businesses ought not to start only with the potential and actual negative impacts of given business models, but with the foundations of such models themselves. That is, the very purpose and foundational idea of a business should be oriented toward the respect and realization of human rights. Human rights, in such business models, are not mere side constraints to ‘normal’ business but serve as a goal and aspiration to provide positive value to people and society (Wettstein 2009). In other words, business starts with the reflection on where and how a company can contribute positive value to society, in particular if it operates with and within disadvantaged communities (Ulrich 2008). Human rights orientation in this regard can inspire new, innovative, and inclusive business models that address human rights in holistic and proactive ways. At the core, it is about profitable business ideas that rest on a human rights foundation, rather than merely to mitigate the unavoidable negative impacts emanating from business models that are based on the premise of profit maximization (Ulrich 2008).

Rights-oriented business cultures and mindsets: In order to work properly and make a difference on the ground, human rights due diligence processes must be embedded in broader, more holistic human rights respecting business cultures. The culture of an organization consists of often implicit norms and behaviors; it determines patterns of interaction and how things are commonly done within an organization (Schein 2010). Hence, even a most sophisticated human rights due diligence process on paper will hardly have a real impact within the organization, if its culture runs counter the underlying idea of such a process. To the contrary, without human rights due diligence being embedded in a more holistic, rights-respecting business culture and mindset, it risks turning into a purely cosmetic process with little concern about the substance and actual results deriving from it. Fasterling and Demuijnck (2013) have argued early on that human rights due diligence can only be effective as an instrument if it is embedded in a respective ethical corporate mindset and thus conducted with a genuine concern for the rights of affected individuals rather than with a purely instrumental perspective on a company’s reputation or cosmetic compliance. With all eyes currently on the design of human rights due diligence processes more narrowly, research on the broader nature and elements of a rights-respecting business culture and mindset has been sparse. Management and business ethics scholarship, which has traditionally engaged with questions concerning organizational culture, could make meaningful and much-needed contributions in this regard.

Rights-oriented business politics: It is well known that businesses exert massive influence on political processes and decision-making, both through formal and informal channels. However, such political engagement still does not figure prominently in corporations' considerations when it comes to corporate responsibility. Their political activities still tend to be curiously detached from their corporate responsibility programs. Particularly in issue areas, which are characterized by glaring governance gaps, as it is the case in the business and human rights domain, corporations' engagement toward enabling political solutions would appear critical. Some companies have indeed understood that their efforts to implement responsible business practices in their operations cannot be detached from displaying responsibility in their political engagements. They have explicitly supported and advocated for human rights due diligence laws, which aim at making mandatory, what they have committed to on a voluntary basis already (Wettstein 2021). Nevertheless, while there has been a dedicated research stream on political corporate social responsibility for quite some time now (Scherer and Palazzo 2007), the business and human rights discussion has yet to pick up on and integrate this kind of thinking in a systematic manner. A deeper, more serious engagement with corporations' political role and responsibility in the business and human rights space is still outstanding. The relatively progressive stance of some companies in supporting regulation in this regard would make it a particularly fruitful context to study such political engagements of corporations more systematically.

Conclusion

After an initial phase of broad exploration during the 1990s and early 2000s, the publication of the UNGPs has brought a considerable narrowing of the business and human rights discussion, focusing squarely on human rights due diligence as a specific approach for corporations to meet their responsibility to respect human rights.

However, reducing business and human rights to a mere management approach to corporate responsibility risks losing an integrative view on how human rights relate to economic activity more generally. Therefore, this brief research note proposed to adopt a more holistic view on a broader transformation toward rights-based organizing both at the regulatory as well as the organizational level. By outlining some possible research perspectives on these two levels of investigation, the research note hopes to stimulate a critical broadening and disciplinary widening of the business and human rights discussion, which could lead to the more fundamental transformations needed to truly set business on course of respecting human rights.

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