

Janet Dine

Companies, International Trade and Human Rights

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Preface

This book is written from a perspective shared with Thomas Pogge:

We, the affluent countries and their citizens, continue to impose a global economic order under which millions avoidably die each year from poverty-related causes. We would regard it as a grave injustice if such an economic order were imposed within a national society. We must regard our imposition of the present global order as a grave injustice unless we have a plausible rationale for a suitable double standard. We do not have such a plausible rationale. (T. Pogge, *World Poverty and Human Rights* (Polity Press, Oxford, 2002))

This book is the result of an investigation into a phenomenon that I found extremely puzzling: the fact that kind-hearted, intelligent, well-informed people could be found taking diametrically opposed views on the issues of international trade and the global economy and the operation of companies within that system. Take just one example: a firm believer in the 'trickle-down effect', Moore (in *World Without Walls* (Cambridge University Press, 2002), p. 146) encourages the 'race to the bottom' as an instrument for improvement. If jobs are shifted from Korea and Indonesia to China because wages are lower, so much the better – 'I hope I live long enough to see wages in China rise so high that those jobs go to Ethiopia'. But an opponent of 'trickle down' notes that in China 'at least 30 million city dwellers are jobless, up to 200 million peasants have no real work and up to 200 million more subsist as day labourers . . . Enormous wealth is being created, but too much is being pocketed by too few' (R. Righter, *The Times*, 30 September 2003). In such a climate, why should wages rise?

In the course of the investigation I have been shocked and angry at the ability of those of us from the rich and powerful nations to 'turn a blind eye' to desperate suffering and to construct our thinking and language and develop philosophies which are self-serving. But I have also come to understand how complex the issues are and am now quite sure that any 'simple answer' is almost certain to be a wrong answer. It is difficult to carry a protest banner reading 'It might be a good idea to sequence trade

and capital account liberalisation for small economies so that domestic industries and the financial sector are protected from the worst of the “herd” behaviour of the international financial sector’ – but simplistic ‘wrecking’ answers such as ‘Ban WTO’ or ‘Kill Coke’ are unlikely to achieve justice in the trading system. The book is therefore an attempt to indicate how difficult the issues are. This is done by looking at the debate at a general level and following with a detailed study of a single issue. It is a wide canvas and the detailed studies are intended as a counterbalance to the allegations which are hurled to and fro at the generalised level. On one question, however, I am utterly convinced. We have an international trading and financial system which creates destitution and injustice as well as extreme wealth. It is unjust. And it needs experts of considerable sophistication to try and unpick the injustice. Most of all, it needs the compassion and goodwill of people of the wealthy world to demand the reconstruction of the trading system and the companies operating within it, which provide so much of that wealth.

The book starts by asking whether there is a global crisis. Chapter 2 puts forward some reasons for the present situation, considering especially the various ways in which global injustice is rationalised in philosophy, economics and language in order to comfort us. Chapter 3 deals with the international institutions, the IMF, World Bank and WTO, together with detailed studies of issues which expose the complexity of what these institutions seek to achieve: banking and financial liberalisation; the construction of a Poverty Reduction Strategy Plan; the EU sugar regime and its proposed reform in line with WTO rules. Chapter 4 considers the moves to control companies and international institutions by imposing human rights norms on them and, in the context of the right not to self-incriminate, discusses the complex arguments about whether companies can or should be able to claim rights. Direct and indirect imposition of human rights responsibilities on the international organisations is also discussed, together with the possibility of a ‘right to trade’ becoming part of WTO jurisprudence. Chapter 5 considers the growing corporate social responsibility debate, calling for careful formulation of the underlying justifications for its imposition on companies, particularly in the light of the corruption of one of its mainstays, the concept of sustainable development. Chapter 6 contains some suggestions for change, including a new conceptualisation of the operation of companies, directors’ duties, the central place of risk analysis and reform of company law remedies. It also calls for a reassessment of our conception of property rights and the consequences this might have for international relations if the concept of international co-operation in the UN Covenant on Economic, Social and Cultural Rights were to be taken seriously. There are suggestions for

