

Business Ethics and Human Rights

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By the end of the 1980s, moral pressure and prudent strategy had wrought a change in the public relations of business. "Greed is good", the cynically self-interested slogan of Ivan Boesky and Gordon Gekko, had given way to the more edifying maxim that "Good ethics is good business". This proposition was then given a political spin from Chris Patten,² newly arrived Governor of Hong Kong. He declared that human rights are good for business.

If linking economic success to morality is tricky, tying it to democracy approaches necromancy. While we should like the just to prosper and the vicious to fail, life is not like that. Indeed, it is an old argument of British moralists that public benefits accrue from private vices. In the *Fable of the Bees*, Bernard Mandeville (1670-1733)³ created a sensation by seeming to attack the distinction between virtue and vice. He suggested that self-interest actually produced public economic benefits. This line of reasoning persists amongst those who make ethics subservient to profits; who believe that human rights threaten productivity; in short, those who are insensitive to the irony of another slogan, this time from Brecht's *Threepenny Opera* — "First grub, then ethics!"

Brechtian irony and British optimism notwithstanding, Patten's case is worth restatement, if only as an antidote to the many who, in the name of market realism and *Realpolitik*, claim that the status quo is the product of political or economic necessity about which it is futile to moralise.

Patten (*op cit*) takes to task the representatives of Asian governments who met in Bangkok prior to the 1993 Vienna conference on human rights. In a joint declaration they claimed that:

While human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the

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- 1 School of Social Work, University of New South Wales. My thanks are due to Stephen Cohen who read this essay in draft and made many helpful comments upon it.
 - 2 "Synergy of Robust Rights and Robust Development", *The Sydney Morning Herald*, 24 November 1993, p 15.
 - 3 Mandeville B *The Fable of the Bees* (Penguin Books, Harmondsworth, 1970).

significance of national and regional peculiarities and various historical, cultural and religious backgrounds.

Patten reads this equivocal endorsement of human rights as a camouflaged attack on their universality. Specifically, he believes that the rhetoric hides a belief that human rights hamper economic development: they are bad for business.

Taking the case of Hong Kong, he claims that its prosperity cannot be attributed to economic factors alone. Other places are rampantly capitalist too, but what sets Hong Kong apart is the rule of law and as part of this, "a proper regard for human rights". This he takes to be "living proof" that human rights are as relevant to Asia as they are to the West. They are not some colonial relic or a new imperialism. If the critics had had their way, Hong Kong should have reached a certain undefined level of affluence before starting to take human rights seriously. Otherwise rights might have got in the way of economic progress much as the Bangkok delegates implied.

In contrast, Patten endorses the indivisibility and interdependency of human rights, echoing the International Covenant on Economic Social and Cultural Rights (ICESCR) reaffirmed most recently at the Vienna World Conference on Human Rights in 1993, and the UN World Summit on Social Development held in Copenhagen in 1995. The most obvious reason for denial of human rights is the maintenance of political power, but oppressive regimes use economic arguments about development to justify their failure to rectify or to observe instruments protecting rights, much to Patten's chagrin:

Freedom from want must take precedence, so it is said, over want for freedom. The idea that human rights holds up prosperity is preposterous. Human rights have never emptied stomachs. Human rights don't hamper growth. They didn't in Germany after the war. Nor in Japan. Nor here in Hong Kong. Indeed, one of the reasons all of these economies have been so successful is precisely because they had — or developed — a solid legal framework and because they were able to build on a healthy respect for human rights. The most successful economies haven't put human rights on hold while they've moved forward — they've held onto them hard.

Patten's polemical address is a welcome change from the weasel words of conditional supporters of human rights, even though there is no more evidence for his views than for the notion that ethical business people prosper. Moreover, there are other problems with his speech, such as the implication that human rights are cost free. Human rights which mean anything in practice are not without costs. Rights which rely on non-interference and governmental forbearance (often called negative rights), seem to be what Patten had in mind. The protection of negative

rights is not free, but is less costly than positive rights which entail the allocation or redistribution of resources. Acknowledging such costs up front, even though this might seem to subject rights to affordability, is important if the role of business in human rights protection is to be serious. I shall say something more of this in connection with South Africa below.

