

Combating Corruption to Respect Human Rights: Understanding the Ethical Responsibilities of Corporations

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ABSTRACT

The debilitating issue of corruption is a well-recognized legal and business challenge for multinational corporations (“MNCs”). However, the connection between corruption and its tendency to allow and even fuel human rights abuses in developing countries is not often discussed or well understood. Although there is awareness that these two topics—corruption and human rights—are intimately connected, the debates and reform proposals on improving corporations’ social performance in these areas are often treated as separate concerns. Corruption seems to be viewed as something present in the business environment that is a separate legal issue from the ethical issues surrounding human rights. We address this gap by arguing that companies must see combating corruption and promoting human rights as connected and complementary moral duties in the countries where they operate. We explore these issues through consideration of existing corporation social responsibility efforts that address human rights, such as the United Nations’ *Guiding Principles on Business and Human Rights*, and provide a path for a new MNC mindset toward promoting human rights and fighting corruption in a single effort.

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INTRODUCTION

In the last decade, the debate over corporations’ human rights obligations has become a central topic in the fields of corporate social responsibility (“CSR”) and international law. Developments such as the United Nation’s *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*ⁱ in 2003, and lawsuits filed against corporations in the United States under the Alien Tort Statute (“ATS”) (sometimes called the Alien Tort Claims Act) for alleged human rights abuses abroad, lead to the United Nations appointing John Ruggie as a Special Representative for Business and Human Rights. In 2011, the UN Human Rights Council endorsed his recommendations, which were promulgated as the *Guiding Principles on Business and Human Rights*.ⁱⁱ These principles have been well-received and established corporations’ obligation to “respect” human rights.

During this same time, combating corruption in international business was also gaining prominence. The OECD Convention on *Combating Bribery of Foreign Public Officials in International Business Transactions* came into force in 1999, and in 2005, the United Nations *Convention against Corruption* came into force.ⁱⁱⁱ More importantly for the business community, the increased enforcement of the Foreign Corrupt Practices Act—including well-publicized guilty pleas of corporations such as Siemens—and the UK Anti-Bribery Act (which went into effect in 2011),^{iv} has made anti-bribery effort an important, and controversial, topic.

Increasingly, there is awareness that these two topics—corruption and human rights—are intimately connected: high levels of corruption in a country prevent the realization of human rights and fuel human rights abuses. However, the debates and reform proposals on improving corporations' social performance in these areas are often treated as separate concerns. To combat corruption, corporations focus on ensuring that their employees or agents do not pay bribes. The goal is to encourage corporations to adopt compliance programs that are likely to be effective in ensuring that anti-bribery laws are not violated. With increased enforcement of anti-bribery laws in the US and elsewhere, combating corruption more and more becomes a legal compliance issue. Likewise, business and human rights efforts recognize the harms of corruption, but treat it as a separate issue. In many ways, corruption seems to be viewed as something present in the business environment that is a separate legal issue from the CSR issues surrounding human rights and therefore is not a direct concern of initiatives to improve human rights outcomes.

This article argues that corporations will have a more positive impact on human rights if these issues are considered together. CSR initiatives aimed at improving corporations' human rights performance must directly consider the impact of corruption and how combating corruption can improve human rights outcomes. In other words, combating corruption should not just be considered as an end in itself, but also as a means for improving human rights.

In Part I we begin by discussing the background of the corruption, CSR and human rights relationship. Initially, we provide an explanation of the goals of fighting corruption and protecting human rights before presenting the existing international and domestic frameworks that have begun to address these issues for both business and society. Next, in Part II we discuss the Ruggie "Protect, Respect and Remedy" framework in greater detail, as well as the notion of corporate complicity in human rights violations, and then present several theoretical perspectives from the debate over a corporate duty to act. In Part III, we argue for a dynamic conceptualization of addressing these goals that go beyond mere compliance with legal frameworks to combat corruption and promote human rights, all alongside a corporate social responsibility view of corporate action. To move in this direction we advocate a multi-prong approach within a framework of developing and implementing effective policies, procedures, publication, and stakeholder participation. We ultimately sum up our arguments and the model of corporate action in a brief conclusion.

