

The Role of the Commercial Sector in Global Health

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Overview

- Define the role of commercial sectors in global health policy
- Examine a range of entities and ways of categorising them
- Explore the nature of corporate power
- Examine issues of governance and regulation in relation to corporations and health

What is the commercial
sector?

The Commercial Sector

- Private actors, generally differentiated from civil society (i.e. non-commercial and voluntary sectors)
- Market orientated:
 - their defining feature is the pursuit of profit
 - in countries like the UK/US this is enshrined in company law
- They may have additional objectives (e.g. societal, environmental)
 - but these are necessarily of secondary importance to the profit margin
 - *The Economist* : ‘philanthro-capitalism’; Bill Gates

Terminology

- Company
- Corporations
- Multinational Corporation (MNC)
- Transnational Corporation (TNC)

Defining Corporations

- Corporation as a 'legal person' (*The Corporation*)
- Dictionary definition:

an association of individuals, created by law or under authority of law, having a continuous existence independent of the existences of its members, and powers and liabilities distinct from those of its members.

Source: <http://dictionary.reference.com/browse/corporation>

Trans-National Corporations (TNCs)

- Corporations are active in multiple countries, but often with a strong tie to a single 'home' market
- Senior management often come from or remain based in home market (along with R and D)
- Profits are often repatriated to the home market or are channelled to markets with favourable tax regimes
- Of increasing importance within the context of globalisation

Why do we need to study corporations in the context of global health?

Central to the Provision of Healthcare

- Provision of health services
 - E.g. residential care, optometry, private hospitals
- Production of health ‘goods’
 - e.g. medical devices / pharmaceuticals
- Health insurance
 - E.g. role in the debates on USA healthcare reforms
- Investment in physical assets
 - E.g. PFI used to build hospitals in the UK
- Occupational health and welfare

TNC and the 'Production of Ill-Health'

- The activities of many transnational corporations (TNCs) affect health
 - e.g. tobacco, alcohol, 'industrial' foods
- Environmental degradation
- Privatisation of essential services
- Unfair or exploitative practices:
 - unsafe working environments
 - restricted access to healthcare

Economic Significance

- TNCs are simply too large & powerful to ignore: they often dwarf public resources
- WHO budget 2008-9 (2 yrs) was \$4.2bn; Glaxo had profits of \$8.4bn in 2008
- “For every \$1 spent by the WHO on preventing the diseases caused by western diets, more than \$500 is spent by the food industry promoting these diets”

Political Power

- Economic strength of TNCs and their wide range of activities mean they have formidable political strength
- There is clear evidence that corporations attempt to influence the policy process to defend their business interests
- Evidence also that they enjoy a high degree of influence
- Various means through which power can be influenced
- Occurs at different levels of government
 - Local, national and supra-national

TNCs and Globalisation

- Increasing trade in health services across borders as well as within
- Enlarged role in health finance, governance and delivery of healthcare at the global level
 - E.g. Global Health Partnerships (GHPs)
- Increased awareness about the role of private corporations in tackling global health issues
 - E.g. pharmaceutical companies and the provision of anti-retroviral drugs

Global Governance

- Globalisation has created a need for global rules and regulatory regimes
- Global rules have advantages for TNCs as they minimise uncertainty & reduce transaction costs
- TNCs have a preference to establish their own rules over government regulation
- Alternatively they seek to shape public regulation through various mechanisms

Corporations as Political Actors

Regulatory Capture

- A situation where a market actor uses its power, resources and/or influence to obtain regulatory outcomes that advance its interests.
- This often involves:
 - Advancing narrow commercial interest as/ over broader public interests
 - A regulatory body (systematically) favouring producer interests
 - A regulatory body adopting the objectives of entities whose conduct it is supposed to regulate

Who are the Corporate Actors?

