



Multiplicity, the corporation and human rights in global value chains

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Abstract

Human rights in global value chains have become a key field of study in international law and corporate governance. The analysis often starts with a gap – a ‘governance gap’ in human rights protection. This pragmatic starting point calls for pragmatic solutions: better corporate compliance and more accountability. While this goes a long way in addressing corporate misconduct, the global corporate form, its power and legitimation in transnationally generating and appropriating value tend to become naturalized phenomena. Moreover, the effects of accountability agendas on corporate power and legitimation are hardly considered. Instead, I propose to address the ‘human rights problem’ by understanding the corporation and its networks as consequences of international politics – conceptualized as inter-societal multiplicity. The multiplicity lens offers a possibility to replace the governance gap with a productive conception of inter-societal conditions and can complement the focus on accountability and compliance. I conclude the article by tentatively sketching three important consequences of such a starting point for defining the problem of human rights in global value chains: the international dimensions of the division of labour under competitive conditions, the legitimation of corporate practices and the production of knowledge for their regulation.

Keywords

business and human rights, corporate power, global production, governance theory, international law, international politics

Introduction

From international law to economic sociology, management studies and business ethics, the debate on business and human rights has become a prominent field of study. ‘Human rights in global value chains (GVCs)’ is one of its key problem areas (Buhmann et al., 2019). Surprisingly, the debate is less prominent in the field of politics and International Relations (IR), with some exceptions that I will mention below. This is somewhat startling, since such important academic and international policy influences in this area come from John Ruggie (2014, 2017), who is one of the most prominent IR scholars. At

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first glance, however, it may seem that IR as a discipline does not have much to contribute, since relationships between rights and corporations are genuine subjects of other disciplines. GVCs are also more central to socioeconomics and human geography.

We might question whether the discipline of IR is even capable of contributing to this debate. Has it not too systematically left private economic entities and the formation of global flows of goods to other disciplines, such as economics, sociology and geography? The core of the IR discipline has side-lined global production (Van der Pijl, 2015).

Of course, heterodox approaches to international political economy (IPE) have extensively studied the power and agency of transnational corporations (Cutler, 2003; Fuchs, 2013; Strange, 1994). But it can be stated that heterodox IPE has often suspended ethical or normative questions related to liberal international human rights law as well as analyses of transnational corporate agency therein (Noelke and May, 2018). This does not mean, of course, that some streams of critical IPE have not explored the productive power of private corporations in relation to ethical and normative discourses more generally. This includes, in particular, feminist work (Prügl, 2015) and studies in cultural political economy (Sum and Jessop, 2013). But the insights we can draw from this research on the currently dynamic relationship between international human rights institutions, private companies and their production networks have so far hardly been incorporated into the dominant policy discourse on 'business and human rights'. The bottom line, therefore, is that the relationship that exists between transnational corporations and the contemporary human rights discourse has been elaborated only to an unsatisfactory degree in existing research.

As a result, a problem persists in the current policy-oriented debate on 'business and human rights': it starts from the perception of gaps – 'governance gaps' (OHCHR, 2008: 3) that prevent an effective protection of human rights from transnational corporate misconduct. *Constitutive* political processes that lead to the miserable human condition of global production are barely addressed. Essentially, they are only considered by noting that there is a too *permissive* environment for corporations (OHCHR, 2008: 3). Thus, to close those gaps and make the environment less permissive, policy strategies focus on more corporate respect for human rights and better forms of corporate accountability. This diagnosis and treatment of governance gaps, while not wrong, naturalizes the corporate form, its vast transnational networks, its practices of value creation (or appropriation) and of legitimation. The solution targets the permissive environment, as if simply the *absence* of an authority had created the problem, rather than the very specific international form and reach of the corporation, its practices, values and powers. To be clear, there is nothing wrong with the goals of better norm compliance and accountability. Quite to the contrary, the dominant pragmatic approach, most prominently represented by the United Nations (UN) Guiding Principles on Business and Human Rights (OHCHR, 2011), has led to remarkable progress towards recognizing human rights predicaments in transnational enterprises, including GVCs. But some important facets of the debate and consequences of its dominant problem definition are largely left out, such as the corporate form (Baars, 2019), corporate power (Birchall, 2021) and legitimation (Scheper, 2019) in the human rights field.

So, this article does not aim at a critique of the manifold efforts to 'close governance gaps', but to complement them by focussing on *constitutive politics of the international*.

By this I mean a focus of the analysis on the processes that, starting from a specific international constellation, have historically formed and are shaping the contemporary problem of human rights in GVCs. Otherwise, there might be a risk of solidifying these constitutive conditions and reifying corporate power by limiting itself to questions of implementation, norm compliance and corporate accountability.

