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Human Rights as a Critique of Instrumental CSR: Corporate Responsibility beyond the Business Case

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Instrumental CSR

- Instrumental CSR:
 - Economic justification of CSR
 - Harmonious view on CSR and profit maximization:

*"Enlightened value maximization utilizes much of the structure of stakeholder theory but accepts **maximization of the long-run value** of the firm **as the criterion for making the requisite tradeoffs** among its stakeholders, and specifies long-term value maximization or value seeking as the firm's objective."*
(Jensen 2002: 235)

- The Business Case for CSR
 - Descriptive / empirical
 - Normative
 - The normative dimension of the empirical business case:

*"It is not necessary to find a positive statistical relationship between CSR and profits to claim that some firms may benefit financially from being more responsible or suffer from being irresponsible. This is certainly true. Such a claim, however, does not satisfy CSR advocates. The reason they have placed so much importance on "proving" that CSR pays is because they want to demonstrate, first, that **behaving more responsibly is in the self-interest** of all firms, and second, that **CSR always makes business sense**."* (Vogel 2005: 34)

Instrumental CSR and its Critics

- Methodological critique (E.g. Margolis and Walsh 2001; Vogel 2005)
 - E.g. Measurement problem
 - Responsibility, morality as a measurable facts?
 - E.g. "CSP disclosures"

- Normative critique:

*"The intellectual currents propelling the 'ethics pays' argument conceal a dangerous undertow. On the surface, ethics appears to be gaining importance as a basis for reasoning and justification. At a deeper level, however, it is being undermined. For implicit in the appeal to economics as a justification for ethics is acceptance of **economics as the more authoritative rationale**...Perhaps most dangerous of all, it invites the **abandonment of ethics in the face of economic difficulty**-a time when, arguably, ethics is most needed."* (Paine 2000: 327-29)

"Instrumental CSR practices have the power to accelerate a firm's transition to Mafia status..." (Gond, Palazzo, and Basu 2009)

Human Rights and the resurgence of business case thinking...

*"...attempts to make an economic case for corporate attention to **human rights** seem perhaps a bit **more credible**..."* (Paine 2000: 324)

- Business and human rights: revival of the business case?
- Case in point: "Protect, Respect and Remedy Framework"
 - Instrumental justification for duty to respect human rights
 - Risk-management (E.g. "courts of public opinion")
 - Reputational impact, license to operate

The business case: positive and negative

- Negative business case
 - Managing risks, reducing costs (fines, penalties...)
- Positive business case
 - External drivers: reputation gains, recruiting, etc.
 - Internal drivers: increased productivity, motivation, etc.
- SRSG: a business case for the responsibility to respect human rights:
 - negative: risks/costs deriving from the violation of human rights
 - positive: gains deriving from the respect of human rights
- Argument is *conceptually* problematic

Situation 1: Negative Business Case

- Business Case "Premium" (conceptual level)
 - Presupposes blame and thus an obligation/responsibility
 - I.e. conceptually, presuppositions of business case render it redundant
- Business Case "Classic"
 - Blame deriving from social expectations: perception of responsibility
 - Commonly: business case for human rights *responsibility*
 - E.g. Ruggie: *responsibility* to respect human rights
 - I.e. moral positivism (rather than elimination of morality)
 - Business case argument is...
 - ...flawed: justification is moral, not economic/instrumental
 - ...redundant: moral obligation trumps instrumental considerations
- Business Case "Light"
 - No normative presuppositions
 - I.e. mere strategy, opportunism (Situation 3)

Situation 2: Positive Business case

- Positive business case for the responsibility to respect human rights
 - Hinges on praise (e.g. reputational gain etc.)
 - Praise belongs to realm of supererogation (acting beyond duty)
- Mismatch
 - Human rights correspond with obligations
 - Rights-based obligations belong to the realm of justice
 - Obligations of justice are owed (not merely desired)
- Implications
 - Implicit diminishment of moral imperative
 - Turning human rights into a matter of benevolence and charity

Situation 3: Business case thinking and Darwinism

- Business case logic
 - Prioritization of stakeholders with high potential impact (i.e. power)
 - Neglect of socially marginalized, non-vocal groups
 - Darwinian logic of favoring the strong over the weak
- Human rights
 - Purpose: protect the weak from arbitrariness and abuse by the strong
- Mismatch
 - Rationale underlying business case: catering to the powerful
 - Rationale underlying human rights: protecting the powerless
- I.e. the very foundation of business case thinking is in fundamental contradiction to that of human rights thinking

Summary: Situations 1-3

Arguing for a business case for human rights responsibility is conceptually flawed because it implies that...

- ...respect for human rights is a moral responsibility (Situation 1)
- ...respect for human rights is a matter of benevolence (Situation 2)
- ...respect for human rights ought to depend on the power of rights-holders (Situation 3)

Beyond the business case

- Moral component of human rights responsibility: "ought"-dimension
 - Threefold moral imperative: respect, protect, realize/remedy (Shue 1980)
 - Collective responsibility
- Practical/Pragmatic component of human rights responsibility: "can"-dimension
 - New context of human rights realization
 - Governance gaps, fragmented authority
 - Blurred boundaries between private and public spheres
 - Emergence of corporations as political actors
- Ought implies can
 - "Can" dimension depends on collective action in all three categories of duties
 - No actor's duties can be limited to one category at the outset
 - i.e. prima facie corporate responsibilities in all three categories

I.e. Corporate responsibility as collaborative responsibility (Wettstein 2012)

Collaborative responsibility

- From actors to collectivities
 - Corporations as pieces of responsibility puzzles
 - Leveraged (rather than isolated) impact as a foundation
- From shared tasks to shared (public and political) responsibility
 - Beyond ideal-typical private-public role distributions
- From involvement to leverage/impact
 - Partial detachment of moral responsibility from involvement
 - Moral relevance of omission and positive responsibility
- What collaborative responsibility is not:
 - Not "noblesse oblige"
 - Not "can implies ought"

Situation 4: Business case and positive human rights obligations

- Ruggie's "Guiding Principles"
 - Implicit partial endorsement of positive responsibilities

E.g. *"The responsibility to respect human rights requires that business enterprises: [...] Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services **by their business relationships**, even if they have **not contributed** to those impacts."* (Guiding Principles, p. 14)
- Business case for proactive engagement for human rights?
 - Assumption: proactive company engagement is praiseworthy
 - I.e. belongs to realm of supererogation
 - In tension with a conception of collaborative responsibility

Literature

- Gond, J.-P., G. Palazzo, and K. Basu. 2009. Reconsidering Instrumental Corporate Social Responsibility through the Mafia Metaphor. *Business Ethics Quarterly* 19/1: 57-86.
- Jensen, M. C. 2002. Value Maximization, Stakeholder Theory, and the Corporate Objective Function. *Business Ethics Quarterly* 12/2: 235-256.
- Margolis, J. D. and J. P. Walsh. 2001. *People and Profits? The Search for a Link between a Company's Social and Financial Performance*. Mahwah, NJ: Lawrence Earlbaum Associates.
- Paine, L. S. 2000. Does Ethics Pay? *Business Ethics Quarterly* 10/1: 319-330.
- Shue, H. 1996. *Basic Rights. Subsistence, Affluence, and U. S. Foreign Policy*. Princeton, NJ: Princeton University Press.
- Vogel, D. 2005. *The Market for Virtue. The Potential and Limits of Corporate Social Responsibility*. Washington D. C.: Brookings Institution Press.