Patten is on firmer ground in demanding evidence to support the view that human rights retard the material development of peoples. This point leaves unanswered the question of whether material prosperity should be pursued at the expense of human rights, and that question is one which the Bangkok conference probably had on its mind. It is a question that is much on the minds of business people in the West as well: it would be wrong to suggest that Australia has problems of business ethics and less developed countries, such as China, have problems of human rights. Economic justifications for ignoring human rights problems in the conduct of business are as familiar in Australia as anywhere around the globe. The labour conditions of outworkers in the clothing industry in this country are as much a human rights matter as those in China or India. Confronted with the need to rectify abuses in the outworker system in the garment industry, the president of the Council of Textile and Fashion Industries of Australia, Mr Tim Todhunter, remarked,

I don't know anyone in the industry who has the capacity to absorb significant increases in costs. Some garments will go back into factory situations. Some garments will still be made at home but with award rates (paid) ... Some garments will go offshore and jobs will be lost.⁴

In April 1996, Mr Don Mercer, chief executive of the ANZ Banking Group, addressed the Australian-British Chamber of Commerce on a number of topics, including the issue of human rights and trade. Mr Mercer found recent moves to link environmental issues, labour standards and human rights to international trade "disturbing".⁵ Indeed, even official responses can be similar: in the same month, Minister John Moore abolished the Outworker Project aimed at identifying exploitative employers of outworkers in order to save \$400,000. While it is easy to be glib about government docility, this does seem to be a genuine failure on the part

4 Stott D and Greenwood H "Shoppers 'Must Wear' Outworker Reforms", *Sydney Morning Herald*, 15 April, 1996, p 6. It is worth noting that in the same article, Senator Sid Spindler reported a visit to a Brookvale manufacturer who paid up to 40 per cent above award rates and was still profitable.

5 Kirby J "ANZ Rules Out Merger Changes", *The Australian*, 4 April 1996, p 27.

of the Australian Government in an area where good example is part of setting the agenda for reform in other countries in our region.⁶

Similar attitudes to human rights are found internationally. "People who demonstrate against China on human rights are wasting their time," young German businessman Lars Windhorst told *Time*. "It is more effective to exert influence in China in small groups, not in public."⁷ However well intentioned and sensitive such attitudes might appear, making human rights unmentionable in public colludes in hiding the problem and offers no support for those struggling to entrench rights into their own political institutions. One suspects that if other aspects of business could benefit from a timely demonstration or public comment, there would be no comparable shyness. Business people have been too ready to treat questions of human rights in host countries as internal matters which have nothing to do with them even when their operations and investments are enmeshed with rights issues. Business ethicists also have doubts about the role of international business in dealing with human rights questions. In an influential work, Thomas Donaldson has argued that multinational corporations ought not to deprive workers in host countries of their rights and should even assist in protecting some rights — minimal education and subsistence — but that they have no duty to provide direct aid to those whose rights have been abridged.⁸ The reason is that such direct aid "would be unfair ... The profit-making corporation ... is designed to achieve an economic mission and as a moral actor possesses an exceedingly narrow personality".⁹ It is not within the moral capacity of a corporation to supply deficiencies in human rights such as minimal education and subsistence, even if it is notionally within its resource capacity. The application of such reasoning to concrete cases is difficult.

What, for example, is one to make of Shell's appalling environmental record in Nigeria, its disastrous effect on the Ogoni people, and its association with a government which, in the face of international outcry, executed the moderate Ogoni dissident, Ken Sari Wewa? It is worth quoting journalist Geraldine Brooks of the *Wall*

6 ABC news report for 5 April. The glibness can be in the form of simple blame attribution. For example, although Country Road has asked its suppliers not to use outworkers, this request is difficult to enforce. In April 1996, the Senate's inquiry into outworkers in the garment industry was told that some outworkers could receive as little as \$1 for work on a garment retailing for \$500; Stott and Greenwood, *op cit*.

7 Geary J "The Little Big Man", *Time*, 5 February 1996, p 41.

8 Donaldson T *The Ethics of International Business*, (Oxford University Press, New York, 1989), ch 5.

9 *Ibid*, p 84.

Street Journal at length on this question. Brooks was arrested by the Nigerian Security Service for delving too deeply into the fate of the Ogoni, amongst whom she found conditions far worse than Sari Wewa described:

I suppose that 10 years of working on a conservative pro-business paper had taught me that self-interest, if nothing else, usually prompts corporations to behave with a measure of decency. Oil companies, dogged by poor records in developing nations, have tried in recent years to better their image.

But three days in Nigeria's Ogoniland had quickly revealed a picture much grimmer than anything Sari Wewa had described. Since Shell struck oil there in 1958, an estimated \$US 30 billion ... worth had been extracted and sold. Yet the poverty of the 500,000 Ogoni remained desperate, even by the harsh yardstick of the poor world.

