

ELISABETH HUH

## Corporations and Human Rights

*An Interview with Charlotte Walker-Said*

Elisabeth Huh

Can corporations actually help protect human rights? In their co-edited volume, *Human Rights In The New Global Economy: Corporate Social Responsibility?*, John D. Kelly and Charlotte Walker-Said have organized a comprehensive collection of articles that investigate the complex concept of Corporate Social Responsibility (CSR) and explore the potential for corporations to serve as a vehicle to defend and develop human rights.

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In the introduction to the book, Walker-Said, assistant professor of Africana studies at the John Jay College of Criminal Justice at the City University of New York, explains that CSR is both a developing conceptual framework, which seeks to apply market-oriented strategies to government, development practice, and humanitarian intervention, and a growing movement to create ethical corporate cultures. Since corporations define these ethical standards for themselves, the practice of CSR varies considerably in extent and focus, ranging from codes of environmental responsibility, to vows to provide humane labor conditions, to efforts to maintain sustainable economic development in developing countries.

Professors Kelly and Walker-Said explain that CSR has enormous global human rights implications. Current human rights scholarship is fixated primarily upon traditional rights enforcement and protection mechanisms—nation-states, international law, non-governmental organizations, and humanitarian intervention systems. However, both authors argue that corporations have

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acquired enormous power not only in the economy, but in societies across the world, thus wielding tremendous potential to influence and determine human rights outcomes.

The book is divided into three parts. Part I describes CSR as a relationship between communication and coercion—it investigates how activism and negotiation on the part of citizens, institutions, and organizations can produce greater corporate accountability. In Part II, legal scholars envision the creation of international regulatory mechanisms that could hold corporations accountable for human rights on a global scale. Some scholars explain how these mechanisms could parallel the human rights norms already established through international laws, declarations, and treaties by construing the failure to meet certain standards of “corporate responsibility” as corporate “criminal liability.” Finally, Part III examines the relationship between CSR and human rights in Africa, where corporate activity exerts a significant influence on human welfare. The authors in this section note that the power of multinational corporations often match or challenge that of the state, raising questions about the salience of state sovereignty and its relationship to human rights.

In the preface to the book, Professor Kelly argues that current approaches to human rights scholarship have remained siloed within discrete disciplinary perspectives, yielding deeply nuanced but sharply limited insights into the complexity of CSR. He argues that anthropologists can peer into the judgments and motivations that drive CSR, and they can use this knowledge to help produce and predict certain outcomes. However, he notes that anthropological diagnoses can quickly precipitate a number of utopian fantasies when they lose contact with the concrete facts that other disciplines provide. Legal scholars, historians, and policy experts fill this gap, contributing detailed knowledge of laws, corporate practices, organizational and institutional infrastructures, and histories of humanitarian practices and interventions that allow us to critically discuss the best practices for the assessment, repair, development, and implementation of CSR.

Still, CSR raises additional key political and philosophical

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questions. Why should private institutions have a responsibility to aid the public good? Can corporations be treated like people? To what extent? On what grounds? Can corporations act from incentives other than profit? Just as the concept of the Western state has evolved over the course of history—from the Hobbesian monolith that constrained our evil nature to maintain social order and security, to a Lockean model, compacted to protect humanity's newly realized rights and liberties, to the modern welfare state that seeks to meet additional social needs—the role of the corporation may also change in response to developing public needs, new social convictions, and concerted civic pressure.

CSR's potential to protect human rights on a global scale also urges us to reflect on the salience of state-sovereignty and the very concept of governance. Can CSR truly emerge as a powerful force within international human rights, as the various scholars in this book suggest? And if so, will it simply aid the nation-state in its efforts to protect human rights, or, as Walker-Said suggests, could it create a new transnational system of governance that replaces the nation-state as the paradigmatic model for human rights and security guarantees? What would happen if a corporation could govern? Could it truly respond to the entire spectrum of needs that belong to a deeply human existence?

[This interview has been edited and condensed for clarity.]