I. BACKGROUND ON THE CORRUPTION, CSR, AND HUMAN RIGHTS RELATIONSHIP

In this Part we first lay out the issues of corruption and human rights and how they are connected to each other and MNCs' activities in emerging economies. In addition, we discuss the rise and evolution of key business accountability efforts, such as the UN Global Compact and the Global Reporting Initiative, and show how corruption is now a part of those frameworks. We also explain that the CSR and especially the legal literature related to corruption often view corruption as *something done to the corporation* in terms of demands from corrupt officials, rather than *something the corporation is doing* to the citizens of the developing country. Throughout we examine how corruption and human rights are interrelated issues, how corruption compares to other human rights concerns, and why it has not been a central part of the business and human rights discussion. We also show that only recently has corruption been seen as an important issue of corporate social responsibility.

A. INTERNATIONAL FRAMEWORKS AND OTHER INSTRUMENTS RELATED TO CORRUPTION AND HUMAN RIGHTS.

As has been pointed out by scholars, corruption is an ancient problem that has been condemned widely throughout history, including by the major world religions.^{vi} A more recent realization has come with an increasingly globalized economy—that businesses "have a vested interest in sustainable social, economic and environmental development."^{vii} Moreover, as the United Nations Global Compact has concluded:

It is now clear that corruption has played a major part in undermining the world's social, economic and environmental development. Resources have been diverted to improper use and the quality of services and materials used for development seriously compromised. The impact on poorer communities struggling to improve their lives has been devastating, in many cases undermining the very fabric of society. It has led to environmental mismanagement, *undermining labor standards and has restricted access to basic human rights.*^{viii}

For our purposes in this manuscript, we use the broadly-accepted definition of corruption proffered by the prominent anti-corruption organization Transparency International (“TI”): corruption is “abuse of entrusted power for private gain.”^{xix} Through tools like its Corruption Perceptions Index (“CPI”), TI applies this definition to both the private and public sectors,^x thus taking the definition beyond the traditional realm of criminalized bribery where one of the participants must be a public official. TI’s definition is relatively expansive and others have begun to look at private-to-private corruption^{xi} and otherwise begun to see corruption as a major issue for the multi-national business community.

Early evidence of an appreciation for the supply side of corruption is TI’s Bribe Payers Index (“BPI”), which was first published in 1999. Unlike the CPI, which ranks countries based on perceptions of the level of corruption, the BPI “ranks the world’s wealthiest countries by the propensity of their firms to bribe abroad and looks at which industrial sectors are the worst offenders.”^{xii}

Beginning in the 1970s with the U.S. Foreign Corrupt Practices Act (“FCPA”)^{xiii} there has been a growing recognition of the issue of corruption as a stunting force for developing economies. What were initially non-binding anti-corruption guidelines for MNCs in Europe, for instance, evolved into a criminalization model similar to the FCPA. The 1997 OECD anti-bribery convention^{xiv} was a major advancement in reaching international consensus based on legal rules and government enforcement. In addition, another important step in acknowledging the importance of corruption as a development issue was when the United Nations Convention against Corruption entered into force in 2005 as the “first globally-agreed anti-bribery instrument.”^{xv}

Connecting the role of corruption and the erosion of the rule of law to specifically imperiling human rights has gained more and more saliency with the prominence of the voluntary United Nations Global Compact initiative. Started in 2000, the Global Compact focuses on the role of corporations and human rights.^{xvi} Notably, the inclusion of Principle Ten, the anti-corruption provision, to the Global Compact Principles in 2004 has been a welcome recognition of the previous gap in understanding the importance of corruption alongside the goals of establishing environmental, labor, and human rights protection responsibilities of MNCs.^{xvii}

The United Nations Declaration of Human Rights, one of the inspirational documents for the Global Compact, also has a clear focus on the rule of law. In part, the document declares that, “All are equal before the law and are entitled without any discrimination to equal protection of the law [and that] [a]ll are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”^{xviii} Official action or inaction stemming from a bribe is, at its root, an instance of unfair treatment of one party at the expense of others parties not afforded the illicitly-gained preferential treatment.

Aiding the efforts of the Global Compact to organize voluntary commitments by MNCs to address non-business concerns is the nonprofit Global Reporting Initiative (“GRI”). In the last decade GRI has taken great strides in promoting its work “towards a sustainable global economy by providing sustainability reporting guidance.”^{xix} The GRI, like the UN Global Compact initiative, did not originally explicitly designate corruption as a key area of concern. Currently the GRI is updating its disclosure guidelines for corruption in light of changes in the field related to the recent financial crisis, as well as new legislation in the United States and the United Kingdom.^{xx} Another voluntary reporting regime that is specific to resource extraction MNCs—a broad industry of natural resource-related MNCs known for a high incidence of corruption—is the Extractive Industry Transparency Initiative (“EITI”).^{xxi} The centralized EITI reporting structure allows the nonprofit to track contracts and payments between MNCs and the countries where the resources are located. By increasing transparency on the transfer of payments concerning the resources extraction activities it is hoped that these proceeds end up benefiting citizens in the developing nation and not in the foreign bank accounts of corrupt officials.