As subsistence farmers dug for yams with sticks, their naked children drank from streams polluted by the toxic chemicals of neglected oil spills. Oil pipelines snaked hard up against the farmers' mud brick huts, even though current industry practice is to site them far from human habitation. I spoke to a woman burned in one of the inevitable oil fires that had resulted from this perilous practice. Still in pain almost three months later, she lay on the earthen floor of a traditional healer's hut, her burns wrapped in poultices of leaves. When I asked a Shell spokesman about her, he said the company was "hazy" on the details of the accident, and couldn't investigate because of tensions in the area.¹⁰

Clearly the delegates at the Bangkok conference — whatever their shortcomings — are not uniquely deserving of criticism. Indeed, in the West, there has been something of a loss of confidence in the tools of criticism — in universal values and the very notion of rationality. The vogue for post-modernism is a *danse macabre* on the corpses of the Enlightenment and modernity, with their beliefs in rational, universal and absolute values. The belated acknowledgment of local knowledge and regional values has made it more difficult to appeal to generalised schemes of ethics, which have come to be regarded by many in the West as failures.¹¹

10 Brooks G "They Hang Writers Don't They?" *The Weekend Australian*, 30-31 December, 1995, Features, p 5.

11 MacIntyre A *After Virtue*, (University of Notre Dame Press Notre Dame, 1981) is probably the best known critique of Enlightenment ethics. Rorty R *Contingency, Irony, and Solidarity*, (Cambridge University Press, Cambridge, 1989) offers an alternative to "unifying theories" in a "postmetaphysical culture", as does Baumann Z *Postmodern Ethics* (Blackwell, Oxford, 1993) and *Life in Fragments: Essays in Post-Modern Moralities*, (Blackwell, Oxford, 1995).

While local values have always been the attachment points of communities to general ethical principles, the notion that one should adhere either to one or to the other presents a false dichotomy. It is important to acknowledge that lives of virtue — lives which reflect answers to the question, “what kind of person do I want to be” — are lived in social contexts where ethical norms may well not bear any resemblance to the abstract principles familiar in the laws, charters and codes through which we characteristically express our moral concerns.¹² But this acknowledgment is quite another thing from giving up the rational pursuit of ethical goals.

At the very time that the UN and other international agencies are establishing international norms about labour, children’s welfare and international war crimes, post-modernist scepticism is abroad in ethics. If the post-modernists are right, we might as well give up on the Universal Declaration of Human Rights, a modernist document born of Enlightenment ideals if ever there was one. Respect for local knowledge, customs and traditions should not be opposed to an appeal to global values and principles¹³. The distinction between the two is actually quite old and was expressed by Hegel in terms of the purely formal requirements of ethics (*die Moralität*) which could yield no guiding content for conduct, and the norms of actual ethical life (*Sittlichkeit*). Both are needed: *Sittlichkeit* to elicit a response which goes beyond the “isms” which substitute abstract categories for human relations, and anchors conduct firmly to human contexts; and the general principles of *die Moralität* to criticise traditions of received morality and aid in the discrimination of what is central to a moral tradition from what is peripheral, even if sanctioned by time and usage. The global perspective can assist understanding but stultify action. Localising problems enables people to deal more confidently and more effectively with them, but the reasoning required to resolve them may still be related to the general principles of ethics. This combination is the very one that modern business needs to embrace in order to be ethically responsive.

12 This is widely recognised, but is difficult to package as neatly as many writers would wish; see, for example, Wines W A and Napier N K “Toward an Understanding of Cross-Cultural Ethics: A Tentative Mode” *Journal of Business Ethics* (1992) 11 pp 831-841.

13 Many critics of generalised theories of ethics would reject this characterisation of the problem. Rorty, for example, would hold that there is no foundation for a universal ethics: we do better to find a kind of existentialist meaning — an ironical attitude — to replace our metaphysical myths, but whatever we decide, there is no possibility of relying on received moral philosophy, even in alliance with localised norms.

14 Commissioner Ryland M “ALRC Cross Border Civil Remedies Inquiry”, unpublished paper, Australian Law Reform Commission, 15 January, 1996.

