

Responsibility in World Business

Managing Harmful
Side-effects of
Corporate Activity

Edited by

**Lene Bomann-Larsen
and Oddny Wiggen**

Responsibility in world business: Managing harmful side-effects of corporate activity

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Addressing side-effect harm in the business context: Conceptual and practical challenges

Oddny Wiggen and Lene Bomann-Larsen

In 2001, 51 of the 100 largest economies in the world were private companies, not states.¹ This makes the private sector a major actor on the global arena – an actor with considerable impact on the societies in which it operates. With such power comes responsibility.

Increased scrutiny of the actions of private companies has placed the responsibility of the private sector on the global agenda. Non-governmental organizations (NGOs), researchers, policy makers, media, consumers, and public opinion – and not least the United Nations, with its Global Compact initiative and Millennium Development Goals – all have a critical eye on corporate actors. To accommodate these increased expectations, the private sector itself has responded with corporate social responsibility (CSR) initiatives and programmes for promoting development, such as the World Business Council for Sustainable Development. New concepts such as corporate citizenship and corporate governance are on everyone's lips, and new and unexpected alliances pop up under headings such as “partnership for development”.

The focus on the private sector and its social and environmental obligations increases awareness of social and environmental issues both externally and internally, and may lay the groundwork for a reinterpretation of the role of corporations, of their purpose and legitimacy beyond the profit margin. On the other hand, the many competing concepts and approaches, as well as a lack of coherence in expectations and responses, may not only lead to fatigue but also serve as a wordy cover-up for a

reality where not much is being done. When those corporations that speak the loudest about ethics, that are in partnerships with the most respected NGOs and that show up at all research conferences on corporate responsibility suddenly are exposed for violating labour rights, hollow slogans are revealed as just that.

With power comes responsibility. But what is the *content* of corporate social responsibility and its related concepts? The responsibility of the private sector needs to be given a concrete meaning, so as to avoid the honourable speeches and the misrepresentation they may entail. An important aspect is that a responsible company does not have an entire division writing up CSR slogans and nurturing relationships with NGOs while business goes on as usual in other departments. Instead, in all its activities, a responsible company is concerned with the questions: What is the potential impact of our operations on people and the environment? If some degree of harm is unavoidable, what measures can we take to minimize it?

Staying away from all difficult spots is hardly a solution for the private sector in the developing countries. Thus, in general, *responsible engagement* is better than *no engagement*. This book aims to clarify and delimit the responsibility of corporations in relation to specific contexts in which they operate. It is the editors' opinion that any actor – including a private company – must, first and foremost, take responsibility for its own actions and the impact of these on its multiple stakeholders.

The ethics of double effect

The key concept of this book is *double effect*. Double effect refers to the fact that actions often have more than one outcome, i.e. actions may produce side-effects. The phenomenon of double effect becomes a moral problem when the side-effects are not desirable, and especially when they are harmful for those affected. Actors are *responsible* for such side-effects when these are foreseeable and they still choose to proceed. Actors are *blameworthy* for harmful side-effects when they allow them to happen if they could have been prevented, or when they make no, or only an insignificant, attempt to minimize them.

The considerations on side-effects above are entailed in what is called the *principle of double effect*, also known as the *doctrine* of double effect. The doctrine of double effect is perhaps best known from the “just war” tradition, though it also plays an important role in many other fields of applied ethics. Owing to the inert connotations of the word “doctrine”, this book will consistently refer to the “principle of double effect” (PDE).

The PDE is a moral principle for assessing actions that produce side-effect harm. In short, it states that, although actors are *responsible* for harmful side-effects that ensue from their actions, actions that produce harmful side-effects are nevertheless permissible provided that (1) the primary goal of the action is legitimate; (2) the side-effects are not part of the actor's intended goal; (3) the side-effects are not means to this goal. Further, the side-effects are permissible only if (4) the actor aims to prevent or minimize them and (5) no alternative courses of action could have been taken that would have led to fewer or no side-effects.