Such policy developments are a welcome acceptance by the MNCs themselves of the importance of corruption for the non-profit making activities. There have been broad legal prohibitions on bribery domestically and, as with the FCPA and the UK Bribery Act, for bribery of foreign officials for some time. However, the commentary surrounding these laws typically views corruption abroad as something that MNCs have done to them. That is, MNCs do not bring a corrupting influence to the country, but they are unwilling forced into a situation where they need to decide whether or not to give into a demand for bribes. Under this approach, the MNCs—along the lines of the Ruggie framework—are only obligated to refrain from being corrupt. In other words, they are merely required to respect laws against bribery, but they have no obligation to impact the corrupt climate that often fuels human rights abuses.

This static perspective is starting to change. For example, the Dodd-Frank Act^{xxii} includes provisions that seek to reduce corruption in extractive industries through transparency,^{xxiii} as well as to address MNCs in those industries contributing to the longstanding conflict in and around the Democratic Republic of Congo.^{xxiv} Nonetheless, not all attempts to force accountability on MNCs have been successful. Some human rights advocates and victims of alleged corporate actions abroad have seen attempts to use mechanisms such as the U.S. Alien Tort Statute (“ATS”)^{xxv} to seek redress thwarted by legal issues such as standing and the extraterritoriality of the alleged MNC misconduct or omission.^{xxvi}

B. EXAMPLES OF THE CORRUPTION PROBLEM, HUMAN RIGHTS, AND MNCs

As described in the previous section, there are numerous approaches to accountability that touch on aspects of anti-corruption and human rights promotion efforts. However, despite these diverse efforts the simple fact is that many of the

human rights challenges that companies face throughout their supply chain cannot be fully addressed without first adequately addressing the issue of corruption.

For example, consider the human rights issues in the garment industry in Bangladesh. Since 2007, over 700 workers have died in fires at garment factories in various developing countries such as China and Bangladesh.^{xxxvii} In April of 2013, an eight story building that housed several garment factories collapsed,^{xxxviii} causing the deaths of over a thousand workers.^{xxxix} These deaths likely could have been prevented if corruption did not allow workplace safety violations and building code violations to go unchecked.^{xxx}

Corruption allows factories to remain in operation even if inspectors find numerous safety violations.^{xxxi} Likewise, as is the case in other countries,^{xxxii} corruption is likely the cause that allowed the building to be constructed in violation of building codes.^{xxxiii} This lack of enforcement has been connected to the devastating situation where countries that suffer a relatively high level of perceived corruption also have a high percentage of earthquake-related deaths from collapsed structures. This correlation may be attributable to the existence of poorly constructed and often illegal buildings that are made possible because of corrupt officials shirking their oversight duties.^{xxxiv} This has including the extensive loss of life from collapsed buildings during the 2010 Haitian earthquake.^{xxxv}

Another recent example of corruption costing lives is the case of the multi-million dollar fraud related to the sale of bogus bomb detectors to the Iraqi government—with the aid of bribed officials—that contributed to civilian deaths through the false trust bred by the useless devices.^{xxxvi} Further, corruption also erodes trust in institutions that can impact human rights and lessen the effectiveness of state or NGO efforts related to disaster relief.^{xxxvii}

Even corruption that seems like it is related to a straightforward bribe for an “against the rule” transaction with a corrupt foreign official can impact human rights. The case of bribes from Wal-Mart de Mexico managers to gain building permits for stores in numerous locations in Mexico may at first glance seem like a simple bribe to gain a speedy hearing or secure an otherwise uncertain regulatory process such as a building permit. However, the alleged bribes paid by Wal-Mart to Mexican officials allowed construction on sites within a previously-designated sensitive archeological zone around the Mayan pyramids of Teotihuacán.^{xxxviii} In another instance, “thanks to eight bribe payments totaling \$341,000, for example, Wal-Mart built a Sam’s Club in one of Mexico City’s most densely populated neighborhoods, near the Basílica de Guadalupe, without a construction license, or an environmental permit, or an urban impact assessment, or even a traffic permit.”^{xxxix} As a result of even larger bribes “totaling \$765,000... Wal-Mart built a vast refrigerated distribution center in an environmentally fragile flood basin north of Mexico City, in an area where electricity was so scarce that many smaller developers were turned away.”^{xl}