Difference and commonality

Too much can be made of difference, especially by cultural relativists. The Australian Law Reform Commission is currently investigating Cross Border Civil Remedies with respect to business activities in the Asia-Pacific region. According to one of the Commissioners, "this inquiry is driven by the recognition that cultural factors are of reducing concern in some areas ... Cultural factors are part of the environment of reform. They cannot be treated as barriers to be overcome."¹⁴ In the West, difference has become a basic condition of identity and, linked with choice and consent, an important aspect of Western conceptions of freedom. Difference and diversity are also aspects of human rights, especially as they relate to culture, religion and ethnicity.

So in what sense, if any, can human rights understood as universal ethical requirements be said to exist? Recently there has been renewed work on questions such as this by philosophers of quite different schools.¹⁵ All find some universal values or criteria of moral reasoning which transcend cultural differences or are shared across them. Alan Gewirth argues that no system of positive morality is possible without the conditions of freedom and well being for agents. Similarly, Sissela Bok, nominates the Golden Rule, justice and fairness as common values.

A more extensive and complicated theory from John Finnis identifies as fundamental goods (ie. goods found across all societies in diverse forms) life, knowledge, play, friendship, freedom and its responsible use, aesthetic experience and religion.¹⁶ While cultures might express these goods differently and people may participate in them in a variety of ways, they can be identified as basically human, not culturally and temporally dependent. That is, these goods are not merely abstract categories — although they are these as well — but the anchor points of identity in a sea of differences. The arbitrary frustration of the pursuit of these goods by government or business is unjust because there is a *prima facie* right to their enjoyment. This is because any life that is minimally human, let alone flourishing, is dependent upon

15 Some of the best known works are Finnis J *Natural Law and Natural Rights*, (Clarendon Press, Oxford, 1980), Dworkin R *Taking Rights Seriously* (Duckworth, London, 1978), Gewirth, *A Reason and Morality* (University of Chicago Press, Chicago, 1981), Kekes J *The Morality of Pluralism* (Princeton University Press, Princeton, 1993) and Brown A *Modern Political Philosophy* (Penguin Books, Harmondsworth, 1986).

16 Finnis J *op cit*. Others philosophers have attempted similar lists of goods including items such as work. See Brown A *Modern Political Philosophy*, (Penguin Books, Harmondsworth, 1986) ch 6.

them. This is recognised not only by those who, like Finnis, defend certain rights as absolute and primary, but also by moral pluralists like John Kekes.¹⁷

What such theories of basic values provide is a foundation for human rights which is universal, not because there is something metaphysically peculiar about human rights, but because they are unconditional and incommensurable. It would follow from them that it was never right or justifiable to impose slavery on another for economic gain; that the treatment of women and children should always recognise their moral equality with men, and that their exploitation is wrong; that governments should not only act to protect rights, but require social justice to form part of the policy process. All in all, human dignity is incommensurable with other goods on these accounts of human values and therefore cannot directly be traded off for benefits such as economic progress, productivity or the like.

Not all goods are commensurable. Those goods protected by universal rights fall into this category: they are not tradeable. Business, of course, is in the business of trading goods. The problem of rights violations by business emerges when business treats incommensurable goods, such as fundamental moral or human rights, as tradeable for reasons such as self-protection, profits or political influence. While some philosophers¹⁸ would dispute that artificial persons, such as business corporations can be morally responsible let alone responsible for breaches of rights if they are pursuing the objectives for which they were created, it is basic to any understanding of the structural conditions which foster or impede justice to be clear about the human goods an organisation is prepared to secure or sacrifice in the pursuit of its objectives.

The test of business probity is not only observance of procedure in the matter of basic rights (such as the law), but its respect for human goods more generally. In the words of George Brenkert, "morally significant human rights (cannot be obtained) by appealing to utterly minimal duties".¹⁹ Some conception of the goods necessary to human flourishing is also required, and no society or government is entitled to regard them as commensurable and to trade them for more general benefits, as some

17 Kekes J "On There Being Some Limits to Morality", (1992) 9 *Social Philosophy and Policy*, pp 63-80; *The Morality of Pluralism*, (Princeton University Press, Princeton, 1993); "Pluralism and the Value of Life", (1994) 11, *Social Philosophy and Policy*, pp 44-60.

18 Such as Ladd J "Morality and the Ideal of Rationality in Formal Organisations" (1970) 54, *Monist*, pp 488-516.

19 Brenkert G C "Can We Afford International Human Rights?"(1992) 11, *Journal of Business Ethics*, p 517.

forms of utilitarianism would allow. It took decades of argument and hard campaigning to get rid of slavery, to secure fair wages and conditions for workers, and to abolish child labour. These are matters which at one time or another were opposed on the grounds that they were unaffordable, that is, on grounds which claimed exemption from moral appraisal. An unwillingness amongst those who benefit from the exploitation of others to recognise their moral responsibilities is not a sufficient ground on which to pronounce an issue non-moral.