This complementary perspective could thus connect the current legal and policy-oriented debate on business and human rights with insights from various strands of heterodox political economy about the historical formation and power of private enterprises, their normative agency and practices. In an effort to develop such a complementary and integrative perspective, I address this article decidedly to the current legal and policy-oriented literature on business and human rights and argue that IR can make a valuable contribution to this debate. A perspective of international politics can conceptually bring together the figure of the globally operating corporation, its networks and practices of value creation and legitimation, with extant human rights predicaments. But some conceptual clarification is necessary. We need to take a perspective on international politics that is unsuspecting of being limited to inter-state politics and that makes clear that the *global* enterprise, its form, networks and practices are phenomena worth explaining, rather than taken as given actors and structures. This article offers a first sketch of what such a perspective might look like, by building on an understanding of the international as inter-societal multiplicity (Rosenberg, 2016). The consideration of the consequences of multiplicity – co-existence, difference, interaction, combination and dialectical change – sharpens our gaze for the constituent, productive political processes that are generated by the historically specific inter-societal constellation. Existing heterodox IPE approaches are quite good at explaining corporate power and agency as well, and I rely heavily on them. But I see an additional, integrative function of the multiplicity concept as it attempts to offer a common ontological ground for the evolvment of liberal international law norms and transnational business ethics and practice.

The article makes three contributions on a conceptual level. First, it fills the constitutive ‘gaps’ in the business and human rights debate. Second, for the broad GVC debate, it clarifies the importance of *international* politics, thus complementing its focus on the firm and the recently increased emphasis on the importance of state governance in a ‘value chain world’ (Mayer and Phillips, 2017). This can also be seen as offering a complementary view to critical discussions on ethical corporate governance within cultural-political economy frameworks. Third, it contributes to the discussion on multiplicity as the disciplinary core of IR (Rosenberg, 2016) by focussing on its effects for phenomena of the *global* – particularly global corporate agents and networks.

In what follows, I will first problematize the debate on human rights in GVCs by focussing on two aspects that have received little attention: the global corporation and processes of creating value as constructs of international law and politics. To bring these aspects more into the focus of the debate, I draw on different strands of research in heterodox IPE, anthropology, critical geography and historical-materialist approaches to law. I then introduce the perspective of multiplicity to connect these different strands to re-articulate the problem. Instead of looking at gaps in global governance, we look at those intersocietal bridges – sites where multiplicity seems to evaporate, be concealed or contested. One of those sites is the global corporation, another is the creation of global

chains of production, and yet another is the human rights discourse in public international law. I will turn to all three. Implementation through corporate influence and accountability in this view becomes a political issue itself, rather than a solution to governance gaps. Human rights in GVCs are no longer primarily about compliance with rules, but about the conditions of the transnational construction of agency and value(s). I limit the analysis to key conceptual elements and conclude by briefly differentiating three consequences of international politics that co-constitute the problem of ‘human rights in GVCs’: international dimensions of the division of labour under competitive conditions, the legitimization of corporate practices, and the production of knowledge for their regulation. Finally, I consider some of the implications of the multiplicity lens for the existing business and human rights debates, (re-)connecting them closer to heterodox IPE and more firmly situating them in IR.

Human rights and the GVC problem

The academic debate on business and human rights is not a new one (see Bernaz, 2017), but it has been reinvented in the last two decades. This reinvention can be understood as the consequence of a dead end in political debates about the international power and limits of corporate actors that had already started in the 1970s. Within the framework of the New International Economic Order – an attempt by various developing countries to reformulate trade terms and development policy programmes through the UN in the 1970s – fundamental systemic questions about the role, reach and impacts of multinational corporations had already been raised. Years later, some of the issues were revisited, but in an international legal guise, proposing binding human rights norms for transnational corporations (Weissbrodt and Kruger, 2003). After this had failed within the UN, John Ruggie was appointed as ‘Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises’ in 2005. He had already co-designed the UN Global Compact as a new form of cooperation with transnational companies a few years earlier. With his appointment, the debate took a new direction towards a much more active involvement of private companies in the international human rights regime.

This change was framed as a pragmatic turn since it built on existing forms of transnational corporate agency to effectively increase respect for human rights without lengthy international treaty debates. Ruggie (2014) has referred to this as ‘principled pragmatism’ and an expression of a ‘new governance theory’, which assumes that transnational polycentric governance is needed because the ‘state by itself cannot do all the heavy lifting to meet most pressing societal challenges’ (Ruggie, 2014: 8) and that, ‘[w]ith only rare exceptions, companies are subject not to international law but to the domestic laws of states where they are incorporated and operate’ (Ruggie, 2014: 9). The resulting political framework accordingly reifies a corporate responsibility to respect human rights, not as a legal duty, but as a social expectation, and calls for additional legal accountability mechanisms where corporations do not walk the talk.

Policy developments and academic debates on business and human rights have flourished since (see Deva and Birchall, 2020). Various scholars have contributed to the development and critique of its new interdisciplinary agenda, which is dominated by law