

**The human rights/multinationals  
problematic: values, values and  
values.**

**Does the Quality of science matter?**

**By: Math Noortmann**

*Dinamika diskusi selama ini masih mempertentangkan ilmu yang bebas nilai dengan ilmu yang sarat nilai. Kajian ini menunjukkan bahwa ilmu yang sarat nilai tidak menjadi masalah selama membawa perbaikan masyarakat. Kualitas suatu interpretasi tidak bisa terlepas dari subjek yang melakukan interpretasi. Studi legal tentang hak azasi tidak bisa mengabaikan pendekatan interpretatif ini.*

**Introduction: Qualifying the Problem.**

“Human rights and multinationals: is there a problem?” (Muchlinski, 2001:31). The traditional human rightist’s answer to Peter Muchlinski’s question is first of all informed by the practices of human rights violations; secondly by the ontology and/or epistemology of human rights; thirdly by methodological choices; and last - and unfortunately also least - by the Quality of science. The problem in that answer is neither that human rightists’ “focus [their] attention on reality under the guidance of values” (Weber, 1904:4,32), nor that their ‘pragmatism’ actually results in ontological, epistemological and methodological pluralism (Baert, 2005). The scientific problem lies in the danger that scientific quality is lost “in the presence of value judgments” (Weber, 1904:32) or that scientific elaboration does not transcend the level of ordinary ‘conversation’ (Baert, 2005:153).

In this paper I want to reflect on the impact of the relationship between ‘value judgments’, the ‘suspension’ of criticism and ‘conversationism’ on the Quality of science.

I will do this on the basis of an assessment of two different strands of scientific epistemology: Quantificationism and Interpretationism. These epistemologies are represented in the studies of Meyer en Smith *et al* on the one side and Avery and Forsythe on the other. I have reflected upon these studies, because they demonstrate that the Quality of science is neither to be found in one specific ontology, epistemology or methodology, nor in rhetoric and storytelling. The 'Dynamic Quality' of science is to be found in the dialectics of the objective and the subjective.<sup>1</sup>

The pre-1980ties, human rights discourse has been characterized by Wilson as a "expansive transnational *legal* discourse" (Wilson, 1997:1).<sup>2</sup> It was the 'valued reality' of Legal Positivism, which qualified that discourse as an example of 'the paradigmatic case for hermeneutics' (Habermas, 1999:29). The Neo-liberal turn and the ontological shift of Social-Constructivism, in the late 1970 and 1980ties brought both 'norms' as well as 'interpretationism' 'back into' the social sciences (Forsythe, 2000a:3, Donnelly, 1999). However, the 're-imagining' of Social-Constructivism rather matched the 're-interpretation' of the Legal Positivism than that it critically reflected on the ontology of the mainstream legal scholar (Alston, 2005:3). The re-

---

<sup>1</sup> The concept of 'Quality' is taken from Robert Pirsig. While it cannot and should not be defined according to Pirsig, it can 'be found *only in the relationship between the two with each other*'. Pirsig refers in this context to the 'objectivity' and 'subjectivity'. PIRSIG, R. M. (1985) *Zen and the art of motorcycle maintenance : an inquiry into values*, New York, Bantam Books. One could also refer to the perceived dichotomy between the 'fact' and the 'value', the 'statistical' and the 'hermeneutical', the 'rational' and the 'emotional', the 'structure' and the 'agency'. The idea of a confrontation between the rational and the pre-rational or mythical man is also to be found in Horkheimer and Adorno's interpretation of the Odysseus' trials and tribulations as the Dialectic of Enlightenment. HORKHEIMER, M. & ADORNO, T. W. (1972) *Dialectic of enlightenment*, [New York], Herder and Herder.