This is all very well, one might say, but it's all about philosophical arguments which, being interminable, are only as good as the last speaker. The cynical assumption is that if business and ethics are an oxymoron, then human rights and business are a contradiction. Cases like Shell in Nigeria or Union Carbide in Bhopal come more readily to mind than the ethics of Levi Strauss or the *Sullivan Code*, the Caux Round Table, Transparency International or the Minnesota Principles. But business and human rights can go hand in hand, as the latter examples show.

Because of systematic human rights violations, Levi's pulled out of Myanmar and China. The latter decision has been described as one of the most difficult for Levi's to make because it meant sacrificing large market opportunities. Explaining the decision, communications manager, Linda Butler, said:

Last year we issued our global sourcing guidelines, which help us make decisions about what countries we should be in and what business partners we should be doing business with. There is a provision in those guidelines concerning human rights violations, and in light of that and in light of the current human rights situation in China, we have decided that we will not pursue a direct investment at this time and that we will begin a phased withdrawal of our contract sewing and finishing work in China.²⁰

Despite the potential costs, Levi Strauss CEO, Bob Hass said that "never has an action by the company been met with such immediate, spontaneous, large and mainly supportive reaction from people all over the world".²¹

In 1977, Leon Sullivan, a black minister from Philadelphia and a board member of General Motors, drafted a set of principles for investment and operation in South

20 North S "Human Rights Concerns Pull Levi's Out of China", *Sydney Morning Herald*, 8 May 1993, p 15.

21 Waterman R *Frontiers of Excellence*, (Allen and Unwin, Sydney, 1994) pp 166-7. For a discussion of the Levi's Aspiration Statement, its emphasis on ethics and its attempt to globalise its values see ch 7.

Africa by US companies which came to be known as the *Sullivan Code*. The *Code* was an attack on apartheid through the morality of American investors, their directors and managers. According to the *Code*, equal pay, opportunity, facilities and respect was required for black workers in South Africa. Unions were to be recognised and living conditions improved. The stability of the South African government; the cheapness of black labour; the natural resources of the country; and the expanding market for American products in a nation of 28 million, were powerful incentives for over 300 US companies to operate there. Perhaps surprisingly, many US firms voluntarily adopted the *Sullivan Code*, thereby lessening their profits but keeping their investors happy and their image at home clean. Critics argued that the *Code* allowed apartheid to continue with sanitised American support. Eventually Sullivan agreed with the critics and set a deadline of 1987 for the removal of apartheid, just a few years before Nelson Mandela's release from prison. When that deadline passed, he vigorously opposed investment in South Africa and many American firms either pulled out or sold off their interests to South African interests. Lost products from American sources were replaced by those from other countries, but there were important moral victories here. Some firms, like Kodak, not only pulled out of South Africa but refused to sell any of its products there. Hindsight has shown the *Sullivan Code* to be more constructive as a challenge to injustice than its critics believed. Although limited, it added to the accumulation of world opinion and translated that opinion into action. Considering the way sanctions against Rhodesia were evaded, the *Sullivan Code* was a strategy which immediately did away with bottom line justifications for breaches. The *Code* required companies to take a cut in profits in South Africa. That was up front.

The language of rights is prescriptive and proscriptive. Slavery and torture, for example, are always to be proscribed, while freedom of speech, religion and assembly are to be observed. The Universal Declaration of Human Rights is an admirable statement of rights couched in such terms, but it can only ever be a minimal set of conditions. Procedure can only safeguard the most fundamental and minimal obligation: respect for persons. Beyond this, there is the world of human flourishing, the realisation of a variety of goods in the lives of people. In other words, we need to go beyond basic rights — important as they are — to the goods that make possible the realisation of human lives. It is such goods that instruments beyond the Universal Declaration, such as the International Covenant on Economic Social and Cultural Rights, try to secure.