The point is that anti-corruption efforts cannot focus only on multi-national corporations refusing to pay bribes. Collapsing buildings and avoidable factory fires where MNC’s suppliers and retailers operate are due to corrupt transactions that may not have directly involved the MNC apparel company, but that company is impacted by it and is (or should be) held responsible for it. Similarly, where a MNC uses bribery to gain construction approval that leads to environmental and cultural degradation that company should not be without some level of responsibility for the impact stemming from the corruption. The MNC is responsible for it in the marketplace through reputational damage. In addition, there is a strong argument that the MNC is also morally responsible.

MNCs know (or should know) that corruption greatly impacts their ability to respect human rights. Awareness of how corruption impacts human rights throughout the MNC’s supply chain is essential for conducting “human rights due diligence.”^{xli} Thus, preventing corruption from creating human rights concerns for workers in their supply chain should be a top priority of MNCs.

To accomplish this goal, MNCs should not only ensure that their suppliers do not pay bribes, but should also work to reduce the enabling environment that allows corruption to thrive in that location. Whether this is a moral obligation—such as may follow from the arguments of Hsieh, Wettstein, and others, that we discuss in the next section—or a supererogatory duty, it is a matter of corporate social responsibility. Moreover, this duty goes beyond legal compliance with the FCPA or other national anti-bribery laws and, thus, must be central to the discussion of corporations’ human rights obligations. It is these discussions that we turn to in the next section.

II. CORRUPTION AND HUMAN RIGHTS PERSPECTIVES AND JUSTIFICATIONS

The longstanding debate over the role of the corporation in society, particularly multinational corporations operating abroad, continues today and is generally framed as a debate over corporate social responsibility. In this section we focus on three nuanced approaches to explaining and justifying corporate action—of varying degrees—in the context of an MNC’s impact on corruption and human rights. We first discuss the Protect, Respect and Remedy framework promoted by former UN Special Representative John Ruggie. In that section we focus on the role for due diligence reporting of human rights, as well as compliance-based corruption control and avoidance reporting. In the second section we discuss the idea of corporate complicity in allowing or even facilitating human rights abuses. In the third section we turn to a review of the prominent theoretical arguments for a MNC’s duty to act beyond merely following any applicable legal rules and regulations.

A. DUE DILIGENCE UNDER THE PROTECT, RESPECT, AND REMEDY FRAMEWORK

The guiding principles endeavor to set up a workable framework that simultaneously requires states to act under an obligation to proactively protect, and thus ensure, human rights and that creates a mechanism that will encourage private actors (i.e., businesses) to participate in human rights protection by first respecting them. For business the seemingly passive duty to “respect” is actually presented in terms of a corporate responsibility. The first action, therefore, for businesses is derivative of that duty to respect: mobilizing to avoid human rights infringement and addressing the “adverse human rights impacts with which they are involved.”^{xlii}

One powerful way to turn what could be seen as a negative duty of respect by refraining from infringing rights is for the principles to put the respect element into a proactive business duty of due diligence. This creates a powerful rhetorical tool for the framework’s advocates by putting the duty in terms that businesses understand. In other words, the concept of due diligence places the respect duty into an accountability and business process context that companies can recognize and even treat as a source of risk that must be addressed. In Chapter II (“The Corporate Responsibility to Respect Human Rights”) the principles explicitly make this link between CSR and due diligence investigative reporting on the corporation’s impact on human rights.^{xliii} The due diligence process businesses should implement is set out in the guiding principles, particularly with principles 16-21.^{xliv} As spelled out in the commentary to Principle 15—commitment to human rights, identification of corporate impact, and remediation of violations as needed—this is the so-called “know and show” duty related to human rights impact.^{xlv}

Specifically, Principle 17 “defines the parameters for human rights due diligence, while Principles 18 through 21 elaborate its essential components.” The commentary to Principle 17 is also enlightening on the connection between due diligence beyond a moral duty, stating that:

Human rights risks are understood to be the business enterprise’s potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22)...Human rights due diligence can be included within broader enterprise risk- management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.^{xlvi}

To conduct its due diligence, corporations should not simply look for violations of labor rights or safety regulations at a supplier, for example, but understand how corruption is potentially impacting compliance with such rights and regulations. This will require that any auditors used to conduct an inspection of the supplier, are trained in these matters and can help identify when corruption is impacting operations. It will also require that a supplier in a high-risk environment is trained on anti-corruption laws and their behavior is monitored appropriately.

