

Preface

The chapters in this volume with two exceptions originated from a workshop organized by the Canadian Business Ethics Research Network (CBERN) held in April 2010. CBERN was formally launched in 2006 following receipt of a seven-year \$2.1 million grant from the Canadian Social Science and Humanities Research Council. The network's mission is to support, facilitate, encourage and profile Canadian research in business ethics nationally and internationally.

The idea for a workshop on business and human rights gained enthusiastic support for many reasons. The subject is one of emerging interest and concern among scholars. It has also emerged as a pressing issue on the part of non-governmental organizations (NGOs) like Amnesty International, Global Witness and human rights organizations generally. It has become of equal interest for business leaders and leading business and professional firms in the private sector and of increasing interest for governments. One feature of this interest is that, unlike many other topics in the field of business ethics – corporate social responsibility, for example – the focus on the human rights responsibilities of business is a recent phenomenon. Interest was spurred in the first instance by NGOs in the early 1990s as increasing evidence of human rights abuses on the part of business firms operating particularly in developing countries began to surface. Accompanying this evidence was the reluctance of many governments to move to curb those abuses and the relative insensitivity of the corporate world and corporate leaders to their significance. As a result of NGO advocacy, the responsibility of business for human rights gradually moved onto public agendas, eventually winning the attention of the United Nations (UN) Commission on Human Rights in the closing years of the 1990s. It is only in the early years of the twenty-first century that the topic has moved onto the business ethics agenda in a significant way.¹

For a variety of reasons, the topic of business and human rights is of particular relevance for Canada. It has become increasingly clear, as research has assembled evidence about the nature and scope of human rights abuses perpetrated by business firms, particularly multinational corporations, that a significant proportion of those abuses have occurred in the resource extraction sector, especially oil and mining. This should

not come as a great surprise. Much of the world's oil deposits are in developing countries like Nigeria, for example, that have weak systems of government and serious problems with corruption, and as a result limited success in imposing and enforcing respect for human rights. The same is true for mining. Mining requires a very substantial investment upfront but also long-term investment in infrastructure. Further, like the extraction of oil, mining can have very significant environmental, social and economic, national and local impacts, including the creation or exacerbation of corruption and civil and military conflict. It follows that in many parts of the world where resource extraction is taking place, human rights are likely to play a central role in how people are treated only if the companies engaged in extractive activities decide that they have a responsibility to promote human rights and ensure that they are respected in their own operations and to the extent possible in their sphere of influence. However, until recently, becoming actively involved in the promotion and protection of human rights has not been thought to be a business responsibility where not required by law and where human rights standards are not enforced by governments.

What is significant about this feature of resource extraction is that in oil, but also and particularly in mining, Canada and Canadian companies are world leaders. In both sectors, Canadian companies are active worldwide. This is especially true in the field of mining. It is not surprising, therefore, to discover that Canadian companies have on the whole a less than stellar human rights record. It is also not surprising that Canadian NGOs and Canadian business leaders have been active in bringing human rights concerns to light and seeking to better understand the human rights responsibilities of Canadian corporations working internationally in oil and mining.

With this background in mind, an invitation was circulated broadly and a workshop organized to examine business and human rights from an explicitly ethical perspective.

Identifying clearly the human rights responsibilities of corporations is important, as already suggested. It is also very contentious. Perhaps the most graphic evidence of this fact is the highly critical response that greeted the report of a working group to explore this topic that was created by the UN Human Rights Sub-Commission on the Promotion and Protection of Human Rights. The results of their work, entitled *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights*, were tabled at the 55th Session of the Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights (United Nations, 2003). Central to the findings of the working group was the recommendation that corporations

and other business entities should be understood to have human rights responsibilities similar in scope and character to those of the nation state. Further, those responsibilities should be understood to be legal obligations under international law.² While the report was greeted enthusiastically by NGOs and by many in the legal community, it was harshly criticized by large segments of the business community and by most of the governments of the industrialized North.