Business tries to secure goods too. The goods of business are social as well as private. Business does not exist primarily to make profits for individuals (although individuals *do* conduct business to make profits), but to secure social goods, including those which comprehend the goods of individuals. Such goods include

profits and wealth in the form of salaries and taxes, employment, and products and services needed by a society.²²

The task confronting defenders of human rights is to reverse the expectations and assumptions commonly involved in reasoning about business. The reaction of business to government blockage of mining at Coronation Hill (home of the Aboriginal spirit, Bulla) seemed to suggest that religious beliefs and money were commensurable. The same goes for much of the debate about the environment: instead of requiring justification for environmental destruction, there is a strong presumption in favour of business and the onus is on objectors to justify their case. Will the time come when this onus is reversed; when incommensurable environmental values will not have to compete with a narrowly defined component of the economy?²³

Tom Donaldson sets three conditions for a human right: (1) "The right must protect something of great importance; (2) the right must be subject to substantial and recurrent threats; (3) the obligations or burdens imposed by the right must satisfy a fairness-affordability test".²⁴ Donaldson nominates ten fundamental human rights which pass this test:

1. The right to freedom of physical movement.
2. The right to ownership of property.
3. The right to freedom from torture.
4. The right to a fair trial.
5. The right to nondiscriminatory treatment.
6. The right to physical security.

22 This is commonly conceded in the literature on business ethics, but for a social contract model see Donaldson, *op cit*, ch 4.

23 In a weak sense this onus already exists in the form of environmental impact statements, but there remains a strong and widespread assumption that the resources of the earth are primarily of use value, and that refraining from such usage is the thing in need of justification. I owe this point to discussion with my colleague Peter Slezak.

24 Donaldson, *op cit*, p 75. Here Donaldson draws upon Nickel J W *Making Sense of Human Rights*, (University of California Press, Berkeley, 1987).

7. The right to freedom of speech and association.
8. The right to minimal education.
9. The right to political participation.
10. The right to subsistence.

Many of these rights are explicitly adopted — and others are assumed — in the initiatives of the Minnesota Centre for Corporate Responsibility,²⁵ the Caux Round Table²⁶ and

25 The Minnesota Center for Corporate Responsibility developed from a pilot program in social responsibility conceived in 1977 by a small group of CEOs. It has since grown to involve 3,000 individuals and a membership of more than 200 companies varying in size from small accounting firms to multi-billion dollar corporations like Pillsbury, 3M, Dayton Hudson, and Honeywell. The CEOs who conceived the MCCR shared the view that business exists to serve society. In 1988, the MCCR affiliated with the University of St. Thomas. The MCCR's Minnesota Principles formed the basis for the Caux Principles of Business, and include commitments "to respect human rights and democratic institutions", and to respect human dignity: "We understand this to mean that business activities should show a special concern for the less powerful and the disadvantaged." See the Minnesota Principles at http://www.Mn_principles.htm

26 The Caux Round Table (CRT) evolved from a meeting of Japanese, American and European business leaders in the Swiss mountain retreat of Caux in 1986. From this beginning, an informal institution emerged. The informality arises from the friendships amongst the members of the group, who are senior executives from such major MNCs as Philips, Canon, Matsushita, Chase Manhattan Bank, Prudential Insurance, Mitsubishi, Toshiba, Proctor and Gamble, Nissan, Schock, Ambrosetti, Medtronic, and Royal Dutch Petroleum. These are not, however, just social gatherings. The members meet twice yearly, once in Caux and once elsewhere, and sometimes invite guests. A basic aim of the Round Table is to encourage business to contribute to global economic and social development. Ryuzaburo Kaku, Chairman of Canon Inc, and a founder of the Round Table, has focused its attention on the global responsibilities of business to foster world peace and economic stability. Underlying this aspiration are two basic ethical principles: *kyosei*, a Japanese term coined by Kaku meaning working together for the common good; and respect for human dignity in the Kantian sense. In 1994, the CRT published its *Principles for Business* as "a world standard against which business behaviour can be measured". The is in effect the first international code of business ethics. It places its "first emphasis on putting one's own house in order, and on seeking to establish what is right rather than who is right". Corporations which want to grow ethically will put their own houses in order according

Transparency International.²⁷ All are directed against corruption, the abuse of workers, and the mistreatment of host communities. The Principles of the Minnesota and Caux groups support the active involvement of business in the economic and social development of host communities, while at the same time enjoining respect for their cultural traditions.