The main emphasis of this book is the PDE not as a principle of *permissibility* but as a device for ascribing *responsibility*. As such, the PDE can be used both as a tool for analysing actions that have already taken place, and as a prerequisite for moral judgement of these actions. More importantly, it can be used as a guide for action in obligating actors to consider in advance what side-effects might result from their actions and, if presumed harmful, how these effects can be prevented or minimized.

The PDE is well known yet not undisputed in academic circles. One major reason for the controversies is the principle's assumed heavy reliance on *intentions* – about whose importance ethicists emphatically disagree. However, the present book wants to emphasize the basic intuition that it *does* make a difference what one intends to do to others. If Peter attacks Mary in order to hurt her, and she falls and breaks her arm, we will judge him differently than if he aims to hug her, trips and falls on her with the same result. Not only will we, as spectators, judge him differently, but it will probably also make all the difference in the world to Mary, even though the broken arm hurts just the same. This is the very simple point that lies at the heart of the PDE; it *does* matter what one's project is. But the PDE is not merely about distinguishing actions from accidents in terms of blame. It is also about ascribing responsibility proper. Because even if Peter had the best intentions in trying to hug Mary, and is not blameworthy for hurting her, he is still to a certain extent responsible for her fall, and we would expect him to offer to help her toward a speedy recovery.

The example is presented to bring out shared intuitions about intentions. The gist of the PDE, however, is not that simple. It deals with actions where the side-effects are in some way chosen, i.e. where they are situated within the sphere of the voluntary because they are *allowed to happen*. This entails that, in order for side-effects to be truly subject to PDE assessment, they must be foreseeable and knowable to agents. This means either that agents foresee that the side-effects will occur, or that they *should* have foreseen them and that their ignorance is in itself culpable. Thus the PDE expands far beyond the Peter and Mary example above. Even with this expansion, however, the PDE lies well within the

common-sensical. It seems intuitively apt to say that, although we do not blame anyone for any accidents they cause, we do blame them if the accidents are the result of recklessness or negligence, and we would expect them to have acted otherwise. The PDE is a principle of fairness: it blames actors only for those things that lie within their power to do something about.

The PDE, then, in spite of the controversies regarding the role of intentions in moral assessments, supports some common-sense intuitions. In addition, it has been developed and debated over a time-span almost as long as the life of philosophy itself, and it has survived and accommodated numerous attacks. It has been rephrased and reinterpreted, and through this we dare say it has been strengthened rather than weakened. It is, in spite of some disagreement about its validity, an ethically well-grounded principle.

The PDE employed in this book is an adaptation as well as a rephrasing. Adaptation was necessary in particular to accommodate the particularities of the business *actors*, but also to take seriously other aspects of the business context, such as the need for stakeholder dialogue. If the attempt has been successful, the PDE revised for the business context manages to combine the legitimacy of a moral principle with a long discursive history with the concrete reality of corporations in the world today.

The casuistic approach

The business context is a complex mixture of political, ethical, and judicial factors as well as empirical risks, uncertainties, and changing environments. Moreover, no two situations are identical. Doing business in a well-functioning democratic welfare state is quite different from doing business in a conflict- and corruption-ridden country or where a large part of the population is illiterate and poor and lacks social security systems. Not only is it different because of the risks to the company; it is also different because of the risks to the community. The potential for harm is greater in vulnerable societies – and, therefore, the responsibility to avoid or minimize it is also greater.

Although the obligation to “do no harm” applies equally to all settings, *how* the requirement should be met will depend on contextual factors. This is why an ethical framework addressing business challenges should be flexible and adaptive to the variety of difficulties that require a moral response from companies; in short, a context-sensitive approach is needed.

That an approach to ethics is context sensitive does not mean that it

relativizes the ethical case that lies at the heart of the CSR discourse. Rather, it can be argued that the ethical case demands that particular features of each situation are taken into account when practical responses are being formed. For instance, doing business in the same manner in Nigeria as in Norway – that is, simply operating in the manner that domestic law requires – might cause tremendous harm in the former context owing to a legal framework that does not protect employees and the environment. The ethical bottom-line is simple: you are responsible for the actual harm you cause or contribute to, no matter where you operate.

