

## Book Review

‘Business and Human Rights’ from Donaldson to Ruggie – A Review of a Classic Book: Thomas Donaldson, *The Ethics of International Business* (Oxford: Oxford University Press, 1989) pp 224.

To understand the timely 1989 publication of Tom Donaldson’s book *The Ethics of International Business*, one may recall several watershed geopolitical events that happened in the course of 1989. On 4 and 18 June, the first partially free legislative election took place in Poland. Also on 4 June, the ‘Tiananmen Square incident’ occurred in Beijing, when the Chinese government cracked down on the demonstrators. And on 9 November, the Wall fell in Berlin, signalling the thaw of the Cold War in Eastern Europe beyond Poland. For international business, these events—and, some years later, events in China—brought about enormous opportunities for global expansion. Liberalization and deregulation, advanced particularly by the United States and the United Kingdom, drastically expanded to global markets.

However, as John Ruggie reported later, there has been a ‘fundamental institutional misalignment’ between the expansion and impact of global markets, on the one hand, and the lack of capacity of societies to manage the adverse consequences of those markets, on the other. This misalignment has created ‘the permissive environment within which blameworthy acts by corporations may occur without adequate sanctioning or reparation’.<sup>1</sup>

Therefore, in the wake of 1989, it has come as no surprise that several initiatives have been launched to address the ethical challenges facing international business:<sup>2</sup> The Parliament of World’s Religions’ Initial Declaration *Towards a Global Ethic* (1993), the *Caux Roundtable Principles for Business* (1994), the *Interfaith Declaration of International Business Ethics* (1995), and, more modestly, the foundation of the International Society of Business, Economics, and Ethics (ISBEE) in 1989.<sup>3</sup> The *Global Reporting Initiative* started in 1997, and the *United Nations Global Compact* was established in 2000.

Against this brief historical backdrop, I would like to explore and acknowledge Donaldson’s contribution to the evolving discussion on business and human rights, using his book of 1989 as the starting point and the United Nations Framework *Protect, Respect and Remedy* (Framework) with its Guiding Principles (GPs), developed by

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<sup>1</sup> Human Rights Council, ‘Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts’, A/HRC/4/35 (19 February 2007).

<sup>2</sup> See Georges Enderle, *International Business Ethics: Challenges and Approaches* (Notre Dame: University of Notre Dame Press, 1999).

<sup>3</sup> Richard T De George, ‘A History of the International Society of Business, Economics, and Ethics, Part I’, *ISBEE* (02 July 2014), <http://isbee.org/category/history> (accessed 6 August 2015); Georges Enderle, ‘A History of the International Society of Business, Economics, and Ethics, Part II’, *ISBEE* (25 July 2014), <http://isbee.org/category/history> (accessed 6 August 2015).

Ruggie<sup>4</sup> for the UN Human Rights Council, as the current point of arrival. By following this trajectory, I intend to highlight the strengths of Donaldson's project, which has stood the test of time, to discuss some critical points on the way to the UN Framework, and to conclude with a few open questions for further scrutiny and elaboration. To begin with, a brief overview of Donaldson's book is in place.

The book has nine chapters with a critical appendix on David Gauthier's *Morals by Agreement*. In the introductory chapter, the aim and limitations of Donaldson's approach are explained. Chapter 2 highlights the failure of 'realism' that rejects moral obligations in the international arena. Focusing on the global corporation, Chapter 3 describes existing international laws, codes, and guidelines, and illustrates different interpretations of multinational corporate responsibility. Chapter 4 elaborates the moral foundations of multinationals with the help of social contract theory, summarizing and clarifying the author's previous book *Corporations and Morality* (1982). In Chapter 5, ten 'fundamental international rights' are developed and exemplified with several sample applications. Chapter 6 addresses the conflicts between home country and host country norms and proposes an ethical algorithm to reconcile international values. Chapters 7 and 8 extensively discuss the ethics of risk, illustrated with Union Carbide's well-known plant disaster in Bhopal (India) and the challenges of disinvestment from South Africa under apartheid rule. The concluding chapter summarizes the main argument of the book by emphasizing the need to view moral problems, to provide moral reasons, and to justify moral conclusions in international business.