By contrast, although each of the rights on Donaldson's list satisfies the conditions for a genuine human right, this says nothing directly about the obligations of businesses such as transnational corporations to do anything about protecting them. The reason for this, according to Donaldson, rests largely upon the fairness-affordability condition. This is simply an extension of the familiar moral requirement that agents must be capable of realising or preventing an action for which they are to be held responsible. If they were not in a position to act, then they could not be held accountable. So too with rights: states and corporations which are not able to prevent breaches of human rights are not to be blamed. This is close to asserting that there

to kyosei, rather than waiting to be regulated. The Caux principles set out the basic requirements of fairness, integrity, social responsibility, obligations to stakeholders and observance of the law and human rights. There is no blueprint for the future in the CRT principles. Their strength derives from the authority of those who devised and endorse them, and from their appeal to the moral sense of ethical business leaders. The background history of the CRT is to be found in "Caux Round Table: History and Meetings" (<http://www.cauxroundtable.org/History.htm>).

- 27 TI was founded in 1993 and commenced its work against international corruption in 1994. It is best known for its annual *Corruption Index*, which scores countries across a range of criteria. TI-Australia began in March 1995 to assist in the exposure of international business corruption in Australia. TI-Australia enjoys the support of major corporations, such as BHP and Telstra, and the accounting and legal professions, law enforcement agencies, academics, political leaders, non-government organisations, and concerned citizens. In the first year of its existence, TI-Australia convened, in association with TI-Philippines, TI's first regional meeting in Asia. This meeting attracted delegates from 14 Asian countries, Europe and North America, who discussed how civil society might combat corruption. The mission of TI is to forge coalitions internationally to combat corruption through law reform and anti-corruption policies; to build public support for anti-corruption measures and promote transparency and accountability in public administration and international business; and to encourage all involved in international business to adhere to high standards of ethics, such as those proclaimed in TI's *Standards of Conduct*. It played a central part in the conference on international conference on corruption held in Lima, Peru in 1997 and the *Lima Declaration* which issued from it. See the *Declaration* at <http://www.transparency.de/iacc/council.html>.

can be no effective rights claims in circumstances in which they cannot be delivered. Donaldson does not adequately distinguish here between the possession of a right and the blame attributable to those who do not recognise it or who cannot recognise it. That is what the affordability condition is really about: blameworthiness in cases where rights are not observed, not the possession of a right.²⁸ Even if corporations cannot (afford to) act positively in defence of rights in a particular context and cannot reasonably be blamed for this, it does not follow that the people making the rights claims do not have a legitimate case.

The failure to make this distinction clearly could have unfortunate consequences for the defence of human rights. It also underlines the importance of giving an unambiguous sense to fairness and affordability in this context. The danger is that human rights might be seen as tradeable, something which Donaldson does not wish to see. Nevertheless, in situations where the values protected by human rights are regarded as commensurable with economic development, profits, property rights and the exploitation of a resource, moral rights will appear to be unaffordable. The response to objections to mining, bridge building, forest felling, tourism development, child labour, less regulated labour markets, self-regulation of occupational health and safety, and so on, could well be that choices which protect human rights are too expensive; that they destroy competitive advantage; that they will cause the loss of jobs or the flight of capital.

This is why Patten's speech was important: it attempted to strip the affordability argument of credibility. He moved to set questions of economic benefits against those about bearing the burden of costs: for whom is the business activity affordable? Are social costs being fairly compensated? In concrete terms, this would mean questions such as these: what if the Ogoni told Shell that they could not afford to have petroleum drilling in their midst; what if the people of Ok Tedi told BHP that they could not afford mining because it increased effluent in their river; what if outworkers were to ask Mr Todhunter why he thought we could afford the current system and why we could not afford fair wages for all workers in the garment industry? What if the same question were posed to Mr Mercer? Affordability suggests that we can decide when and where human rights will bite. The notion that in argument, morals are trumps suggests that other reasons should carry less weight in governing action. If that is so, then decisions about what can be afforded by a business — as distinct from a society — have already shifted ground to the prejudice of human rights.

28 The criticism is discussed at length in Brenkert, *op cit*, pp 515-521.

Human rights will mean nothing without the institutions to give them effect. Morality is more than mastery of the techniques of a certain style of reasoning: it is adherence to a shared way of life. That is why the active interest of the International Commission of Jurists in the role of lawyers in securing human rights is important in bringing institutional support to the issue. In the international world of business another such institution exists, however fragmented. The proponents of the Minnesota Principles, and the cognate Caux Principles, and of the norms of Transparency International have already attracted considerable international support. Their aim is to build coalitions of business to foster ethical commerce and human rights. One should not expect more formal institutionalisation for ethical principles whose force is widely recognised. The pressure that organisations like these can exert on consumers and governments is already considerable, and will be increasingly important not only to human rights advocates but to businesses which seek to do the right thing internationally.