<sup>2</sup> The disciplinary hegemony of (international) law was reinforced by the relative lack of interest of social sciences in the 'human rights phenomena. Anthropologists have explained that lack of interest by referring to Anthropology's "methodological emphasis on localism" and "theoretical concerns with culture" which in effect resulted in a critical posture to "universal values and transnational processes such as 'human rights'" WILSON, R. A. (1997) *Human Rights, Culture and Context: An Introduction*. IN WILSON, R. A. (Ed.) *Human Rights, Culture & Context: Anthropological Perspectives*. London, Pluto Press.. In international relations it was the state-centered ontology of Political Realism, which prevented the first generation of post-World War Two IR Students to address human rights in the realm of international relations.

introduction of a quantitative/naturalist dimension by William Meyer, (1996) triggered an interesting but short methodological/meta-theoretical debate between exponents of the naturalistic community (Smith *et al.*, 1999, Meyer, 1999); ...the non-quantitative epistemic community remained conspicuously calm on this matter.<sup>3</sup> Meyer's extensive justification of the 'appropriateness' of the quantitative approach given the nature of the subject questioned the ethics of the quantitative methods.<sup>4</sup>

For the purpose of this paper, scientific Quality is defined as the variable, which stimulates the dynamics in scientific processes. Bringing values into that process can either stimulate or curb the dynamics of science and thereby affecting scientific quality both positively and negatively. Weber was right when he noted both that "we focus our attention on reality under the guidance of values" and that "criticism is not to be suspended in the presence of value judgments" (Weber, 1904:4,32). The Quality of science requires just that, no matter what values we introduce into the science.

In this paper I will touch upon the problematic of 'valuing' in the multinationals/human rights debate on the basis of comparing the positions of William Meyer, Chris Avery and David P. Forsythe, whose articles are equally informed by the 'human rights value', but differ in terms of scientific quality. As such, this paper reflects on the specific ontology of human rights and the possible consequences of the underlying metaphysical assumptions on the methodologies and theories of human rights.

---

<sup>3</sup> The Human Rights Quarterly is one of the leading journals in the field, which supports the assumption that the Meyer article must have been widely received.

<sup>4</sup> It has to be stressed here that a employing a quantitative method cannot be compared to the experimental testing with living creatures. In the latter case the confining effect of ethical values upon scientific method can be justified.

### **The Meyer – Smith *et al* debate: The Quality of Quantification**

William H. Meyer sets out to ‘test’ “[t]wo theories of multinational corporations and human rights, the engines of development thesis and the Hymer thesis [by taking] indicators of direct foreign investment to measure the presence of multinational corporations.” (Meyer, 1996:1). According to Meyer, such “[e]mperical analysis will inform moral and legal studies of MNCs” (Meyer, 1996:273). In that, Meyer is in a dual sense a Durkheimian. He not only adheres to the Durkheimian believe in statistics as a methodological device to isolate social facts and to observe them in their ‘pure state’ (Durkheim, 1982: 3), but also he also shares Durkheim’s social engagement. To the extent, however, that Meyer can be labeled as a ‘social engineer’, he is however closer to Popper’s ‘piecemeal engineering’ (Popper, 1968). His study furthermore entails the features of a ‘risky prediction that Popper could also have appreciated. (Popper, 1968:36). Meyer’s demonstrates that he is clearly informed by the shortcoming of quantification and the special character of human rights as he agrees with Goldstein’s opinion that:” [w]hat is needed is a combination: statistical information which is reliable and meaningful; non-statistical information which is meaningful and reliable and judgment to”(Meyer, 1996:382). It is in the questioning of both the methodological aspects of quantification as well as its as well as the philosophical/normative dimension of quantification that the ‘Quality’ of Meyer’s quantification is to be found. However, his 1996 article Meyer explicitly raises the question whether “quantitative studies of human rights” are “justifiable” in response to the critics that “To quantify is necessarily to depersonalize and even dehumanize a topic’s content” and that “*the essential nature* of human rights is qualitative not quantitative (Meyer, 1996:380,381). However, he also acknowledges the claim that “quantitative studies advance theoretical understandings while supporting the policies needed to protect human rights” (idem).

Meyers' arguments did not refrain Smith *et al* from questioning Meyers' (a) 'world-views' (b) 'paradigms' and (c) "philosophies of science"/"meta-theoretical conceptions".

a. Meyer's 'reality is that of the MNC as a 'moral' and 'social' actor (Meyer, 1996:273), whereas Smith *et al* think of TNCs as predominantly economic/profit oriented actors (unless they are pressed by societal and/or legal forces)(Smith *et al.*, 1999:207)

b. These world views are then reflected in the Meyer's Liberal and Smith *et al*'s Critical stance in terms of IR Theory, which then corresponds with their 'empirical' findings that is MNC are respectively beneficial or detrimental to the promotion of the development and human rights of a country

c. In terms of meta-theoretical conceptions then, Smith *et al*, seeking to implicitly falsify Meyer's analysis by testing their "assertions about the limitations of the data used in [that analysis]"(Smith *et al.*, 1999:214). Meyer, response invoked Lakatos in order to rebuff Smith *et al*'s implicit claim to have 'falsified' his 'results'. (Meyer, 1999).

