RECLAIMING THE STATE

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From talks with (foreign) corporations and investors active in agriculture in Africa, particularly in Zambia in my case, I realised that many of them are concerned about the issues critics have raised. These critics, ranging from (international) NGOs to local communities, human rights lawyers, international organisations, journalists, and social movements, increasingly point to the negative consequences of current forms of global capitalism. They try, in a way, to put ethics back into economics. They demand a halt to 'land grabbing', better treatment and wages for labourers, the mitigation of environmental damage, and so forth. Resonating with the thoughts of John Kenneth Galbraith and Karl Polanyi, the critics can be considered a countervailing power or countermovement aimed at reducing the damaging effects of agricultural investments – and corporate practices and market expansion more generally.

The countervailing power of critics, such as NGOs, has been at the origin of phenomena such as Corporate Social Responsibility (CSR), impact investment, and ethical consumption. Notwithstanding the many limitations of these phenomena, they symbolise a more or less constant struggle between economic beliefs and ethical and social concerns. I have actually come to believe that this is a recurring pattern of capitalism. The raising of concerns, I have noticed, is not without its results. Change is possible. Large-scale systemic slavery has been abolished. In many Western countries labour conditions have seen improvements. Minimum wages have been implemented. There are laws that allow for the prosecution of companies in case of pollution. Yet it is never enough, never completed. There is always something to hope for. Besides, when one issue is solved or attention wanes, a new issue presents itself – or labour rights are gradually undermined again. It is, in a way, a perpetual taming of the 'capitalist beast'.

Prominence of corporate power

Notwithstanding that corporations are concerned about their critics and have, in response, also changed some of their practices, there is still much left to be desired. This partly results from the shifting of roles between the public and private sectors, which has strengthened the power of multinational companies in international politics. Conversely, the position of ordinary citizens (as employees, consumers, local communities, etc.) has weakened in the context of state withdrawal. As Jem Bendell (2004: 14) illustrates in his analysis of the accountability movement, civil society groups and NGOs realised that it was increasingly futile to lobby governments, and that intergovernmental commitments on social and environmental issues could take years to negotiate – and even then they were often not enforced in any meaningful sense. Instead, many civil society groups directed their attention to the corporations themselves. This (social) pressure plays an important role in prompting corporations to embrace certain codes of conduct, mitigating their environmental impact, CSR, and other forms of integration of ethical concerns into existing economic practices. One could therefore say that critics may 'force' economic actors to reflect on concerns that the latter often conceive of as external to standard business operations.

There is plenty of very valid criticism about the limits of corporate actors' engagement with the concerns that have been raised. CSR, for example, has not really led to change, and seems more like a 'moral fig leaf' for corporations, while the same damaging practices often continue. For some, this is just confirmation of the inherently evil nature of corporations. I am not sure, though I would certainly not deny the possibility that they can cause substantial havoc. If they only acted immorally, however, it would imply that when left unattended they would not care whatsoever about the harm they cause. Certainly, corporations are interested in making a profit, but not necessarily at all costs: the *homo economicus* version of the corporate person who only acts to maximise profits, an image often reproduced by the critics, does not necessarily reflect everyday realities, as Marina Welker illustrates in *Enacting the Corporation: An American Mining Firm in Post-Authoritarian Indonesia*.

At the same time, there remain just too many examples of corporations – or banks, or other economic enterprises – that breach our hope for fairer and less damaging outcomes. Even while most economic actors may remain within the legal (and ethical) boundaries of the respective counties in which they operate, it is the ones that breach those boundaries that attract attention. The damaging influence of oil companies, such as Shell in Nigeria, or of mobile phone producers in China, obscures the fact that the bakery or factory around the corner may do little harm. Compared to the latter, however, large multinational corporations and companies that operate and/or trade across borders seem to have much more room (and power) to tweak the system. It is certainly an achievement that large corporations such as Coca-Cola and Nestlé have become more receptive to the concerns raised. Yet, it appears that this is not enough. Not only because below the surface more anonymous actors, such as traders, are largely left unchallenged, but also because of the possibility of avoiding legal oversight. The possibility of shopping between the legal systems of different countries, having the power to negotiate favourable (tax) deals, and getting away with breaking the law are still far from being eliminated. To change this, I argue, we have to reclaim the state.

Towards a rebalancing of interests

A main cause of the current predicament is that pressure on the private sector will never be sufficient, while the state does not do what it should do – taking care of its citizens. Corporations' first incentive is to make a profit; not necessarily at all costs, but their mandate is not to take care of all (stakeholders) in a specific geographical space; rather 'their contributions to society's overall needs will always remain at the margins, and their contribution to welfare will never be comprehensive' (Hertz 2001: 243). Thus private governance will not be able to address the global governance deficit (Mayer and Gereffi 2010: 2) and expecting this is actually risky because it 'may omit or even override state bodies that "ought" to take responsibility for regulation' (Tallontire 2007: 779).

Initiatives aimed at improving our social lives outside the realm of the state and/or harmful (business) practices are certainly laudable. But these initiatives are not sufficient to change the tide. As Susan George in *Shadow Governs: How Global Corporations are Seizing Power* argues, corporations have just become too strong. With tax evasion and concerns about accountability, it is clear that multinationals are 'increasingly distant from direct legal mechanisms to hold them to account by the state' (Barrientos and Smith 2007: 717). This creates a democratic deficit that cannot be solved by bottom-up approaches only. Whether we like it or not, to bring about meaningful change I think we still have to rely on the state – just in a different form from the current one!

