

TRACK 12 RESPONSES

PROFITABLE REFLECTIONS ON PROFIT

Many of you want to persuade corporations that our human rights ideas are part of their capitalist world.

Richard Buck emphasises the importance of rethinking what profit means. He says we should emphasise that 'the responsibility of corporate officers and directors to the long term benefit of the firm and its shareholders should be the ethical norm in the business community.' Richard wants a 'culture of corporate governance that requires a long-term view of responsibility, including long-term corporate survival' because he believes that from this 'human rights concerns should follow.'

Lee is not dissimilar: We are never going to win over the business world with idealism, we need to engage with them on their terms: profitability. Respect for human rights needs to make commercial sense. '

And, late on, Paul Bernal is similarly optimistic: we need to work towards 'compliance (and even support) for human rights, something that is ultimately beneficial for the companies involved, and hence something that companies actively go for in a positive way.'

Well, up to a point. Worth doing for sure.

But I think we downplay the conflict between the market drive for (narrowly-defined) profit and human rights at our peril – the market is not 'self-corrective' to this extent.

We can certainly seek to affect how people think in business, especially the City, tackling what Lee describes as 'their lack of exposure and understanding'. This is inseparable from building a fairer society; I don't think it can be done in isolation: its part of the social democratic project that this writing exercise explicitly identifies itself with: see [track one](#)

GETTING TANGIBLE

So what else, more immediate in nature, can be done?

We can start by staying a bit soft and remembering what Alan D P Brady reminds us of, that a corporate entity is not inevitably (or even invariably) an 'atavistic sociopath.' It can follow a morality which is not solely rooted in the coercion of law.

So human rights promoters, get out there find the people who make up the corporate mix, and make a difference to the way they think and act!

True as Zoe Fiander says the company has no conscience – but those whose actions give it life do, and they are the ones that Alan has in his sights. (Of course Alan is also right when he warns that '[I]legal protection for those to take a pro-human rights stance in opposition to the corporate culture is also essential here'- more on this in a moment).

Holly Bontoft comes in with various suggestions from a civil society perspective to force change, and Craig Valters adds to these (advocacy campaigns and then later some really

good examples of what organisations like Global Witness can do to make life difficult for the unethical by ‘naming and shaming’).

There is also the spectre of direct action for these companies to take into account.

And the right to freedom of association, unions. Carol Coulter reminds us of their vast importance – recalling my [Up with the unions track](#) I couldn’t agree more. And Carol also implicitly warns against patronising the victims of corporate human rights abuses: it is ‘social movements involving those whose rights are at stake’ that are ‘the best guarantor of human rights’. Yes – but absolutely not on their own.

I agree with Holly’s observations about the interest of the media and the general public in seeing that companies fulfil their ethical obligations is high even if these ethical requirements are not grounded in law. We can certainly work to increase the costs of exploitation (still ‘profitable so long as you manage any reputational damage’ as Lee neatly puts it).

All of this is outside law, a multi-pronged activist and ethical engagement which plans for the worst but devotedly hopes for the best *and knows it is possible*.

AND LAW?

In the UK there is Labour’s legacy of statutory engagement to build on, detailed by Lee and perhaps slight – but something to go on. Yes Craig Valters is right about corporate influence on parliament, both directly and via the media (epitomised in Craig’s post about Rupert Murdoch and from a world-wide perspective by the shocking Wikileaks story about Shell in Nigeria). Yes tackling this is hard – but in a decently functioning country not impossible.

One of parliament’s jobs is to legislate as a way of influencing how we think, and as I’ve said over the years Labour did this a bit in relation to business. I wrote a perhaps over-optimistic few words on the excellent [Open Democracy](#) web site about the potential of Labour in the coming year, but maybe this is a space that Ed Miliband and his team can be persuaded to think hard about, ‘changing the mentality of the decision makers’ (Lee) by statutory carrots – and penal sticks. (Paul develops a similar line in his second post.)

Lee goes in to a great deal of well-informed detail on the kinds of initiatives that might be developed, well worth studying closely. I have sent this track and its comments to Professor Ruggie and his team so hopefully these threads will be taken to be contributions to his discussion as well.

WHAT ABOUT RUGGIE?

Lee’s last post is *almost* cynical about the response that the big companies will have to Ruggie.

I am less sceptical.

Think about Germany and the EU: all those social costs that Germany incurred and then determinedly insisted the others should share: Hey Presto, a degree of social solidarity in an otherwise markedly market system. If there is a critical mass of big companies that get engaged, it will be in their interests to spread the sense of commitment across their whole

business community so that their competitors find themselves similarly committed and the playing field is thereby levelled. Ruggie needs to get big players in key industries on board. I think a number are – so this may be a way of causing a better reception to Ruggie than Lee anticipates.

My experience with business?