*In the introductory chapter of your book you write, "Is the corporation a crucible or an obstacle for the global human rights order? A benefactor or nemesis? The time has come for serious inquiry into the under-studied but critical relationship between corporations and human rights and the trend toward codes and practices of corporate social responsibility." What was the impetus that compelled you to investigate the relationship between corporations and human rights?*

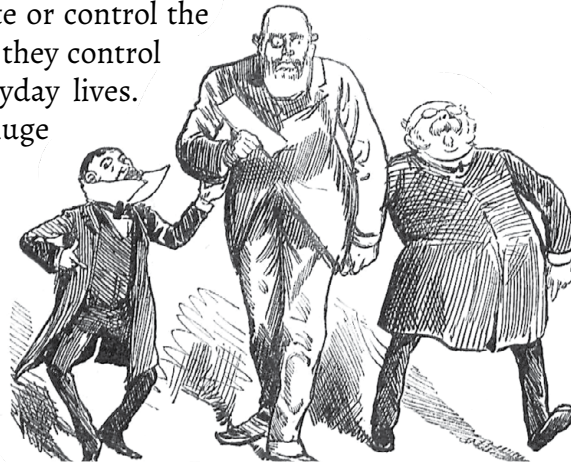
**Charlotte Walker-Said:** That is a great question. I was asked by the University of Chicago Human Rights Program, which is now called the Pozen Center, to think about some of the most pressing issues in human rights today. I am a historian, I am trained as a historian, and a lot of human rights catastrophes that exist today are

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a result of long-term human rights failures. There are very few, other than an earthquake or just a few other natural disasters, that arise out of nowhere. A lot of humanitarian crises evolve over time as a result of other kinds of human rights failures. The Human Rights Center had done a symposium on statelessness—a very interesting topic; human rights right now are only guaranteed by states. If you are not a member of a nation-state, there are really no strong legal mandates to protect your rights. So there have been some very interesting conferences on statelessness, and then another interesting conference on refugees and migration. I wanted to go in a little bit of a different direction and think about an alternative framework of the nation-state. The reason we have refugee crises and various forms of civil conflict is that states are in fact weak, or weaker than the international order ideally wants them to be.

So what are some of those things that are causing state weakness, and who are the agents who are stronger than states? So I began to think about the rise—in the United States, but also across the world—of global capitalism and global capital as being truly powerful and transformative. It has become the leitmotif of the 21st century: global capitalism and foreign direct investment. Capital really is mobile. It is constrained by very few laws and very, very few obstacles. Capital moves very easily in the age of financial technology and increasing mobility of global corporations—how they can move their operations, their factories, have their sources around the world. They truly are a transnational entity, and as such they have a lot of power and a lot of wealth. They control human rights outcomes. They don't dictate or control the realm of human rights, but they control outcomes for people's everyday lives. So they can have a really huge impact on human rights.

So, I began to think about the corporation and its power in relation to the nation-state and its power in relation to what we think of political



The Bear-men were to be her Experimental Philosophers.

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actors. The corporation considers itself a political actor. It considers itself an economic agent, but in fact its work is deeply political, so I thought it would be interesting to have a book that really looks at this, about how others are starting to see corporations as political agents and about how corporations are themselves, interestingly enough, starting to see themselves as political agents as well. They are taking up the mantle of rights politics in a way that they never have before. So I thought that would be interesting to publish a book about.

*I thought your chapter on corporate social responsibility and sustainability in Africa was really fascinating. I think that most people perceive corporate activity in the developing world solely through a negative lens—we primarily hear horrific accounts of large multinational corporations violating human rights and the environment—but your chapter argues that corporations in developing countries are actually starting to choose to defend human rights and the environment by adopting sustainability doctrines. You show how various corporations are now accepting responsibilities to maintain political stability, manage climate risk, and provide fair wages, among other protective functions, because these measures actually allow them to safeguard their growth and their profits. To my knowledge, this is currently a limited phenomenon, and I want to know if you have any insight into what specific factors or conditions help motivate corporations to adopt these doctrines of sustainability.*

I think what's interesting in this framework is that the largest multinationals are the most conservative about sustainability. They have the most to lose from excessive or irresponsible behavior, and so a company like BP is a bad example of this. BP is an enormous multinational that operates across the globe. They're in the Arctic Circle, they're in the Gulf of Mexico, they're in Nigeria, they're in the Middle East. They're truly global, and they're famous along with Shell, another multinational, for being irresponsible. Their accidents and their violations of environmental and social rights are widely publicized. They have horrible press. So they're examples of large companies who are not interested in sustainability and they often become a poster-child for the irresponsible global multinational.