## I. THE STRENGTHS OF DONALDSON'S PROJECT

With his book in 1989, Donaldson drew attention to the uncharted field of international business ethics by demonstrating several fundamental features; much later, with the benefit of hindsight, I have explored and conceptualized these features in a recent article.<sup>5</sup>

First, Donaldson presents a sharp and consistent focus on multinational corporations (MNCs) as economic actors or agents (that is, on actors at the organizational or meso-level) assumedly of North American or Western origin. They operate at home and in host countries, facing the difficult challenges of choosing the right moral standards for corporate conduct. Donaldson does not deal with individual citizens or with systemic issues, and he considers nation-states (governments) only indirectly. (Interestingly, despite, or because of the 'victory' of capitalism with the fall of the Berlin wall, the term capitalism does not figure in his book.)

Second, MNCs are supposed to have 'moral duties' (not 'responsibilities' as the Framework will call them). These moral duties are limited to minimal obligations and do not pertain to other moral requirements and expectations beyond this minimum. However, these obligations have to be fulfilled not only by corporations but also by other major international actors, that is, by nation-states and individuals, although not in precisely the same manner.<sup>6</sup>

<sup>4</sup> John G Ruggie, *Just Business. Multinational Corporations and Human Rights* (New York: Norton, 2013).

<sup>5</sup> Georges Enderle 'Exploring and Conceptualizing International Business Ethics' (2015) 127(4) *Journal of Business Ethics* 723.

<sup>6</sup> Thomas Donaldson, *The Ethics of International Business* (New York: Oxford University Press, 1989) 76.

Third, MNCs' moral duties consist in honouring (or 'respecting' as the Framework will demand) so-called 'fundamental international rights' (or 'fundamental rights') of human beings. Drawing from Henry Shue's well-known distinction<sup>7</sup> (adopted by the Framework as well), Donaldson differentiates three types of duties: (i) the duty to avoid depriving a person of a right; (ii) the duty to help protect a person from being deprived of a right; and (iii) the duty to aid those deprived from a right. Depending on the contents of the rights, these three types of duties apply to MNCs only partially. In other words, MNCs are not supposed to be accountable for all types of rights violations, which is an important limitation of duties affirmed by the Framework as well.

Fourth, in line with Shue's argument, Donaldson does not accept the distinction between positive and negative (moral) rights proposed by libertarian and other philosophers. Moreover, he supports the so-called compatibility proviso which does not allow for trade-offs between different rights, as, for instance, between non-welfare rights and welfare rights. Again, the Framework too will reject such trade-offs and firmly support the indivisibility of human rights (which is also argued for in Daniel Whelan's fine historic account<sup>8</sup>).

In addition to these four fundamental features of international business ethics proposed by Donaldson and essentially (re-)affirmed by the Framework, I should mention three common features which may explain the widely positive reception of both publications. It is fair to say that both *The Ethics of International Business* and the UN Framework *Protect, Respect and Remedy* are driven by a strong motivation to address real-life challenges in global business, fully aware that systemic changes in legal, cultural, and moral terms are necessary as well in order to fix 'the fundamental institutional misalignment' identified by the Framework. Moreover, both publications speak a relatively plain and comprehensible language that furthers the dialogue among business people, academics, and policy makers. While Donaldson, an academic philosopher, addresses a wider audience in ordinary English, Ruggie, a professor of political science, ably converses with practitioners, precisely explains crucial distinctions, and pragmatically builds bridges for common understanding. Finally, both scholars fundamentally agree in vigorously criticizing the widely held views that morality is irrelevant for global business and that ethical relativism—though not 'cultural' relativism as Donaldson wrongly puts it—necessarily will have the final word. However, it is noteworthy that Ruggie abstains from using an ethics language—perhaps in order to avoid ethical controversies—except for the concept of corporate responsibility which clearly has an ethical, in addition to a legal, meaning.

## II. SOME CRITICAL POINTS ON THE WAY TO THE UN FRAMEWORK

From 1989 to 2011, when Ruggie presented the final report to the Human Rights Council, an abundance of voluntary codes of corporate conduct—or 'soft laws'—emerged, fuelled by scandals of sweatshops, corruption, environmental harm, and other issues or launched by business and civil society organizations. These soft law

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<sup>7</sup> Henry Shue, *Basic Rights, Subsistence, Affluence and US Foreign Policy* (Princeton: Princeton University Press, 1980).

<sup>8</sup> Daniel J Whelan, *Indivisible Human Rights. A History* (Philadelphia: University of Pennsylvania Press, 2010).

developments have raised a number of critical questions, which have been partly elucidated by Donaldson, partly reconceived in new ways, and partly still ignored. I will address some critical points before concluding with a few open questions.