Not only is the topic in practical terms highly contentious, it is also complex and intellectually challenging. This is true for legal scholars in part because until recently, it has been assumed that the responsibility for protecting human rights was a state responsibility. It is particularly true for scholars in the field of business ethics both because analysis and commentary have been dominated by legal scholarship but also because the topic of human rights is philosophically complex and contested.

Given this background, the papers that the workshop invitation solicited were organized around a number of questions. Did corporations, or more particularly multinational corporations, have human rights responsibilities beyond those set out by the laws of the countries in which they operated? Should national governments with strong human rights laws extend the reach of those laws to cover the operations of companies over which they have national jurisdiction when operating abroad? If corporations did have human rights responsibilities that extended beyond what the law required of them, what were the nature and the scope of those responsibilities? Were voluntary codes of ethics a useful vehicle for raising corporate human rights standards in their international operations? In all 20 papers were presented and discussed at length over two and a half days. Most of the presenters left committed to further study and research based on insights and observations gained through presentation and discussion and with a view to resubmitting their contributions for possible inclusion in a special issue of *Business Ethics Quarterly* and also a book comprising papers first presented at the workshop.

A special issue of *Business Ethics Quarterly* (January 2012, 22(1)) has now appeared. The editor and publisher of *Business Ethics Quarterly* have kindly agreed to having three of the papers of that special issue republished in this volume. The chapters in this volume include but also go well beyond the scope of the *Business Ethics Quarterly* papers. They are organized around three themes and a postscript: theoretical discussions focused on determining whether corporations have ethically grounded human rights responsibilities and, if so, the nature and scope of those responsibilities; the implications of the assumption that business firms and other business entities have human rights responsibilities that go beyond those imposed by law for the regulation of international trade; three case

studies looking at the human rights responsibilities of corporations in three different economic sectors, clothing, mining and pharmaceuticals; and finally, a reconceptualization of human rights and the implications of that reconceptualization for business.

All the chapters with three exceptions (Chapters 1, 6 and 11) are extensively developed and rewritten versions of papers first presented at the CBERN workshop held at York University. Chapter 1 by Wesley Cragg was published originally in the Oxford University Press *Handbook of Business Ethics* and benefitted a great deal in its development from the advice and critical commentary of George Brenkert, one of the two editors of that volume. It is being republished here in a modestly revised form. Chapter 6 is the result of the ongoing interest of Alistair Macleod in the integration of human rights principles into the regulatory structures that have been developed to govern international trade. The final chapter is a developed version of a key note address delivered by Charles Sampford to the third Annual Conference of the CBERN in Montreal in May 2010. Chapter 7 by Pitman Potter was first presented at the CBERN (April 2010) workshop and subsequently published in a law journal. It has been revised for publication in this volume. Chapter 10 by Alex Wellington was presented at the CBERN workshop and subsequently published in an Australian medical journal.

Much of the discussion at the CBERN human rights workshop focused on the work of the Special Representative of the Secretary General of the UN, John Ruggie. Elements of that discussion are captured in the first part of this book, 'Toward a Theory of the Human Rights Responsibilities of Corporations'. However, the main contours of that discussion are captured in the workshop papers that were subsequently accepted for publication in the special January 2012 issue of *Business Ethics Quarterly*.

I would like to thank the participants in the CBERN workshop and the authors of the chapters in this volume for stimulating debate and discussion and for their dedication to submitting to a rigorous process of editorial critique and review over the intervening period.

NOTES

1. For a more extended discussion of this history, see Cragg et al. (2012).
2. For a more detailed account of the report and its recommendations, see the section on corporations and human rights in Chapter 1.

REFERENCES

- Cragg, W, D.G. Arnold and P. Muchlinski (2012). 'The guest editors' introduction: human rights and business', *Business Ethics Quarterly*, Special Issue on Human Rights and Business, **22**(1), 1–7.
- United Nations (2003). Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights 55th Session, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, E/CN.4/Sub.2/2003/12/Rev.2.