A context-sensitive approach, which applies moral principles as guidelines while allowing the particularities of the situation to determine the practical conclusion of moral reasoning, is properly called *casuistic*. A casuistic approach stresses that moral rules must be applied with great care and skilful judgement. This entails exercising what Aristotle called *phronesis* (practical wisdom). Casuistry is further a method for dealing with moral *problems*, i.e. situations in which the answer to what one ought to do is not clear. As Toulmin and Jonsen point out in their *Abuse of casuistry*, “We understand general maxims, whether about lending or borrowing, cruelty to animals, avoiding violence, or the rights of innocent life because – and to the extent that – we are familiar with the central unambiguous kinds of cases (the ‘paradigmatic’ cases) that those maxims are commonly understood to cover.”²

Translated to the business context, we can say that a business environment that functions to the best for all – in which everyone benefits from the business activity and no one is harmed, in which business can be left to “mind its own business” because there are democratic laws and institutions that safeguard both business and the public – constitutes the paradigmatic case: a “rule of the proper division of labour”. Yet, as Toulmin and Jonsen emphasize, “it is just those situations that are not covered by appeal to any single simple rule that begin to be problematic; and in just those cases our concern to act rightly gives rise to genuinely moral ‘questions’ and ‘issues’”.³

In war, the *prima facie* rule “do not kill” becomes problematic. In business, so does the appeal to a proper division of labour between governments and corporations, when a government does not attend to the common good or represent the people as a whole. Here the private sector should not be left to “mind its own business”, because doing so would cause unnecessary harm. Whereas a proper labour division between the private and public sector is a necessity in a country such as Norway in order to retain democratic control, the same ideal applies ambiguously in, for example, Angola, where oil companies and similar corporations may need to take on some public responsibility in order to rectify harm

to the community, a harm to which the company contributes. In other words, whereas the Norwegian state ensures a redistribution of wealth through an open, transparent system, this is not the case in many developing countries such as Angola, where large amounts of revenues are unaccounted for and “disappear” – into the pockets of the government and into the military budget – or where the environment or human rights are not protected. Thus, there is a morally relevant difference between these two types of settings that necessitates a differentiation in the degree of corporate involvement and range of responses. The particularities of the situation thus determine the degree and direction of a proper response.

Narrowing the scope of corporate responsibility

There are many different approaches to the issue of corporate responsibility, and they vary in scope and content. Some approaches impose a broad range of expectations on private sector actors. One example is the concept of corporate citizenship, which regards the business company as a part of a community, somewhat analogous to other citizens, and with the duties incumbent on these. At the other end of the scale, narrow approaches claim that the company is responsible only for acting in accordance with the law of its host country.

As suggested above, the double effect approach outlined in this book is situated somewhere in between. Operating legally is no guarantee that the result will be acceptable. From an ethical point of view, considering the impact on affected parties – an inclusive stakeholder approach – is necessary to ensure acceptability. On the other hand, business is business, meaning that it should and must attend to those purposes for which it has been created and is established by law. All ethical demands must, in order to be reasonable, be balanced against the legitimate purposes and needs of business. After all, a well-functioning economy is to the benefit of all.

Two issues of legitimacy are worth noticing in this context. The first is the legitimacy of the private sector itself and of the goal of sustainable value creation. Any approach addressing the responsibilities of the sector must, so as not to undermine its own project, accept this goal. Judging business as such as immoral leads nowhere; the concern must be focused on the question of how business can be conducted in a morally legitimate manner. The second issue of legitimacy is political: How far should the private sector go in taking on governmental duties in societies where no one else takes on these tasks? One way to answer this would be to re-

strict the scope of legitimate involvement to the sphere of the company's own impact; another would be to redefine the company's purpose or form partnerships between company, government, and NGOs.