First of all, a number of questions arise about the concept of the business organization. Donaldson defines it as an economic actor, a productive organization, or even as an economic animal. At the turn of the millennium, the notion of global corporate citizenship was coined to emphasize the political nature of corporations, since they are often more powerful than nation-states and can set the rules in economies and societies.<sup>9</sup> The Framework speaks of transnational corporations and other business enterprises without articulating their nature and size more specifically.<sup>10</sup> It focuses on the impact these organizations exert on people and nature, whether privately owned, publicly listed, or owned by states. Nevertheless, it matters how business organizations are conceived, how their purpose is defined, what kind of economics is involved, and how the systemic economic context is understood—these are critical points, which are only touched upon by Donaldson and not at all dealt with by the Framework.

Furthermore, the understanding of moral rights of human beings needs more clarification. Donaldson uses the term ‘fundamental international rights’ or ‘fundamental rights’ and abstains from calling them human rights, perhaps because human rights in the 1980s had a kind of declamatory connotation or because fundamental international rights may highlight the international reach more clearly. Anyway, thanks to the Framework (and other initiatives), the term human rights, central in the Universal Declaration of Human Rights in 1948, has been freed from a prevalent legal and state-related notion and become the moral focus of corporate responsibility, which is a remarkable achievement.

To clarify the concept of human rights, it is helpful to draw on Alan Gewirth’s work (hardly mentioned by Donaldson). Gewirth distinguishes five main elements of a claim-right:<sup>11</sup> (i) the subject of the right; (ii) the nature of the right; (iii) the object of the right; (iv) the respondent of the right; and (v) the justifying basis or ground of the right. Applied to human rights, the subjects are easy to identify—namely all human beings without exception. The nature of human rights means that, as minimal requirements, these rights trump any other claims and do not allow for trade-offs. The object is defined by what is necessary for a life with dignity, which partially depends on socio-economic circumstances (e.g., with regard to a decent livelihood). The respondent can be one or more, making it difficult to determine how to share the fulfilment of this duty (say, among individuals, states and corporations). Finally, the justification of human rights is the most difficult but a necessary task.

With this structure of five elements in mind, we can assess the development of ‘business and human rights’ over the years. Both Donaldson’s 1989 book and the Framework affirm the subjects and the binding nature of fundamental rights and human rights, respectively. They also agree on multiple respondents who have to share the burden of duty, with a special focus on corporations. Regarding the object or content

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<sup>9</sup> Andreas G Scherer and Guido Palazzo (eds.), *Handbook of Research on Global Corporate Citizenship* (Cheltenham, UK: Edward Elgar, 2008).

<sup>10</sup> Ruggie, note 4, xii.

<sup>11</sup> Alan Gewirth, ‘The Epistemology of Human Rights’ (1984) 1(2) *Social Philosophy and Policy* 1.

component, Donaldson identifies ten fundamental rights ‘as a beginning consensus’,<sup>12</sup> based on philosophical considerations inspired especially by Shue and James Nickel. He offers a philosophical justification of these rights, which, however, has not persuaded me.<sup>13</sup> (To be fair, ten years later, Donaldson and Tom Dunfee presented an elaborated ‘Integrated Social Contract Theory’ for business ethics, in which they emphasize the importance of ‘hypernorms’ as global moral standards, although without using the terms fundamental international rights or human rights.)<sup>14</sup>

In contrast to Donaldson, the Framework identifies 30 human rights based on extensive consultation with governments, MNCs, and other organizations around the world, which have been carefully reported and analysed in social science terms by Karin Buhmann.<sup>15</sup> These rights are not justified in philosophical terms (which remains a task for business ethicists). But they reflect a common understanding of the interested parties about the importance of those rights, based on numerous international conventions. With regard to the application of rights, Donaldson proposes an ‘ethical algorithm’ for managerial decision-making, while the Framework provides 31 Guiding Principles for states, companies, and stakeholder groups to foster, manage, and assess business respect for human rights. The recommendations are certainly helpful for practical decision-making, the Principles likely more than the algorithm.