The 'problematic of the logic of Falsificationism', which is predominantly a debate amongst 'methodological naturalists' (Baert, 2005:61), constituted only a small portion of the debate. Much of the debate concerned the character of human rights and the inherent values and was highly interpretative in character. Addressing and accounting for the normative character of this 'problematic' by asking and answering the question whether quantification is 'justifiable' and 'appropriate', Meyer did not satisfied Smith *et al*'s concern that "Meyers earlier findings, which support neoliberal assumptions [which] policy makers could interpret these findings to mean less need for international regulation." (Meyer, 1996:382-384) Agreeing to Meyer's 'combination of approaches', Smith *et al* suggest that the problematic is 'more complex' than the quantitative approaches would suggest. (Smith *et al.*, 1999:218). Meyer and Smith *et al* would agree to Popper's criteria of 'falsifiability', 'refutability' and 'testability', but do not agree with him on this being the 'line of demarcation' where human rights are

at stake (Popper, 1968). Because this refusal of a strict line of demarcation is value informed it cannot be interpreted as a fall to one's knees before the Pragmatism's temple of methodological pluralism. (Baert, 2005:150)

### **Avery and Forsythe: The Quality of Interpretation**

Chris Avery, former legal adviser to Amnesty International and current Director of the London based *Business & Human Rights Resource Centre* and David P. Forsythe, a political scientist, have adopted an interpretative approach to the problematic. Both authors are clearly informed by the values of human rights.

Avery focuses on the impact of economic developments and globalization on "society and its values" a questioning of which is according to Avery "well underway and which makes it] important for companies – and for human rights advocates dealing with companies – to recognize these fundamental changes and to adapt them to the new world" (Avery, 2000:17).

To Avery a 'new' world and the changes in 'society and its values' appear to be ontologically given. What needs to be done is to make adaptations, which are in accordance with the 'given' structural changes. In this Avery seems to be 'somewhat' of a Critical Realist, who recognize both structure and agency, but understands structure as informing agency (Baert, 2005:97). Avery's reality however is confined to the actual. A deeper knowledge aim is not envisaged. Avery's narrative is a classical example of the hermeneutics of the traditional legal academics and his account is clearly informed by the 'values of human rights'.(Avery, 2000)

He observes and reports a 'change in business thinking, which is challenging the "traditional argument that human rights do not need to be a priority " through a valued lens (Avery, 2000:19-22) The basic reason for this is that "Society is calling on business to act."(Avery, 2000:29-51) This 'calling' results in "steps towards change" in business attitudes.(Avery, 2000:51-69) In the end, however, Avery observes "a

slow response to the new realities...[and that] .in the new millennium most companies have still not come to terms with the new reality...” (Avery, 2000:69). Avery’s ‘new reality’ is what one could understand in Critical Realists language at the most as the ‘actual reality’. Avery’s narrative, however does not even establish a ‘pattern of events that take place,’ (Baert, 2005:92). It is not an example of Habermas’ idea of hermeneutics. i.e. serving the accomplishment if “a common understanding or shared view” (Habermas, 1999). Avery’s rhetoric serves to support the ‘idea’ of a ‘new reality’. Even in the absence of paradigmatic meaning, the distinction between rhetoric and hermeneutic has to be drawn (Taylor, 1971).

Forsythe’s, honors the ontology of Political Realism only partly as he perceives the world ‘out there’ as ‘dominated by states and their collective interest [but] The subject of human rights projects liberalism into the realist world. ”(Forsythe, 2000a:4/1). Thereby Forsythe integrates the ontology of Neo-Realism and Neo Liberalism in one study, and adds the ‘myth of ontological purity’ to the ‘myth of scientific method’ (Baert, 2005:131), thus opening up for critique from both sides.