The political legitimacy challenge is important because it may prove perilous to communities if the private sector, with its legitimate self-interest, meddles in public affairs. Such involvement might prove harmful to democratic processes and the development of the public sector. On the other hand, reference to the legitimacy challenge is also commonly used by companies as an excuse to avoid social responsibility at all ("We are only here to do business"). It is necessary to find the proper balance between doing too much and doing too little for the community in which the company operates.

This book does not provide an answer to the challenge of legitimacy, but it does suggest a way to go: by outlining a principle for assessing de facto corporate impact, the PDE establishes a *minimal-requirement* norm. This entails that the reply "We are only here to do business" or claims of "constructive engagement" cannot be used to evade responsibility for the negative impact of corporate activity. Further, the responses to prevent or minimize harm that are required by the PDE may extend beyond what is commonly thought of as cleaning up after oneself. For example, if corruption is the problem, measures to rectify a situation in which the company becomes an indirect contributor to the wealth of a private government may entail giving something back to the community – be it in the form of direct social services or in the form of supporting NGOs' work against corruption. The options are many.

However, even though the PDE is a minimal-requirement norm – simply to take responsibility for the harm one causes to others – this does not mean that there is no room for negotiating corporate responsibilities beyond the PDE's scope. As mentioned above, a reconstruction of the very idea and purpose of the business corporation is not unthinkable, nor is a discussion about the corporation as citizen. However, it seems pressing first and foremost to establish a reasonable minimum moral standard that everyone arguably is obliged to follow, and then, when compliance to such a standard is ensured, we may start discussing broader responsibilities. There is no point in planting flowers in the neighbour's garden if poison is leaking out in your own backyard, polluting the soil. Acts beyond what the PDE requires may perhaps best be regarded as supererogatory acts: one is morally praiseworthy for performing them, but not blameworthy for not doing so.

Thus, the aim of this book is to lay down a minimal moral duty requirement in the form of the PDE, a principle that everyone, on the basis of reason and fairness, should be able to adhere to and, it is to be hoped,

comply with. This aim, however, does not exclude other approaches that go beyond what is minimally required and into the broader debate on the role of corporations in society.

Complicity

One of the advantages of narrowing down the notion of corporate responsibility is that it helps us frame the problematic concept of corporate *complicity*. The issue of complicity – here understood as being implicated in human rights abuses in particular, but also in environmental degradation and violations of labour standards – is at the forefront of many CSR debates. Furthermore, the word is frequently used by company critics as a reproach. Acknowledging the importance of the concept, the UN Secretary-General launched as his second principle of the UN Global Compact that “Companies should make sure they are not complicit in human rights abuses”.⁴

The problem is not, however, agreeing that complicity in human rights abuses is something that should be avoided; the problem is agreeing on the content of the term. When is a company complicit in the wrongdoing of other actors – be they other companies, national or local governments, security or police forces, or even armies? An International Peace Academy workshop report from 2001 notes: “Establishing the extent to which a corporation is complicit in conflict is central to the notion of responsibility, yet there is no consensus on what ‘being complicit’ means.”⁵ We could easily substitute “human rights violations” for “conflict”, without getting closer to consensus. The IPA further notes: “The continued broadening of and vagueness of the notion of complicity has the effect of ‘moving the goalposts’, whereby corporations meet one set of standards only to find themselves under criticism for failing to address others.”⁶ It goes without saying that such a situation is not very constructive if the goal is to make companies more responsible. What is needed is a conceptual clarification of the term “complicity” – at least where the term is not precisely defined or covered by law – which might serve to *fix the goalposts*.