I do think there are, however, other companies, especially mining

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companies, which can be widely responsible whether they're set up small-scale or locally based, or if they're large-scale like AngloGold Ashanti or Anglo American. These companies can actually be very concerned with human welfare, environmental welfare, and, of course, their financial welfare, because they really do care about hedging their bets. Labor unrest, environmental crisis, they see as a threat to their bottom line, in a more visceral way than BP or Shell often do. So, I think in the age of falling oil profits, environmental and social human rights violations may actually become more costly to oil companies, though they haven't proven to be as costly as they should be. But mining companies, whose profit margins have been historically lower than oil companies, have been in some or many cases extremely concerned with environmental and social rights. It's never perfect, it's never a company that's run like a humanitarian organization, they're certainly extractive and their work causes a lot of damage. But in these necessary industries—people are never going to live without steel, they're never going to live without iron, they're never going to live without coltan—these are necessary minerals and metals that basically power our everyday lives. So although the work that they do is damaging, they do a certain amount of sustainability measuring: environmental, social, and even political. They try to make sure that the nation-state doesn't nationalize the mine and nationalize the corporation so they can guarantee their investments. They are, of course, selfish in that way as well.

So I think there are examples of large multinationals who operate across the Global South in particular, because that's where we find a lot of timber, a lot of mining. Still, the Global South happens to be those resource-rich territories that these multinational corporations seek. And so these territories in the Global South also happen to have very weak states and you can have a very toxic environment when you have these very powerful corporations and these weak states that are very poor with politically marginalized people. And I see these corporations, and again this does not make media profit; it does not work in the realm of catastrophe. Sustainability doctrines and CSR avoid catastrophe, so that doesn't really become news.

You actually have to do quite a bit of research to find out the

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positive preventive kind of work that corporations do, simply because that's something that's not very interesting for the media narrative of corporate social responsibility. But I do think that there's actually an interior struggle within the corporate world between irresponsibility on the one hand, and, on the other, taking measures that are not enforced by law, but are increasingly becoming enforced by code, and by frameworks of cooperational ethics that are nonbinding. And these measures increasingly encourage corporations to act in a different way towards sustainability. I do see

many positive stories, because it would be hard to imagine a better outcome in the current day, where we do have very powerful capital and very weak states.

*Your response and the chapters in your book seem to posit that the corporation is starting to eclipse the power of weak states and actually to develop into a new locus of trans-governmental political authority. You state that these growing powerful corporations are luckily choosing to adopt these ethical initiatives because they coincide with their interest in protecting their bottom line. However, if corporations actually did acquire more political power, do you think we could truly always trust them to regulate themselves in an ethical way?*

So this is really like a game-theory question. Do you create a game, basically a market, where corporations are bound by certain ethical norms across the globe? Where nation-states don't compete to be the most, or should I say, the least protective of their citizens and of their environments? Because right now that is really the situation—where nation states can compete and they can say, we are business-friendly, or, we are open to investment, we have a liberal regulatory environment—and so corporations are basically incentivized to seek out the lowest bidder. So that compels the corporation to act strategically, as anyone would. You would like to invest in a country

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with the least hassles. You can decide for yourselves how much you want to pay their workers, to pollute their environment, etc., and you can be bound by your own code, and if you are a large multinational who is concerned with brand reputation, you might actually enforce some standards. But if you're a small company from Greece or a family-owned logging company from Lebanon, you really aren't going to care at all about being destructive or punitive to your workers, because your company is never going to make the press. It's just never going to happen. So, I think the self-policing has its limits.

What would be better, really, would be a global framework that would be binding, that would regulate investment and regulate everything from taxation to environmental impact to labor protections, etc. But that kind of global governance, that isn't in the realm of frameworks or norms that work to enforce some sort of global standards. That is probably a very long way off, if not nearly impossible. I think we are, for the next few decades, wedded to the self-policing, non-binding, self-governing framework that we have among corporations, and I think it really is up to activists to have these watchdog groups and media pressure to make corporations feel as if they are in the public eye. They are public actors and they have reputations just like a person would. And their reputations can impact their bottom lines, so I think that activists, investors, media pressure will be the only real enforcers. Those kind of global frameworks that would bind all these countries to mandate that corporations act in a certain way in their countries, there's going to be a lot of reluctance to do that, especially among the poorest nations who are the hungriest for investment.

*As these large multinational corporations gain more and more power, especially in developing countries, do you think they will hinder the growth of smaller businesses?*

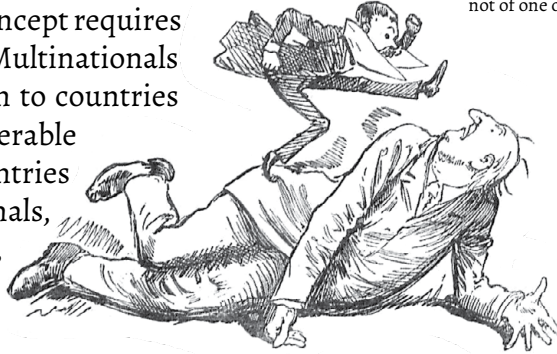
That's an interesting question. I'm not an expert on this, but I believe that there are cases in which a multinational can push out small businesses. But a lot of times multinationals don't push out small businesses, because they can even support small businesses. They can depend on small businesses for the supply chain. It really depends on the industry, whether it's apparel, or artisanal mining,



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not of one opinion.

but I think the small-business concept requires very contextualized research. Multinationals can bring a great deal of growth to countries and can provide considerable opportunities. So a lot of countries really welcome multinationals, multinational grocery chains, apparel companies, because they really do feel like the growth is perceptible. But yes, occasionally countries will push out all businesses and lead to negative growth, not positive growth.