It will remain difficult for those businesses which differ from the hostile policies of host governments to stand up for human rights, and the decisions they make will be on a case-by-case basis. This last point is important. Rights claims have become a slogan for anyone anxious to stake a claim for self-interest. Talk in foggy, generalist terms about human rights will not secure the assent of thinking people. The cases which make rights claims real are those which depict the oppression and suffering of real people and the response of governments and social institutions to their plight. In other words, reasoning and not labelling is what human rights should be about. Each case has to be argued, not merely proclaimed.

This is a difficult requirement to place on human rights activists when moral argument is difficult enough in a community which seems to accept cultural relativism and moral pluralism unreflectively. But it does go on: the case of BHP mining in Ok Tedi was argued by that company and its critics, and came to a resolution which did credit to BHP. True, there were litigation and emotional demonstrations as well, but the company was brought around to acknowledge its responsibilities in a fashion not often seen amongst transnational corporations. The questions it faced were not simple. The case was not just about investment and tailings in a river. It was also one of the different aspirations of the peoples who work in that region; of just compensation for losses; of the costs and benefits, the losers and beneficiaries from mining. The BHP decision to compensate says something about the moral community in which the company's owners live, and may signal the effect of ethical investment and moral suasion on such global businesses.

Ethical questions like the involvement of BHP in Ok Tedi are not simple: they require argument about the issues mentioned above. Co-operating with evil is one of the

largest and most common questions faced by businesses based in countries which claim to uphold human rights. If business is to further human rights, mere withdrawal from the site of conflict might not always be the ethical thing to do. It might be better to leave, as Levi's did in China, or to stay and make things less worse for the host population. Such decisions, like Shindler's in occupied Cracow, are not made according to slogans, but on the basis of contextual analysis and principle.

The Greenpeace campaign in Europe against Shell's decision to sink the decommissioned Brent Spar oil rig, while ultimately misdirected, shows that public opinion can punish businesses which offend. Perhaps the same will be true of business which does not keep in step with human rights developments. A significant aspect of the *Sullivan Code*, the Minnesota Centre for Corporate Responsibility, the Caux Round Table and Transparency International, was that they were initiated by people involved in business. Too often campaigns against business decisions are driven by external interests. This types business as reactive rather than responsive. Initiatives like those mentioned above are important because they model a more engaged and responsive form of business conduct. Sometimes businesses surprise themselves by taking the initiative on issues such as the environment.²⁹

Realistically business will not lead the way on human rights. Indeed, it would be enough if business were to follow in the wake of human rights activism and support its advances. At the very least, business needs to protect its interests in the face of pressures from ethical investment organisations³⁰ and public pressure about ICESCR issues. It is not in the interest of business in the broadest sense to countenance human rights violations in the contexts in which it operates. This is a business decision affecting investments as surely as the political stability of a host country. In the past,

29 In 1996 in a first for Australia, WMC produced the report of an audit of the company's environmental performance. The audit identified problems and potential savings of which the company was previously unaware, for example, in water consumption. CEO of WMC, Mr Hugh Morgan, says the company has "a very strong self-interest in getting it right. I try to make it clear that this environmental activity is not a function of something imposed from outside. This is very much in our own self-interest." Davis M "WMC Compiles Its Own Green Report Card", *BRW*, 10 June 1996, 20-22.

30 These have been growing in number internationally. For Australian ethical investment services see Knowles R (ed), *Ethical Investment*, (Choice Books, Sydney, 1997); and the web sites of ethical investment advisers Terry Pinnell (<http://www.peg.apc.org/~dei>) Australian Ethical Investment Ltd (<http://www.austethical.com.au>) and Ecobusiness Consultants Pty Ltd (<http://www.ecobusiness.com.au>) .

business has had to conform to labour laws, occupational health and safety requirements and other conditions of doing just business, so it would be foolish for it not to anticipate human rights developments in the same way. This is the argument from self-interest.³¹ It is not to be despised, particularly if it assists the recognition of human rights in practice, as Chris Patten asserts. But it remains an uncertain linkage, and the ultimate appeal of human rights must be in terms of a more constant regard and respect for humanity, not commercial advantage. ●

31 For an elaboration of the argument from self-interest see Bowie N E and Vaaler P "Some Arguments for Universal Moral Standards", *International Society of Business, Economics and Ethics Papers*, Tokyo 1996, (http://www.nd.edu/~isbee/p_bowie.htm)