In addition to laying down the minimal requirements of corporate responsibility, the PDE can also help define a more precise content of the vague notion of complicity. When the criminal or immoral intent is not shared, complicity is located within the realm of side-effects: “in the case of complicity, the permitted side-effect is another person’s immoral or criminal action.”⁷ The PDE, by emphasizing the company’s responsibility for the side-effects that ensue from its own activity, thus tailors the proper area for criticism and blame to the (foreseeable) *impact* of the

company on its surroundings, rather than (more broadly) to the company's sphere of influence. Thus the PDE will cover both contributing to and benefiting from the wrongdoings of others, including exploitation of an unjust or weak legal framework, as categories of complicity. However, it is not given under the PDE that merely *bystanding* wrongdoings (so-called silent complicity) should count as complicity on the part of a company (though it might do so on the part of individual persons). It may be added that, although "being there" as such does not constitute complicity, the PDE in its classical expressions does ascribe responsibility for the side-effects of *inaction* as well as of action, but in those cases it must be proven that the agent is guilty of omitting a positive duty.

Which duties a business corporation has beyond the duty to take responsibility for its own impact on human rights, the environment, and so forth is, as suggested in the previous paragraph, open for discussion. Although there is no consensus – even within this volume – on where to place the *second* goalpost of corporate complicity, it is the contention of the editors that the PDE framework fixes the *first* goalpost by providing a minimal-requirement norm – and that this is a significant step in the right direction.

Structure

This book proposes a normative framework to help companies address the harmful side-effects of their operations. It also reflects a dialogical process towards a best possible normative map to fit the landscape. The book consists of two main parts: (1) a theoretical part comprising philosophical and legal considerations on the principle of double effect (PDE) and the fruitfulness of adapting the principle from the just war tradition to the business context, and (2) a case-study part, applying the revised PDE to concrete cases where corporations have faced relevant dilemmas, and evaluating the usefulness and potential shortcomings of a revised PDE with regard to the specific cases.

In the theoretical part, the chapters reflect the development of the project from the first idea that some tenets from the just war tradition could perhaps be successfully adapted to the CSR/corporate citizenship discourse, generating a concept of "just business". Provided sufficient analogies can be proven between war and business, the criteria determining when war is considered "just" (i.e. morally warranted) can also determine when business is "just".

Methodologically, the casuistry of the just war tradition – i.e. applying general guidelines to specific cases and letting the particularities of the cases determine the deliberative outcome and judgement – seems in-

tuitively apt for addressing the complexity of the business world. In essence, however, there are some disanalogies between war and business that may not warrant a direct transfer of the rules from one tradition to the other. The presumed analogies and disanalogies are discussed in the first two chapters of the theoretical part. In chapter 2, “The idea of double effect – in war and business”, Gregory Reichberg and Henrik Syse provide an introduction to the just war tradition and the historical origins of the doctrine/principle of double effect embedded in this tradition. They argue that there are certain analogies between war and business, and that the terminology of the just war tradition can be suited to the purpose of awareness-raising and conceptual clarification in the CSR discourse. In chapter 3, “Business is not just war: Implications for applying the principle of double effect to business”, G. J. (Deon) Rossouw reminds us that there are also *disanalogies* between war and business that require a rephrasing of the principles from the just war tradition if they are to be adaptable to the business context.

A legal perspective is given in chapter 4, “State responsibility, corporate responsibility, and complicity in human rights violations”. Here, Andrew Clapham provides a judicial discussion of the legal framework that exists in the international arena for dealing with issues of corporate complicity.

The fifth chapter discusses the role of intentions in assessing corporate conduct and in relation to the PDE, and shows how the PDE may serve to delimit corporate responsibility and serve as a constructive tool for corporate decision-making. In “Reconstructing the principle of double effect: Towards fixing the goalposts of corporate responsibility” (chap. 6), Lene Bomann-Larsen argues why the PDE is relevant to an assessment of the side-effect harm of corporate activity, in terms of both enhancing and narrowing this responsibility.

On the basis of the discussion in these chapters, as well as roundtable discussions within the project group, the conclusion of the theoretical part presents an alternative PDE, revised and adapted to suit the specifics of the business context while still keeping the philosophical coherence it has gained through its 2,000-year-old discursive legacy.

