

WHAT IS CORPORATE ACCOUNTABILITY?

BACKGROUND AND OVERVIEW

Since the 1990s, the world has witnessed the growing importance and visibility of a range of initiatives led by businesses, social organisations and governments, with the stated aim of pressuring companies to behave in more socially responsible and accountable ways. This is a new development for many parts of the business world. Previously, the state (or government) was assumed to lead standard setting and behavioural norms for businesses in relation to most categories of stakeholders. When community organisations and interest groups wanted to change business behaviour, they focussed on changing the law. From the 1990s the focus changed, reflected in the emergence of new alliances and regimes of influence over business norms, linking together consumers, communities, workers and producers.

What is the difference between corporate social responsibility (CSR) and corporate accountability?

Corporate responsibility, corporate social responsibility (CSR) and corporate accountability are sometimes confused or seen to be synonymous. However, corporate responsibility and corporate accountability are typically distinguished from one another along several lines. **Corporate responsibility** in its broadest sense refers to varied practices that reflect the belief that corporations have responsibilities beyond generating profit for their shareholders. Such responsibilities include the negative duty to refrain from harm caused to the environment, individuals or communities, and sometimes also positive duties to protect society and the environment, for example protecting human rights of workers and communities affected by business activities. Such responsibilities are generally considered to extend not only to direct social and environmental impacts of business activity, but also to more indirect effects resulting from relationships with business partners, such as those involved in global production chains.

In contrast, the term **corporate accountability** is commonly used instead to refer to more confrontational or enforceable strategies of influencing corporate behaviour. Often, the term corporate responsibility is used to indicate voluntary approaches, albeit those supported by market based incentives. Corporate accountability typically implies that corporate behaviour is influenced by pressure exerted by social and governmental actors beyond the company itself. Such actors can adopt a range of strategies, including but not limited to the mobilisation of legal mechanisms to enforce social standards.

INNOVATIONS IN CORPORATE ACCOUNTABILITY IN THE AMERICAS AND OCEANIA

Initiatives seeking to pressure companies to conform to standards of social responsibility have taken a number of forms. These have included relatively 'soft', collaborative approaches where companies have worked together with NGOs and other social groups to try and improve the sustainability of their behaviour; 'hard' approaches involving coercive pressure from confrontational activist campaigns and/or traditional forms of government regulation; and mixed strategies in which collaborative approaches have been combined with an emphasis on greater influence and participation in shaping corporate decision making by workers and communities affected by corporate behaviour. Often these approaches have interacted in important ways, both in shaping

the dynamics of their development over time, and in exerting influence over the sustainability of business behaviour.

Activist campaigns

Activist campaigns advocating corporate responsibility began gaining momentum in the 1990s. These campaigns sought to build on increasing mobilization within prominent consumer sectors such as garments and coffee and focused on improving working conditions and raising wages for workers in developing countries via a series of public campaigns which targeted both companies and consumers in industrialized countries, including North America.

The emergence of such campaigns has also been underpinned by the increasing capacity of activists in the global north to communicate directly with workers in distant factories, together with broader changes in the focus of the non-government organization (NGO) sector in the United States within the post-Cold War political context. As the corporate accountability agenda emerged and developed through the success of campaigns focused on prominent brands such as Nike in 1998, a broad range of social and political organizations began to mobilize around the issue, including NGOs, unions, immigrant workers and a wide range of individuals and organizations coordinated through email lists, student groups and churches.

As a result, such campaigns have sometimes taken on interesting cross-regional dynamics, in which NGOs, unions and other social groups in consumer and investor countries have joined forces with workers or communities to pressure companies to change their behaviour. One example of such alliances being formed between the Americas and Oceania is a campaign that was launched in 2001 in support of workers at the Taiwanese-owned Chentex factory in Nicaragua's Las Mercedes Free Trade Zone, with the support of both local unions and a range of labour and human rights NGOs (Macdonald 2007). In Taiwan, the participating coalition of labour activists, Taiwan Solidarity for Nicaraguan Workers, exerted pressure on the Taiwanese owner of the Chentex factory (the Nien Hsing consortium) by protesting outside the stockmarket and at the company's annual meeting. In Nicaragua, the Sandinista-based Chentex union placed direct pressure on local management via widespread protests and strikes. In the US, labour campaigners organized consumer boycotts and protests at retail outlets across the country, directed against major clients of the Chentex factory. Coordinated action across the cross-regional reach of the global production chain was therefore used as a basis for corporate accountability.

Collaborative multi-stakeholder schemes

Often in response to these activist campaigns, many initiatives have been created in 'partnership' between companies, NGOs and others to try and bring about sustainable changes in corporate behaviour, in accord with the social and environmental standards affirmed by such campaigns. These kinds of approaches are often built around principles of voluntarism, dialogue and collaboration. They call for governments, businesses and workers to engage in processes of mutual learning, and to increase compliance via preventative and cooperative efforts.