The difficulty with the state is that it can be detrimental to the lives of many of its citizens. States have substantially contributed to the race to the bottom in attracting corporations with tax incentives, to lowering standards in their aims to attract FDI, and to favouring geopolitical considerations over its citizenry, as I have shown elsewhere. Yet, at the same time the state is also an important vehicle for change. What other viable option do we have to regulate (and limit) the power of corporate actors? To change from insufficient voluntary codes of conduct to applying legal means to reduce the negative impact of corporate practices? Governments still seem to be the main force that can curtail the damaging corporate practices and improve conditions across the board by balancing the interests of different parts of the societies they govern, of which the corporate sector is only one. Its central role in taxing its citizens, which may potentially be applied to the benefit of all (think about services and infrastructure), furthermore indicates that the state remains essential to the organisation of our everyday lives – at least, for the foreseeable future.

Building further on the belief that external pressure is not necessarily without results, concerns and initiatives aimed at change should more explicitly target governments and politicians. A renewed role of the state in regulating economic practices should be demanded. The state should be claimed back, in other words. Public institutions are needed to 'resolve a set of collective action problems that private actors cannot overcome on their own' (Locke 2013: 17). Governments should set the conditions for business since it has become evident that voluntary promises and codes of conduct are not sufficient. Resonating Galbraith's countervailing power, Robert B. Reich argues in *Saving Capitalism* that a push in the direction of more equitable outcomes is actually inevitable, as we cannot continue in the direction we are now heading.

Governments should take moral responsibility for pushing for fairer outcomes, including when it concerns people elsewhere in the world: 'one cannot load the whole development agenda onto the shoulders of […] private firms, or expect them to behave as non-profit entities' (Berdegué et al 2011: 165). States have to provide regulatory frameworks that aim at an equal distribution of gains and a reduction of harm. When corporations and other private-sector actors are subject to comprehensive (and equally binding) regulation and oversight, their standard business approaches may actually bring more prosperity than if corporations are expected to be directly responsible for, for example, alleviating poverty and diminishing hunger. Accordingly, a clear division of roles is needed.

In a recent interview, Stuart Kirsch, the author of the insightful *Mining Capitalism: The Relationship Between Corporations and their Critics*, argues that, contrary to the belief that postcolonial states' acquisition of ownership stakes in resource extraction projects would redistribute wealth – since overseas shareholders would no longer siphon off all profits – this has actually led to a consequential conflict of interest:

> [T]he state would have to weigh its mandate to protect people and the environment through regulation against its desire to maximize revenue as an investor and tax collector. For Papua New Guinea, this has meant that the state aligns itself with the interests of the mining industry over the rights of its own citizens and the environment, with often-disastrous consequences.

I do not hold a grudge against business, or even multinational corporations, yet our lives depend on more than market thinking alone. Pressure on corporations should certainly remain, but we should realise that they, as illustrated above, have a different mandate. That does not necessarily mean a corrupt mandate. But society is the sum of different cultural, social, economic, and environmental aspects. Apart from citizens and economic enterprises, it is particularly the state – and politics – that have a responsibility to balance these interests.

Press politicians to rethink their approach and become more ideological. We cannot have equitable outcomes when too much power remains in the hands of the corporate world. Politicians must be drawn back into *politics*. In powerful states, they must be pressured to take on the task of improving the conditions in more vulnerable states, to hold corporations operating in their constituencies accountable for their actions – and tax avoidance – elsewhere, such as in Africa. Governments should be pushed to reconsider their approach towards corporations and (international) business. Instead of hoping that flimsy voluntary promises will do the trick abroad, the situation should be turned upside down. Corporations should be forced to stick to the same standards as the states where they domicile. Why allow, as Norway does, the national oil company to operate in notoriously corrupt Angola? Why not apply similar labour standards to textile factories in Bangladesh as in Europe?

Such an approach would also avoid states' reluctance to enforce their norms upon other states. Corporations just have to stick to the rules and laws of a particular state when they want to do business with it. Tell overseas producers or traders that they can only sell their produce when they obey the same standards abroad. But what about when similar laws already exist abroad, yet these are barely enforced? Demand from corporations that they commit to empowering governments with weak regulatory capacity (in Africa, South Asia or elsewhere) so that these laws can be meaningfully enforced. Without doubt this will also involve paying a much fairer share of tax, as only then will many of the states be able improve their capacities. But so be it. We have waited in vain for real change coming from corporations. Voluntary commitments are just not enough. But this does not imply an either/or situation: even in a more ethical setting and/or within relatively strict operating legal systems, economic enterprises can make a profit. To accomplish this, I would say that for now our best hope is to push states to reconsider their mandate, to take it up for the most vulnerable instead of powerful corporations, to put their citizens first. One has to remain vigilant of the state, but also realise that pressure may work. Change is not impossible, though neither is it a one-way path towards utopia – or dystopia, for that matter. It is, as I have suggested, probably a neverending 'struggle' – but not one in which people are powerless by definition.

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