In the second main part of the book, the case-studies provide tests of the PDE framework on concrete dilemmas faced by corporations, and offer evaluations on the applicability of the framework in these situations.

In chapter 7, “The principle of double effect and moral risk: Some case-studies of US transnational corporations”, Patricia Werhane discusses double effect in relation to three American companies operating in China and Africa respectively. She also discusses the notions of *moral risk* and *moral imagination* as fruitful tools for ethical decision-making.

In chapter 8, “An object lesson in balancing business and nature in Hong Kong: Saving the birds of Long Valley”, Robert E. Allinson examines a potential double effect in which the side-effect would have been a serious negative impact on the natural environment in Hong Kong.

Chapter 9, Ogbonna Ike’s “Shell in Ogoniland”, looks at Shell’s activities in Ogoniland, Nigeria, from a double effect perspective. Florence J. A. Oloo’s chapter, “Del Monte Kenya Limited” (chap. 10), discusses means and side-effects as regards the exploitation of workers at a pineapple plant in Kenya.

In chapter 11, “The ‘just war’ for profit and power? The Bhopal catastrophe and the principle of double effect”, Upendra Baxi examines the Bhopal disaster and argues that the scale of the predicament represents a challenge for the PDE. In “Dealing with harmful side-effects: Opportunities and threats in the emerging Polish market” (chap. 12), Julita Sokółowska discusses unemployment as a side-effect of the transition from a planned to a market economy in Poland.

In chapter 13, “The Orissa case”, Heidi von Weltzien Høivik examines the effects on indigenous people in Orissa, India, of a joint venture in which the Norwegian company Norsk Hydro was involved. Cecilia Arruda’s “Child labour in the Brazilian citrus sector: The case of Cargill’s double effect” (chap. 14) shows how multinational companies can deal with child labour as a side-effect in terms of the measures taken to minimize and eventually eliminate it.

Chapter 15, “A commentary on the principle of double effect”, written by Chris Marsden of the Amnesty International UK Business Group, gives an NGO perspective on the principle of double effect as a tool for business enterprises.

Finally, on the basis of the case-studies and the theoretical discussions, the editors sketch out some guidelines for operationalizing the PDE in corporate decision-making in the conclusion, “Towards improved business practice: Implementing the principle of double effect”.

Notes

1. Lene Bomann-Larsen (ed.), *Corporate social responsibility in the Norwegian petroleum sector* (Oslo: INTSOK, 2002), p. 7.
2. Stephen Toulmin and Albert R. Jonsen, *The abuse of casuistry. A history of moral reasoning* (Berkeley: University of California Press, 1998), p. 8.
3. *Ibid.*, p. 7.
4. See <http://www.unglobalcompact.org/Portal/> (accessed 13 August 2003).
5. International Peace Academy, *Private sector actors in zones of conflict: Research chal-*

lenges and policy responses (New York: International Peace Academy, workshop report, 2001), p. 4.

6. Ibid.

7. Gregory M. Reichberg, "The hard questions of international business: Some guidelines from the ethics of war", in Heidi von Weltzien Høivik (ed.), *Moral leadership in action. Building and sustaining moral competence in European organizations* (Cheltenham: Edward Elgar, 2002), p. 311.

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• Chris Marsden

How should companies deal with the harmful side-effects of their business operations? To what extent should they be held responsible for the wrongdoing of other actors? And how can they conduct business in a responsible manner in countries where human rights abuses are widespread, or where the environment is being degraded?

These are crucial issues within the current debate on corporate responsibility and they represent the most substantial challenges confronting the business community today.

This book offers an approach to corporate decision-making based on the principles of Just War Theory, primarily the Principle of Double Effect (PDE). The proposed normative framework can be used both as a tool for performance evaluation, and as a set of guidelines for conducting business in an ethically responsible manner.

Multiple case studies illustrate the usefulness of incorporating the Principle of Double Effect into corporate decision-making, and show how the proposed framework can help companies assume responsibility for the impact of their operations on multiple stakeholders.

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