An example from the US of a multi-stakeholder corporate accountability scheme is the Fair Labor Association (FLA), which is a US-based multi-stakeholder governance arrangement in which a number of high profile apparel and sportswear companies work together with universities and NGOs

to promote compliance with core international labour standards within their global supply chains. The FLA was initiated by the Clinton Administration in response to ongoing activist pressure during the 1990s, the government coordinating a series of meetings to bring major companies in the apparel and sportswear sectors together with some of the labour and human rights groups involved in the campaigns, leading ultimately to the establishment of the Association. Like many similar initiatives, the multi-stakeholder character of the FLA is reflected in the broad range of actors who participate. The key categories of actors who participate directly are companies involved in the design and marketing of branded apparel and sportswear products, universities who licence many of their products, and northern NGOs working on labour and human rights issues. The central goal of the FLA is to promote compliance with international labour standards. Accordingly, it has developed a range of regulatory mechanisms – including standard setting functions, monitoring and audit systems, and some ‘soft’ forms of enforcement – to provide leverage over corporate behaviour (Macdonald 2011).

Government regulation

Although many regard Multi-Stakeholder Initiatives of this kind as an improvement on wholly voluntary approaches to corporate social responsibility, there have continued to be widespread calls from many promoting corporate accountability agendas to strengthen governmental legislative and regulatory responses at national, regional and international levels, to underpin such accountability systems with stronger means of ensuring compliance.

“Hard” corporate accountability agendas thus seek to strengthen legislative and legal regulatory governance over corporate practices at national, regional and international levels. They have two objectives. One is the reformation of state-based regulation in order to better operate within global systems of production. On the one hand, this entails legally formalising non-standard working arrangements – extending the reach of regulation outside the traditional workplace or factory – as well as providing new rights to consumers. On the other hand, it involves extending regulation outside national jurisdictions. Efforts towards this goal include, for example, the on-going field of work around John Ruggie’s mandate as the UN Secretary General’s Special Representative on Business and Human Rights, which is seeking to clarify the responsibilities of businesses under international human rights law (Human Rights Council 2007); (Human Rights Council 2008).

There are a number of examples of governments in the Americas and Oceania intervening to strengthen private initiatives. In some cases, national parliaments have internalized voluntary codes in national and international laws which require companies to be more transparent and report on social or environmental performance, thus enabling enhanced social monitoring and sanctioning. The California Cooperative Compliance Program adopted by California’s Occupational Health and Safety Administration, for example, retains the option for litigants to enforce standards that may be in breach (Vogel 2005).

In other cases, the existing legal apparatus has been “creatively” deployed – often in ways that go beyond the original intentions of the relevant provisions – as a means of providing harder measures of enforcement for norms of corporate responsibility. In Los Angeles, the LA City Sweatfree Procurement Ordinance is an initiative that has experienced a marked success, requiring private companies to demonstrate that they are complying with national labour standards in order to have their tender considered; where it involves labour standards of subcontractors in countries other

than the US, the Ordinance also requires compliance with local minimum standards and the payment of a “procurement living wage” assessed on the basis of local conditions (Owen-Smith, Coast et al. 2010, p.340-1).

These kinds of ‘hard’ regulatory approaches have often come together with activist based approaches when corporate accountability campaigners have attempted to invoke existing causes of action in inventive manners to enforce principles of responsible corporate practice against major transnational corporations such as Nike and Walmart. Unfair competition and false advertising legislation have been mobilised as a basis for trying to hold companies accountable for claims made in their CSR marketing material, such as in the Californian case of *Kasky v. Nike* (45 P 3d 243 (Cal, 2002)). The US *Alien Tort Claims Act* (28 U.S.C. 1350 of 1789), which enables civil lawsuits to be brought in the US for extraterritorial actions “committed in violation of the law of nations or a treaty of the United States”, has also been used on a number of occasions to enforce international corporate responsibility (Vogel 2005, 168). Such claims are sometimes successful in gaining publicity and providing greater corporate transparency, partly through the “discovery” processes by which claimants have been able to gain access to documents previously unavailable to the public. However, these private law mechanisms place great financial and time demands on claimants, and even where the claims are successful on their own terms, due to the nature of the causes of action the changes required of company behaviour in legally enforceable terms remain restricted in scope via this avenue.

Similarly, many social alliances that promote corporate accountability have pressured governments to regulate corporate behaviour in ways that reflect standards of social responsibility. For example, the Fair Wear Campaign in Australia is an alliance between churches, community organizations and unions which has, for many years, pressured states and federal Australian governments to strengthen the regulation of homeworking. Fair Wear has pressured governments to enact innovative styles of regulation extending beyond the regulation of standard “employer/employee” relationships, so as to cover business entities which do not themselves manufacture but, rather, organise and outsource production, and workers who are many steps removed from those who design and procure production. Successful campaigning in this case has led to the introduction of a range of highly innovative instruments of supply chain regulation (Fenwick, Howe et al. 2008).

The Asia Wage Floor Alliance demonstrates another instance of campaigns for new regulatory techniques on behalf of states in order to reflect greater corporate accountability. It campaigns for an enforceable Asia Floor Wage for workers in the Asian garment industry and fair pricing for suppliers across Asia. It is insistent upon both the role of the *state* in mediating labour standards and production prices and consistent *transnational* standards in order to reflect the global nature of the contemporary garment industry.