In the recent literature on business ethics, human rights have been discussed in *Business Ethics Quarterly* (including a special issue in 2012), *Journal of Business Ethics*, and other journals. It is fair to say that the development of Ruggie’s UN Framework and Guiding Principles from 2005 to 2011 gave major impulses to this debate, which cannot be reported in this review.<sup>16</sup>

### III. CONCLUDING QUESTIONS

Finally, there are several open questions for further scrutiny and elaboration. First, given the powerful role of corporations in the globalizing world, their moral status needs thorough public debate. Donaldson skipped this topic in 1989 on the recommendation of a reviewer;<sup>17</sup> the Framework seems to assume moral agency, but does not articulate it; economists from the right and the left (Milton Friedman and Robert Reich, respectively) deny it; and the Catholic Social Tradition keeps silent on it. Second, as Albert Hirschman

<sup>12</sup> Donaldson, note 6, 82.

<sup>13</sup> See also Norman E Bowie, ‘Moral Decision Making and Multinationals. Review of *The Ethics of International Business* by Thomas Donaldson’ (1991) 1(1) *Business Ethics Quarterly* 223; George G Brenkert, ‘Can We Afford International Human Rights?’ (1992) 11(7) *Journal of Business Ethics* 515.

<sup>14</sup> Thomas Donaldson and Thomas W Dunfee, *Ties That Bind. A Social Contract Approach to Business Ethics* (Boston: Harvard Business School Press, 1999).

<sup>15</sup> Karin Buhmann, ‘The Development of the “UN Framework”: A Pragmatic Process Towards a Pragmatic Outcome’ in Radu Mares (ed.), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Leiden: Koninklijke Brill, 2012) 85–105; Karin Buhmann, ‘Business and Human Rights: Analysing Discursive Articulation of Stakeholder Interests to Explain the Consensus-based Construction of the “Protect, Respect, Remedy” UN Framework’ (2012) 1(1) *International Law Research* 88.

<sup>16</sup> Some ethical explications of the Framework are discussed in Georges Enderle (2014), ‘Some Ethical Explications of the UN Framework for Business and Human Rights’ in Oliver F Williams (ed.), *Sustainable Development. The UN Millennium Development Goals, The UN Global Compact, and the Common Good* (Notre Dame: University of Notre Dame Press, 2014) 163–83.

<sup>17</sup> Donaldson, note 6, xii.

hopes,<sup>18</sup> moral considerations should be displayed openly and disarmingly in social science. Donaldson, indeed, ‘walks on two legs’,<sup>19</sup> combining ‘normative’ and ‘empirical’ concepts in international business studies—an exemplary approach for the twenty-first century. Third, while the vigorous focus on moral responsibilities of MNCs has been necessary, moving successfully towards the implementation of the Universal Declaration of Human Rights requires a balanced co-operation and ‘division of labour’ between actors at all levels (i.e., the micro-, meso-, and macro-level). Fourth, as Amartya Sen proposes, there is common motivation and basic compatibility between human rights and human development expressed in ‘human capabilities and functionings’,<sup>20</sup> and public discussion between persons and across borders is vital to address the doubts of many legal and political theorists and to face authoritarian orders.<sup>21</sup> Fifth, a spirituality of human rights is virtually non-existent. However, the victims of human rights violations are crying out in pain. In addition to human rights activism, intellectual commitment, humane legislation, and responsible corporate conduct, a compassionate change of mind is necessary to hear those voices and respond through actions. Sixth, the importance of theoretical justification of human rights should not be underestimated. Given the pluralistic character of our societies, multiple ways of justification should be undertaken from different philosophical perspectives and faith traditions.

I have tried to highlight the strengths of Donaldson’s classic book that anticipated a number of features developed later on in the UN Framework and its Guiding Principles. It is understandable that such an early work had to focus only on some aspects and could not address the wide complexity of ‘business and human rights’. But it opened the discussion, helped to capture critical points more precisely, and provided valuable impulses for robust debates.

Georges ENDERLE

John T Ryan Jr. Professor of International Business Ethics  
Mendoza College of Business  
University of Notre Dame  
(Indiana, USA)

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<sup>18</sup> Ibid, 3.

<sup>19</sup> See Georges Enderle, ‘Business Ethics in the 21<sup>st</sup> Century Walks on Two Legs’ in E. Kimman, A. Schilder, and F. Jacobs (eds.), *Drieluijk. Godsdienst – Samenleving – Bedrijfsethiek. Liber Amicorum voor Henk van Luijk* (Amsterdam: Thela Thesis, 1999) 185–9.

<sup>20</sup> Amartya Sen, ‘Human Development and Human Rights’ in United Nations Development Programme, *Human Development Report 2000* (New York: Oxford University Press, 2000).

<sup>21</sup> Amartya Sen, ‘Elements of a Theory of Human Rights’ (2004) 32(4) *Philosophy and Public Affairs* 315.