With respect to the activities of multinational companies, Forsythe argues “ that it remains reasonable to expect that if left alone, many TNCs will opt for short term profits at the expense of human dignity for many persons affected directly and indirectly by there practices.” (Forsythe, 2000b:199). In this respect, Forsythe displays the general skepticism of the average, critically informed, human rights researcher. The only two Tables in his monograph ‘compares’ states and ‘the world’s largest TNCs in terms of billion US\$ (Forsythe, 2000b:192-193) intend to serve rather than to inform the argument concerning the “*tremendous* effect transnational corporations have on persons in the modern world, for good or ill” (Forsythe, 2000b).

Like Avery, Forsythe observes developments, which are “getting TNCs to pay more attention to human rights standards”. Unlike Avery however, Forsythe does not see a ‘new reality’ but a ‘new psychological environment in which TNCs are expected to engage in Socially responsible policies” (Forsythe, 2000b:210). Forsythe also

differs from Avery in that he explicitly raises the normative point in question: Should [there] be more public regulation of TNCs in the name of human rights? (Forsythe, 2000b:194). In answering that question, Forsythe takes an intermediate, albeit skeptical, standpoint between the “a critical view” and “a more positive view” on “the social and political workings of capitalism over time” (Forsythe, 2000b).<sup>5</sup> Both Hymer as well as Meyer are referred to as exponents of the ‘critical’ respectively the more positive view (Forsythe, 2000b).

**Human Rights Ontology and the Quality of science**

In order to classify the “background social theories of human rights” in ontological and epistemological terms, Dunne and Wheeler have designed the following quadrant (Dunne and Wheeler, 1999:4).

		Ontology	
		Cultural relativism	Universalism
Epistemology	Anti – foundationalism	Communitarian pragmatism	Cosmopolitan pragmatism
	Foundationalism	Traditional communitarianism	Liberal natural rights

Dunne and Wheeler make clear that both the human rights ontology as well as epistemology is value based. Again, that is not the problem. The Quality of science is not threatened by values or multiple values as such, but by values, which curb critical reflection. In Dunne and Wheeler’s scheme, I would classify Avery as a ‘foundational liberal natural rightist’. Combining an absolute ontology with an absolute epistemology would leave little room for what Baert calls ‘academic

---

<sup>5</sup> Both Hymer as well as Meyer are referred to as exponents of the ‘critical’ respectively the more positive view. FORSYTHE, D. P. (2000b) Transnational Corporations and human rights. IN FORSYTHE, D. P. (Ed.) *Human Rights in International Relations*. Cambridge, Cambridge University Press.



exchange' (Baert, 2005). So defined, the Pragmatic notion of 'conversation' converges with Habermas' Communicative realm, which is essential to critical reflection (Habermas, 1999). Meyer and Forsythe open themselves up to critics as they explicate their ontological starting point as well as their (meta) theoretical conceptions. Avery's narrative has to be qualified as a mere rhetoric and has to be disqualified as scientific. Pragmatism too has to disqualify 'science' which curbs pluralism and conversation. The 'science as solidarity project', (Rorty, 1991) must necessarily end where solidarity is detrimental to the Quality of science.

The 'Quality of Science' assumes [if we do not adhere to post-modern nihilistic conception of science) that we can differentiate between [1] different knowledge realms with their different truisms that is: between scientific and non-scientific claims, truisms and knowledge and [2] that we can differentiate between good and bad science, i.e. that we can determine the Quality of Science. The Quality of science is to be found in the encounter of two realms: the subjective and objective; the normative and the neutral; the qualitative and the quantitative; the value and the fact. Studies which have scientific Quality, are both informed by and informing that encounter. Meyer's study can be considered to represent that dynamic and bare this scientific Quality, Forsythe's interpretative narrative is scientific because it represents different opinions and refers to different findings. The normative position of the author does not contain the scientific debate by static 'is' or 'ought' propositions. Chris Avery's narrative cannot be considered to constitute a 'piece of science'. It is an enumeration of cases and opinions with the sole purpose of making a point and convincing the reader. It's a typical and traditional piece of legal rhetoric. It is about establishing an inter-subjective truth based on 'is' statements. Such narratives have no scientific quality and are detrimental to the scientific project.