Environmental, social and political sustainability impact and outlook

What then has been achieved to date by corporate accountability initiatives of these various kinds? It would be a mistake to overstate the extent or impact of this shifting agenda with respect to mainstream corporate practice. As a proportion of international corporate numbers, very few businesses have adopted the practices promoted by corporate accountability movements, such as social auditing or joining established corporate accountability mechanisms such as the Fair Labor

Association. Furthermore, the agenda's impact on business practices associated with labour standards or environmental sustainability has in many cases been very limited. In the same period in which corporate accountability has gained ideational leverage, real wages for many vulnerable workers have continued to fall. In December 2007, Neil Kearney of the International Textile, Garment and Leather Workers' Federation noted that over the past 12 years real wages in the textiles sector have fallen by 25 per cent and working hours increased by 25 per cent (cited by (Mantovan, Ausserhofer et al. 2010)).

Nevertheless, such initiatives have brought about some important forms of behavioural change among businesses in a range of economic sectors. In understanding the scope and limits of such change, it is useful to examine how impacts have differed across the spectrum of 'soft' to 'hard' corporate accountability.

Soft vs Hard Approach impacts

Softer approaches, focused more on processes of collaboration and learning to bring about change, have certainly made some contributions to influencing corporate behaviour in the direction of greater sustainability. In particular, collaborative initiatives that offer forums for stakeholder dialogue and participation can enable the strengthening of communication, trust and shared learning around areas of potentially common interests, and enable NGOs and affected groups to participate directly in consultative and decision-making processes associated with new forms of standard setting and enforcement. They can also contribute to organisational and cultural change within companies, fostered by learning and dialogue. This can be especially beneficial in relation to complex features of organizational culture such as discrimination and health and safety regulatory systems, where normative change and participatory engagement are often important prerequisites for effectiveness.

However, such 'soft' approaches to corporate accountability have been widely criticised as ineffective and unresponsive to the concerns of workers and communities affected by corporate activity. Because they lack significant means of sanctioning those companies that fail to engage with such change processes, improvements brought about as a result of such mechanisms are typically highly uneven across sectors and companies. Such approaches have also come under strong criticism for enabling corporations to decide at their own discretion how to implement codes of conduct, which to follow and which elements to discount or suspend where they involve trade-offs or costs. There is also widespread fear that 'soft' corporate accountability approaches might provide a 'fig leaf' for inadequate business approaches, thereby undermining improved corporate behaviour in the longer run.

At the other end of the spectrum, where governments have implemented strong regulatory approaches to underpin corporate accountability strategies, in some cases stronger and more consistent enforcement of CSR norms has been achieved. Precisely because the 'business case' for compliance is often weak, legally backed sanctions can provide the incentive for compliance that would otherwise be absent. The strength of legally backed enforcement mechanisms reflects the distinctive capacity of law to both counter underlying power imbalances among social actors, and also to provide for greater consistency, as tensions between competing interests may be resolved on a normatively principled and consistently applied basis.

On the other hand, critics of mandatory approaches continue to highlight fears of excessive regulatory burdens on business associated with such approaches and the difficulties of designing mandated approaches capable of accommodating diverse contexts of business activity. Moreover, many states have not matched new legal clout with resources for the departments and unions responsible for monitoring and prosecution (Marshall 2010) thereby undermining enforcement capabilities of governments.

Somewhere in between these two approaches are those corporate accountability campaigns and initiatives that seek to engage a broader range of non-business actors, and strengthen the non-market incentives underpinning compliance with CSR norms. The involvement of a broader range of stakeholders in such approaches often enables more robust systems of monitoring and compliance to be established. In some cases enhanced transparency and participation can also improve the perceived legitimacy of such schemes.

Area of greatest impact

Perhaps the most important innovation of the corporate accountability movement has been its demands for increased participation by affected groups. This has been shown to be extremely important in many contexts as a basis for effective compliance with specified norms. In the few and often short-lived cases in which worker organization or representation has been established, positive outcomes for workers have often been achieved, both in factory settings and among homeworkers. Participation in initiatives can feed into underlying changes to social power relations via their spill-over into campaigning activities, and their potential to create sustainable social alliances between workers, producers and communities affected by transnational business activity. However, such participatory, multi-stakeholder processes do however tend to confront a range of practical challenges associated with both weak capacity among key stakeholder groups to engage effectively, and in some cases also difficulties in mediating conflicting priorities of affected stakeholders.

Clearly, significant challenges continue to confront all these different strategies of corporate accountability. However, to view these initiatives as static institutional arrangements misunderstands their purpose and impact – as both experimental, learning devices in specific governance contexts, and as broader vehicles for social transformation via their provision of ongoing sources of knowledge and pressure that can leverage processes of progressive change within wider social and political institutions. Much uncertainty remains and a great deal more experimentation will be needed as corporate accountability initiatives continue to be formed and improved, either as stand-alone forms of corporate regulation or in conjunction with other strategies.

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