As a barrister I have been working with businesses and big law firms on and off for over ten years now. Usually the issues are international as well as domestic. My most recent project is one that I'd like very much to write about when it is complete. I have found an extraordinary seriousness of purpose allied to a commitment to do the right thing in human rights which – when combined with sharp intelligence – made for an immensely pleasurable association – and one which has been very productive. The clients have been receptive not only to domestic law but to international law and also the whole soft-law world of Ruggie et al.

HAVE WE FORGOTTEN SOMETHING?

And of course – there is tax. What better way to display a commitment to human rights than to pay some!

As Ken Livingstone has said on [Any Questions](#) last week, recalling when he was Mayor, the trick is to come down hard on profit but not so hard that the profit-makers up sticks and leave. As Holly says there is 'the risk of driving large businesses abroad.'

How can this be done?

Craig's raises the Robin Hood tax: well my first response is change the name! Paul gives us a quick pep-talk about the need to think through the consequences of moral actions (like this tax) with extreme care or we will end up worse than we are now.

How about taxing income?

There is an important point about paying tax being a form of corporate social responsibility. After all, lots of supposedly ethical companies actually avoid tax by basing themselves elsewhere than in the country where they mainly work. So even paying tax is a start.

What about higher taxes? Well we are back with the social democracy of [track one](#), a different vision of society, one in which we all are under an obligation to pay more, for the greater good.

Not so much 'supping with Mammon' as taking a share of the food to distribute outside the dining room, and using the power of the state to do so – dictating, not requesting.

Maybe Craig is right that a stronger approach to taxation would help change the culture, assist in the framing of responses to great wealth in a more critical manner. But it's quite a risk for any political leader to take right now. As I say I am hopeful about Labour but it seems obvious that the pathway to higher taxes needs to be treaded very carefully – pending the revolution in attitudes that even if it comes will seep in and not happen overnight.

Lee's comments about engaging with the corporate side in a stronger tax-based way strike me as being informed by a real understanding of the need to maintain the difficult Livingstone balancing exercise. But clearly he'd risk being much *tougher* than Ruggie is shaping up to be.

THE CORPORATE STATE?

In pushing ahead on these various fronts we need to be careful not to overreach.

Alex reminds us we need to think hard about the respective role of companies and states – the former cannot morph into the latter ... or can they?

If not, is the answer to turn NGOs into quasi-states, administering vast sums on behalf of the companies but without accountability in the states within which they work. Hardly the right, long term answer. As is often the case we end up with the vital importance of having states that respect law and human dignity – and which are run on the representative principle as well. Bypassing states does nothing to address this issue.

I agree with Craig that 'in order for such countries to develop effectively, they will need adequate control of their own resources – something which by and large would not be in the economic interest of powerful states'.

As long as we stick with this idea of nation-states, we can't avoid nation-building.

GRAMSCI GETS A LOOK IN

I was delighted to see Ivan Manokha come in with a more nuanced perspective on his own work than I had provided. He is certainly not against corporate engagement – his post makes this clear – but he takes what no doubt he would call a realistic line. And who can argue with his assertion that 'capital is now hegemonic in a Gramscian sense, and this hegemony is very strong not only because it has this moral aspect and because our contestation is channelled in ways that are compatible with its continuous supremacy, but also because its agents are difficult to identify and locate geographically.'

Or as Favio Farinella puts it 'The human rights paradigm runs the risk that corporations, instead of adopting a real human rights policy, prefer to sketch a human rights masquerade to show to the public opinion while covering their exclusively profit-oriented policies.'

Reading Ivan I was struck by the fact that my whole approach does not want to destroy capitalism but rather seeks to control it, to make it one part of society's play for a just society. I am not sure but Ivan might regard it as beyond redemption.

If you take that view, though, human rights are bound to be just an add-on, a useful spoiler to capitalist critics but little more. I am with Richard that 'While we are unlikely to replace capitalist hegemony with something else in the near future, we can work to change attitudes within the hegemonic culture.' With him I think 'we are not trying to destroy global capitalism, but to change its culture.'

SOME INTERESTING LOOSE-ENDS.....

Insisting that corporations only work in 'democratic' societies sounds great (Favio) but begs all these questions about what constitutes democracy – I don't think such a framework would be easily managed, while being quite easy to abuse...

Favio also mentions the US Alien Torts Act. The most recent case shows that this legislation might have a less long reach than had been supposed so far as corporations are concerned: [Kiobel v Royal Dutch Petroleum](#)

.... AND A LAST THOUGHT

Let's go back to one of my heroes [Antonio Gramsci](#). Or rather what Richard thought Gramsci might have said:

'the small sparks we create will not coalesce into a forest fire unless we are in sync with the flow of history.'

Or to put it slightly more crudely (Richard again)

'If acceptance of human rights were spread as widely and as quickly as Coca Cola or McDonalds, what a great world it would be.'