- TNCs with interest in or impact on health may lobby governments directly themselves or through agents
- Global Cartels: colluding to eliminate competition or influence policy process
- Philanthropic Organisations (Soros, Gates): funded from private profits – with set agendas

International Associations

- Business Associations
 - International Chamber of Commerce
- Professional Associations with impacts on health
 - International Private Practitioners Association
- Standardising Associations (International Standards Organization)
- Also informal groupings: issue networks, policy communities

Semi-Autonomous Bodies

- Industry sponsored think-tanks and institutes
 - Institute for Regulatory Policy in US, created by Philip Morris
- ‘Patient Groups’ and ‘Grassroots’ Organisations
 - International Alliance of Patients’ Organisations, funded by pharmaceutical consortium
- ‘Scientific’ Organisations
 - International Life Sciences Institute: seeks to influence regulation on diet, tobacco, alcohol
 - Follow industry-defined agendas

Analysing Corporate Power

- It is useful to think of corporate power in terms of structure and agency
- Structural power is derived not from direct actions but from privileged position of commercial actors within the market economy
- Agency power refers to the deliberate exercise of influence by market actors

Corporate Power: Structure

- Control over investment in particular state
- The dependence of state revenue on the activities of a corporation
 - e.g. duty on cigarettes; corporation tax revenues
- Capacity for exit
- Ideological power

Corporate Power: Agency

- Direct political engagement:
 - Lobbying governments, regulatory bodies, International Organisations (IOs)
 - Funding political parties
- Institutional participation:
 - Seats on management boards of service providers
 - Involvement in government/IO committees
 - State delegations in international negotiations
- Institutional levels: local, national , regional (EU), global

Expertise

- Corporations are often the main or even only source of technical expertise in a given policy area
 - Many experts will work for, or have relationships with, corporations
- This is especially the case where specific scientific or technological expertise is central to policy making as is the case in many health related issues
- Corporations also use scientists / scientific institutes to provide evidence to support their aims and objectives

Corporate Power and Health Governance

Three Types of Involvement in Health Governance

1. Influence on public regulation
2. Co-regulation
3. Self-regulation by private standards

1. Influence on Public Regulation

Corporations can exert influence at every stage of the policy process:

- agenda formulation
- legislation
- implementation
- evaluation

Tactics Employed

- Propose or initiate measures that advance corporate interests, whilst keeping other issues off the agenda
- Promote ineffective regulation that won't impede core business activities
- Delay or block the adoption of a policy or instrument
- Frustrate the implementation of a policy
- Influence perceptions of the effectiveness of an implemented policy instrument

Case Study: The Global Tobacco Industry

- Smoking is the leading cause of premature death in developed countries
- Harms of tobacco well known since the 1960s, yet meaningful legislation to curb tobacco use took decades to come about
- Wide range of tactics employed by the tobacco industry to curb regulation:
 - funding and lobbying governments
 - denying the scientific evidence
 - funding campaigning organisations and ‘scientists’ who denied the impact of secondary smoking
 - appeals to personal freedom and liberty

Case Study: The TRIPS Agreement

- In 1995 the WTO concluded the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)
- Affects variety of products and industries dependent on patented and copyrighted products
- Crucial role played by US corporations in influencing the negotiating position of the US delegation and thus the content of the agreement

Setting the Agenda on TRIPS

- In 1986 the CEOs of 12 US-based corporations formed the Intellectual Property Committee (IPC)
- Its purpose was to seek a comprehensive agreement on intellectual property in the Uruguay round of GATT negotiations concluded in 1994
- The companies involved in the IPC changed over time with some members joining and others leaving along the way

Drafting TRIPS

- The IPC hired a trade lawyer, Jaques Gorlin, to draft an international IP treaty
- Resultant draft adopted by US administration as 'reflecting its views'
- CEO of Pfizer advisor to US delegation during Uruguay negotiations
- Agreement reflects IPC's agenda: 'IPC got 95% of what it wanted' (Gorlin)

TRIPS & Corporate Power

“What is new in this case is that industry identified a trade problem, devised a solution, and reduced it to a concrete proposal that it then advanced to governments. These private sector actors succeeded in getting most of what they wanted from an IP agreement, which now has the status of public international law. In effect, twelve corporations made public law for the world”

Sell S (2003) Private Power, Public Law: The Globalization of Intellectual Property
(Cambridge: Cambridge UP)

Governance Implications of TRIPs

- Shift in authority from the state to the private sector
- However, the State is still important
- Requires countries to make dramatic changes to IP policies and laws
- Requires states to play role in enforcement of monopoly
- Profound health implications: restrictions on generics, rising prices of drugs

2. Co-regulation

- Bargain between public authorities and private sector
- Often involves civil society and corporate actors
- Dramatic recent expansion:
 - Global Health Partnerships (GHPs/GPPPs)
 - UN Global Compact
 - Public health regulation in the UK

Case Study: Global Health Partnerships

- A paradigm shift in the way global health governance is conceived and administered
- consistent with core neo-liberal precept of limited government
- Incorporates strong presumption in favour of private sector
- Presents a challenge to state & multilateral organisation through WHO?