The Quality of Science is neither the same as the essence of science, which according to Baert is a non-starter (Baert, 2005:148) nor can it be found in only one 'truly scientific' method, ontology or epistemology. If these aspects of science are diversified then the Quality

of science is inherently diversified in the sense that two different ontologies may have the same quality in that they stimulate rather than curb the dynamic of scientific discourse and study. This Quality is equally to be found in both studies informed by Naturalism (Durkheim, 1982) and Falsificationism (Popper, 1968) as well as Interpretationism (Weber, 1904) and the Critical and Interdisciplinary approach of the *Frankfurter Schule* (Habermas, 1999). Even in Pragmatism's 'self-referential knowledge (Baert, 2005) there is scientific Quality. The philosophers of science tend to agree on one characteristic of science it has to further that very scientific endeavor. If the accumulation of scientific understanding and knowledge is science's end, then but only then, every scientific means is justified.

### References

- ALSTON, P. (2005) The 'Not-a-Cat' Syndrom: Can the International Human Rights Regime Accommodate Non-State Actors? IN ALSTON, P. (Ed.) *Non-state actors and human rights*. Oxford [England] ; New York, Oxford University Press.
- EVERY, C. (2000) Buseniss and Human Rights in Time of Change. IN KAMMINGA, M. T. & ZIA-ZARIFI, S. (Eds.) *Liability of multinational corporations under international law*. The Hague, Kluwer Law International.
- BAERT, P. (2005) *Philosophy of social sciences; towards pragmatism*, Cambridge, Polity Press.
- DONNELLY, J. (1999) The Social Construction of International Human Rights. IN DUNNE, T. & WHEELER, N. J. (Eds.) *Human Rights in Global Politics*. Cambridge, Cambridge University Press.
- DUNNE, T. & WHEELER, N. J. (1999) Introduction: human rights and the fifty years' crisis. IN DUNNE, T. & WHEELER, N. J. (Eds.) *Human Rights in Global Politics*. Cambridge, Cambridge University Press.
- DURKHEIM, E. (1982) What is a Social Fact? IN LUKES, S. (Ed.) *The Rules of Social Method*. New York, Free Press.
- FORSYTHE, D. P. (2000a) *Human Rights in International Relations*, Cambridge, Cambridge University Press.
- FORSYTHE, D. P. (2000b) Transnational Corporations and human rights. IN FORSYTHE, D. P. (Ed.) *Human Rights in International Relations*. Cambridge, Cambridge University Press.

- HABERMAS, J. (1999) Reconstruction and Interpretation in Social Sciences. *Moral Consciousness and Communicative Action*. Cambridge, MIT Press.
- HORKHEIMER, M. & ADORNO, T. W. (1972) *Dialectic of enlightenment*, [New York], Herder and Herder.
- MEYER, W. D. (1996) Human Rights and MNCs: Theory Versus Qualitative Analysis. *Human Rights Quarterly*, 18, 366-397.
- MEYER, W. D. (1999) Confirming Infirmary and "Falsifying" Theories of Human Rights: Reflections on Smith, Bolyard, and Ippolito Through the Lens of Lakatos. *Human Rights Quarterly*, 21, 220-228.
- MUCHLINSKI, P. T. (2001) Human Rights and Multinationals: is there a problem? *International Affairs*, 77, 31-47.
- PIRSIG, R. M. (1985) *Zen and the art of motorcycle maintenance : an inquiry into values*, New York, Bantam Books.
- POPPER, K. (1968) Science: Conjectures and Refutations. *Science: Conjectures and Refutations*. New York, Harper & Row.
- RORTY, R. (1991) Science as Solidarity. IN RORTY, R. (Ed.) *Objectivity, Relativism and Truth*. Cambridge, Cambridge University Press.
- SMITH, J., BOLYARD, M. & IPPOLITO, A. (1999) Human Rights and the Global Economy: A Response to Meyer. *Human Rights Quarterly*, 21, 207-219.
- TAYLOR, C. (1971) Interpretation and the Sciences of Man. *Review of Metaphysics*, 25, 3-51.
- WEBER, M. (1904) Objectivity of Social Science and Social Policy. *Archiv für Sozialwissenschaft und Sozialpolitik*, 19, 22-87.
- WILSON, R. A. (1997) Human Rights, Culture and Context: An Introduction. IN WILSON, R. A. (Ed.) *Human Rights, Culture & Context; Antropological Perspectives*. London, Pluto Press.