*I know that you spent a few years working in Africa, and I was wondering if your experiences or observations of corporate behavior there influenced the development of your ideas for this book.*

Yes, I was very, very interested in international fruit companies. Dole has some farms in Cameroon, and a number of American-based agricultural multinationals have bases in Africa and their operations are definitely debatable. They come into question a lot and right now there is a big debate in Ghana. Ghana and the Ivory Coast are some of the biggest exporters of cocoa, and they have come under fire because most of the cocoa-growing in Ghana and the Ivory Coast is done on family farms. The family has to grow cocoa and then they bring the cocoa to a depot, you know like a giant factory or a warehouse, and then they weigh it and then they're paid, similarly to coffee in Ethiopia. They're just totally family-run farms. They're not like plantation-style, where everyone's a wage laborer on a giant commercial farm. Most cocoa and coffee in many parts of Africa, they're just families that grow it in their lots. And as it is a family business, children are used for labor. That is a long-standing custom throughout Africa, of using small children as labor, whether they water, whether they weed, whether they cut down trees to sell. Whether or not that is child-labor-like, making a child work in a factory ten hours a day, whether all child labor is the same and whether it is all to be criminalized via international law, or whether there is a space in a society where children only go to school in the morning, or children only go to school two days a week, whether there is an

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institutional capacity to offer children alternatives anyway, whether using a child on a family farm should be criminalized, and whether a company should pull out—there's a question of Cadbury and Nestle, if they should pull out of Ghana, because Guineans and Ivorians are using child-labor. And the question is a really complex one, and as someone who has studied these societies and knows their history that largely has had hundreds of years of this labor, and the children don't see this as exploitative, they see this as participating in a family business. So to pressure a corporation to leave a country entirely, to basically rob tens of thousands of people of their livelihoods, because the question of child labor is a sticky one? That kind of debate is very interesting to me.

I fall on the side of, I think this really has to be contextualized and considered, what child-labor really is. And all child labor is not the same, and companies should not be penalized for investing in countries where families benefit enormously. The Ivory Coast and Ghana actually have very decent economies and very workable incomes for many families who produce cocoa, because they would literally be reduced to starvation if the cocoa industry were to collapse. So there are bigger questions than “we have to enforce human rights” in this broad scheme.

This is a kind of question that I find interesting, and I think that the notion of corporate social responsibility in that case is an interesting one. How could they improve the lives of those children, instead of just pulling out of the country entirely? Could there be non-profit schools, could there be corporate-funded sports-activity programs? That could be very cheap for the corporation to invest in, and it could alleviate some of the child-labor obligations on children while at the same time promoting business on small family farms in these countries. That's a better solution than divestment, in my opinion. But, that's the kind of debate that has to be a little more sophisticated than simply condemning corporations for “working in countries with child labor.”

*I have two questions in response to that. If corporations primarily seem to be protecting human rights in order to protect their bottom line—to safeguard their growth and profits—do you think that other human rights,*

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*such as cultural rights, for example, will just go ignored and unprotected because they may not turn out to be valuable according to a profit-driven calculus? My second question, which I think is kind of related, is what political authority is going to be able to judge whether or not certain types of child labor are acceptable, and then force corporations to comply with these judgments on protecting human rights?*

For that last question, I think that we really are stuck with the policing mechanism of the market. No matter how loud or active activists are, we know that nation-states are more and more reluctant to regulate corporations. We are working in a very liberal regulatory moment for global capital. Even in the United States, we have a fairly liberal regulatory environment, and especially in some states. I think the nature of fracking will demonstrate that very easily, that the environmental and social fallout from fracking has been ignored. I think that state and local governments are willing to let those kinds of violations occur in the name of natural gas investment. So, again, I think that the market will kind of be the only regulating force—that of activist pressure, of brand reputation, of the lack of sustainability.