further research on a number of reform agendas: state bankruptcy, international free movement of people, changes in understanding sovereignty and banking reform, as well as reform of voting procedures at the WTO, IMF and World Bank. The issues covered mean that a positive deluge of literature is available and it has not been possible to read it all. I hope I have considered a representative sample and I am grateful to everyone who has supplied information. I am especially grateful to the British Academy for funding a trip to Barbados to research the sugar industry, although my colleagues were less than impressed with the absolute *necessity* of travelling to Barbados in January! Many thanks also to Sally Painter who helped with that application and provided valuable information and support throughout the writing of this book. As always, thanks to my family for their support and concern about the injustice of the trading system. Thanks also to the 'starship' colleagues Steve Anderman, Jim Gobert, Sheldon Leader, David Ong and Bob Watt for discussions on corporate governance, to Michael Blecher who provided invaluable help on systems theory (and red wine), Alastair Macauley for assistance with economics, Marios Koutsias for help with research, Stephen Bottomley and members of the Corporate Law Teachers Association of Australia and New Zealand for helpful suggestions, Chris Richards for keeping me fit enough to complete the project and Barry Rider, Finola O'Sullivan and Kim Hughes for agreeing to publish the result.

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Abbreviations

ACP	African, Caribbean and Pacific States
BIS	Bank for International Settlements
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEO	chief executive officer
CESCR	UN Committee on Economic, Social and Cultural Rights
CSR	corporate social responsibility
EBA	Everything But Arms Initiative
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECLA	Economic Commission for Latin America
EPZ	Export Processing Zone
FDI	foreign direct investment
FSA	Financial Services Authority
GATT	General Agreement on Tariffs and Trades
GCC	Global Climate Coalition
GDP	gross domestic product
HIPC	Heavily Indebted Poor Countries
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICSID	International Centre for the Settlement of Investment Disputes
IDA	International Development Association
IFC	International Finance Corporation
IFI	international financial institution
ILO	International Labour Organization
IMF	International Monetary Fund
IPO	initial public offer
ISO	International Sugar Organisation
LDC	Least Developed Country

MAI	Multilateral Agreement of Investment
MFN	Most Favoured Nation
MIGA	Multilateral Investment Agency
MNE	multinational enterprise
MSN	maximum supposed needs
PFI	private finance initiative
PIG	public interest group
PRGF	Poverty Reduction and Growth Facility
PRSP	Poverty Reduction Strategy Plan
SAP	Structural Adjustment Plan
SDR	Special Drawing Right
SPS	Special Preferential Sugar Scheme
TNC	transnational corporation
TRIMS	Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property
UDHR	Universal Declaration of Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
WHO	World Health Organization
WTO	World Trade Organization

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1 A global crisis?

Is there 'a rapidly accelerating and potentially fatal human crisis of global proportions?'¹ And if there is, are 'the systemic forces nurturing the growth and dominance of global corporations . . . at the heart of the current human dilemma?'²

On these questions, there is something amounting to a war of statistics seeking to prove that the world is richer than it ever has been,³ that many people have been lifted out of poverty,⁴ and that the economic systems in place are benefiting the world.⁵ On the other hand, statistics also show that the gap between rich and poor is widening both within and between nations and that in many countries, poverty is both increasing by numbers and by depth.⁶ Using almost any statistics 'we certainly know that the problem of world poverty is catastrophic'.⁷ Of 6,133 million human beings in 2001, some:

- 799 million people are undernourished;⁸
- 50,000 people daily die of poverty-related causes.⁹

¹ D. Korten *When Corporations Rule the World* (Kumarian Press, 1995), p. 3.

² Korten, *When Corporations Rule*, p. 9.