Case Study: The UN Global Compact

- First attempt to regulate the activities of TNCs at the global level via the UN
- Criticised for being voluntary and largely unenforceable, whilst offering mark of respectability
- The UN hopes to 'fill a void between regulatory regimes, at one end of the spectrum, and voluntary codes of industry, at the other' (Global Compact Office, 2002)
- In practice, the GC reinforces 'the pendulum swing away from stricter forms of regulation' (Utting, 2000),

Case Study: Public Health in the UK

- UK facing problem of excessive alcohol consumption and high rates of obesity
- New government sought to address this problem and convened a 'Public Health Commission' when in opposition
- This formed basis of a controversial approach to improving public health through a direct engagement with corporate 'stakeholders'

3. Self-Regulation

- Statements of principles, guidelines, codes of practice
- Soft-law: voluntary, not traceable to public authority
- Enforced by market actors themselves
- Not subject to public monitoring or verification

Case Study: The Portman Group (PG)

- The PG was set up by leading drink manufacturers in the UK to promote the responsible use of alcohol
- Main area of responsibility today is their code of practise on the sale and marketing of alcoholic products

Corporate Social Responsibility

- Loose umbrella term incorporating diverse measures
- Rapid expansion in interest
- Attention from 3 types of companies:
 - (i) social + environmental principles at core (Fairtrade; Body shop; Co-operative Bank)
 - (ii) link to social responsibility via marketing (Benetton and World Food Programme)
 - (iii) controversial industries responding to pressure from consumers, investors or regulators (tobacco)

CSR and Globalisation

- Increased interest across commercial sector
- Value where core activities raise ethical issues
- Pressure over TNCs conduct in LMICs
- Voluntary codes as alternative to regulation

CSR and Development

- Commitments to sustainable development prominent within CSR programmes
- CSR has itself become a development issue, actively promoted by development agencies:

By following socially responsible practices, the growth generated by the private sector will be more inclusive, equitable and poverty reducing

UK Dept. for International Development, 2001

- Reflects global shift from interventionist/ regulatory approaches to FDI since 1970s and the current emphasis on voluntarism

TFI/ FCTC Drove BAT's CSR Initiative

Put in another context and in order to relate the project on the TFI threat, I would analogise as follows- If Brent Spar and the Nigerian Ogoni issues were the major spark that pushed Shell to where they are today with social accountability, then the WHO TFI threat is our spark.
If the Colombian environmental and security mess was the one that drove BP Amoco to committing to the social accountability agenda, then the WHO TFI threat is our Colombia.
If the community riots and challenges that Rio Tinto faced in Australia were the ones that led to the company's review of its social responsibility and public commitment to doing something about it then the WHO TFI is our Australian challenge.
If PLL in the US (recall the Master settlement) was the main reason that led the industry to re-asses its position and its management of smoking issues, then the WHO TFI threat is our US PLL today.
If GMOs are the bane and business threat to Monsanto and the cause of the company's engagement with its stakeholders and in particular NGOs, then the WHO TFI is our GMOs.

And the list can continue. Time comes when organisations have to be shocked out of their comfort zones and shells and some of this unfortunately may come from externally driven rather than internally inspired and value driven sources. Then for us WHO TFI presents the best opportunity to take forward the big agenda on CORPORATE REPUTATION Management.
The KPMG proposal needs to be seen in this light. I believe that in spite of their apparent intellectual let-down when we met them, they still offer us a much better proposal than Pricewaterhousecoopers and that they will provide a much needed link and help in connection with two key areas namely, corporate activity review in the WHO TFI context and stakeholder engagement and dialogue combined with a reality check on this process - these two hopefully leading us to making a public commitment on social accountability and stating our values. This is a key test for all that we do and we must do it in order to win in this whole area.

Finally please take particular note of their point number 5 on page 6.

Shabanji

Summary

- Corporations are incredibly powerful economic and political actors
- Corporations active in almost every aspect of global health policy
- Wide range of mechanisms and tactics they can employ to influence policy
- Their influence has increased in recent decades in line with underlying ideological shifts
- Move towards co-regulation and self-regulation raises a number of issues about accountability and effectiveness.