A lot of these companies are publicly traded, and if they have unsustainable business models, they will run themselves into fines, to public outcry, to litigation, which are great tools. All of those things are liabilities and they aren't sustainable. So, the market will push the market share, the value price of that corporation to decline, and its investment lure will be reduced. So there is great potential in activism, litigation, and regulation, even modest regulation, in determining the market value of a corporation, and I think that will most effectively incentivize a corporation to change their behaviors.

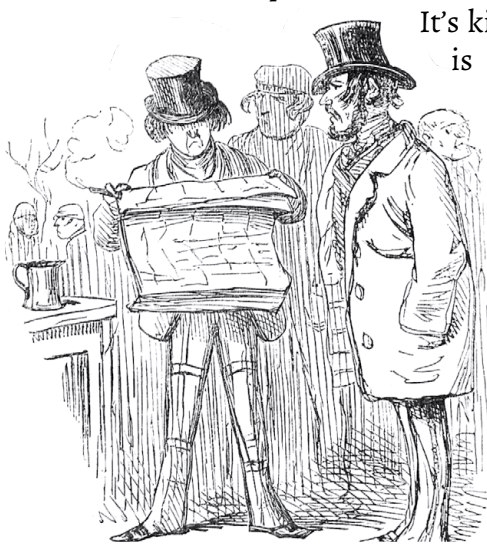
Will corporations ever act as more social actors, in service of something other than their bottom line? Well, yes, sometimes they can, if there are certain incentives that cause them to have social concerns. But they are very profit-driven. By their natures they don't see themselves as very political or social, they see themselves as financial and commercial. And I think that will remain even if they may become more concerned with culture and environment.

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They are still seeing it through the lens of profit, but I don't think that's necessarily a negative thing. Again, that can be harnessed to incentivize them in the right direction.

*Many people are critical of corporations that try to brand their socially responsible ethos. For example, some people are critical of Starbucks or Toms shoes—which gives a small percentage of their profits away to charitable causes, or donates a pair of shoes with every purchase—because there's something kind of morally suspect about buying a product that seems to offer moral absolution included with the price of consumption. Do you think that these criticisms of moral perversion in corporate social responsibility are valid? And do you see any other ways in which corporations, especially in the U.S., can practice social responsibility?*

Sure. There's actually another movement going on right now called the B Corps, or benefit corporations. Corporations have to go through very strict audit and review processes before they can be labeled a benefit corporation. Everyone from a caterer to a dry-cleaner can act under that certification. I think that is a movement. There's Toms or Starbucks—people can consider that weak sauce [laughs] weak ethical movements, but these are all soldiers in a growing army of corporations and customers and social entrepreneurs who are more and more concerned with generating social welfare from private enterprise. I do think this is a considerable movement. If you look up benefit corporations, it is one of the fastest-growing certifications.



It's kind of like a LEADS certification, which is an environmental certification for buildings. Many companies want to have this certification, they want to be able to promote that they are a benefit corporation, like Toms or Starbucks, like for every cup of coffee or for every shoe you buy, you're doing something good in the world. There are certain direct marketing incentives for that. People like buying things when they feel good about doing it. They like to feel good. "Feel-good capitalism" is sort of a glib criticism, but I do think

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that there's something to their momentum, and there's something to the fact that this is a growing movement, it's not really just a blip on the radar or a passing fad.

This is a movement that has been growing every year for more than a decade now. It seems to be getting bigger now. I think this has a possibility to transform from feel-good capitalism to an actual ethical and social movement. I think that has yet to be seen, I think it's too soon to say that this is a broad-scale resolution in consumer capitalism, but I do see it growing. So I do think that's a considerable step forward in B Corps certification and socially-minded corporate marketing campaigns and foundation orientations.

*In the U.S. do you think there is going to be a movement to make this sort of corporate social responsibility a legal obligation?*

Interesting. I don't think so. I think it will remain voluntary, but I don't think that will make it less powerful or less effective. Of course, I think regulation would be better, I believe in regulation as well, but I just don't see that being realistic. I mean, not even liberals, democratic presidents or politicians have vocally supported regulation. No matter what side of the political spectrum one seems to be on these days, regulation is pretty much off the table. So, there really isn't a left-right debate about this anymore. It's not just Republicans. There are not many politically strong voices for regulation. So I think it will continue to be voluntary, but I still think that could be considerable and still be powerful.

*Do you think that there is anything that individual citizens can do to hold companies accountable, apart from boycotting their products or services?*

Once you become an investor or become interested in broader financial instruments that all of us become bound to, whether they be pensions or 401Ks, you sort of become conscious investors. Not just conscious consumers but conscious investors. I think there's something important up to that as well. Also, I think just being aware of how things are being made in the world. So I think that public awareness and knowledge of both financial and commercial enterprises are important.