³ 'Between 1965 and 1998 average incomes more than doubled in developing countries': *World Bank Development Report 2000–2001, Attacking Poverty* (Oxford: Oxford University Press, 2001), p. vi.

⁴ 'In 1990–1998 alone the number of people in extreme poverty fell by 78 million': *World Bank Development Report 2000–2001*, p. vi.

⁵ See, e.g., T. Larsson, *The Race to the Top: The Real Story of Globalisation* (Cato Institute, Washington, 1999); D. Irwin, *Free Trade Under Fire* (Princeton University Press, New Jersey 2002), a slightly more balanced approach in M. Moore, *World Without Walls* (Cambridge University Press, 2002).

⁶ UNCTAD Report, *The Least Developed Countries Report 2002* (UN, 2002). See ILO, *A Fair Globalisation: The Final Report of the World Commission on the Social Dimension of Globalisation* (ILO, Geneva, 2004).

⁷ T. Pogge, 'The First Millennium Development Goal' (www.etikk.ne/globaljustice/).

⁸ United Nations Development Programme, *Report 2003*, p. 87.

⁹ Such as starvation, pneumonia, tuberculosis, measles, malaria, pregnancy-related causes: World Health Organisation, *The World Health Report 2001* (WHO Publications, Geneva, 2001), Annex, Table 2.

This means that 'the global poverty death toll over the 15 years since the end of the Cold War was around 270 million, roughly the population of the US'.¹⁰ And the figures go on and on:

- 34,000 children under five die daily from hunger and preventable diseases;¹¹
- 1,000 million lack access to safe drinking water.¹²

What are we to make of this barrage of statistics with their apparently contradictory messages? As with all statistics, it depends on how they are compiled and precisely what is counted. There are definitional problems, for example the definition of poverty is hotly disputed,¹³ as are the ways of arriving at the statistics.¹⁴ Take just one example, the definition of poverty and the trends in poverty reduction. Reddy and Pogge show that both are highly questionable.¹⁵ Trends are falsified by comparing different poverty 'lines' arrived at in different ways and targets are moderated by switching from an estimate of the *numbers* of persons in poverty to the *proportion* of the world's population in poverty. The numbers themselves are greatly affected by using flawed methodology for comparing the purchasing power of the poor across countries.

There is also the great danger posed by aggregation and averaging. Gaps in wealth disappear when some persons or nations are hugely wealthy and their wealth is increasing. In aggregate statistics the poor become invisible.¹⁶ Aggregate counting disguises growing inequality and makes it possible to assert, as Moore does:

¹⁰ Pogge, *Millennium Goal*, p. 11.

¹¹ US Department of Agriculture, *US Plan on Food Security*, 1999, p. iii (www.fas.usda.gov/summit/pressdoc.html).

¹² UNDP, *2003 Report*, p. 9; Wateraid, 'The Education Drain' (www.wateraid.org.uk).

¹³ Most thoughtful studies now rely not *just* on income data but on a multifactorial definition which takes account of insecurity, vulnerability and powerlessness: A. Sen, *Development as Freedom* (Oxford University Press, 1999); D. Narayan, P. Petesch, M. Shah and R. Chambers, *World Bank Development Report 2000–2001: Voices of the Poor – Can Anyone Hear Us?* (Oxford University Press, New York, 2000).

¹⁴ See the detailed discussion of methodology in *World Bank Development Report 2000–2001*, ch. 1. UNCTAD, *Least Developed Countries Report 2002*, notes that its statistics differ from those of the World Bank because they are collected on a national-accounts-consistent basis which adds to the household survey basis used by the World Bank the further dimension of average annual private consumption per capita as reported in national accounts data.

¹⁵ S. Reddy and T. Pogge, 'How Not to Count the Poor' (www.socialanalysis.org) and Pogge, *Millennium Goal*.

¹⁶ 'Dealing with Aggregation' in *World Bank Development Report 2000–2001*, p. 22. See also *ibid.*, p. 25.