In this way the business profit maximization strategy of reducing sources of costly risk can be harnessed for promoting the social good of protecting human rights. The examples of the factory fire and building collapse in the Bangladeshi garment industry is useful in understanding how business risk, corruption, and human rights converge. In retrospect the risk and subsequent business cost in terms of adverse publicity from the high-profile disasters are obvious, but market incentives failed to spur the necessary safety changes beforehand. The proactive approach of executing due diligence obligations could have helped avert such tragedies on business grounds once the risk was formalized. That is to say, with greater due diligence and reporting by western companies with regard to the garment supply chain may have identified the human rights risks and created an opportunity for positive action to protect the violations, including those resulting from the corruptly-facilitated disasters. In sum, the guiding principles can help make these connections clear for business decision makers and in a way that goes beyond simply making moral claims by explicitly framing human rights as a business issue.

B. CORPORATE COMPLICITY IN HUMAN RIGHTS VIOLATIONS

Principle 2 of the UN Global Compact states that, “Businesses should make sure they are not complicit in human rights abuses.”^{xlvii} Likewise, the ISO 26000 guidance on social responsibility states that an “organization should avoid being complicit in the activities of another organization that are not consistent with international norms of behavior,” including human rights.^{xlviii} In addition to the legal meaning, which is to knowingly provide some form of assistance to the commission of a wrongful act,^{xlix} a corporation “may also be considered complicit where it stays silent about or benefits from such wrongful acts.”^l

Complicity can further be divided into direct, beneficial, and silent.^{li} Direct involves knowing assistance to the violation of a human right. Beneficial complicity “involves an organization or subsidiaries benefiting directly from human rights abuses committed by someone else. Examples include . . . an organization benefiting economically from suppliers’ abuse of fundamental rights at work.”^{lii} Silent complicity “can involve the failure by an organization to raise with the appropriate authorities the question of systematic or continuous human rights violations, such as not speaking out against systematic discrimination in employment law against particular groups.”^{liii}

Under this perspective, there are many situations where corporations know (or should know) that they are benefiting from corruption that either facilitates or directly supports the violation of human rights. Consider again the apparel industry

in Bangladesh. Corporations in the apparel industry know (or should know) that corruption allows the violation of building safety codes that imperil human rights at its suppliers' factories. Thus, there is a strong argument to be made that those corporations are beneficially or silently complicit in those actions. This is not to say that those corporations should have legal liability, but they have a moral responsibility to take some action to reduce corruption that is directly impacting the rights of the workers in the suppliers' factories. Under current practices, it seems that corporations will rely on safety audits and local government inspections and—knowing that corruption is endemic to many developing countries such as Bangladesh—simply hope for the best; or worse, turn a blind eye to the problem.

C. THE DEBATE OVER A CORPORATE DUTY TO ACT

In the last few decades formalized conceptions of a corporate duty to stakeholders and the larger society beyond mere profit-making for shareholders has become a well-established feature of both academic^{liv} and practitioner oriented research.^{lv} In that time the definition of whom or what will qualify as a stakeholder, and thus necessitate consideration by corporate decision makers, has also expanded.^{lvi} In a broad sense, these ideas can all be placed under the umbrella of corporate social responsibility.^{lvii}

Since CSR concepts began taking form in the 1970s critics have argued that business has no social responsibility beyond representing the interests of shareholders.^{lviii} In the general management literature and elsewhere the focus has evolved past narrowly-conceived attacks on CSR. A company's CSR efforts are now subject to critique like any other business strategy. For example, the focus of one branch of management research is on the need to integrate CSR into core business activities.^{lix} Notably, the UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights ("the Norms") which included a proactive obligation on the part of MNCs failed to gain the required support to become binding in the mid-2000s. Nonetheless, the aspirations of the Norms to have MNCs act to protect human rights are relevant to the evolving justifications for a corporate duty to act.

Recent work by leading scholars in business ethics and law has reenergized the theoretical justifications for why multinational corporations must act in certain circumstances. When and how MNCs must act, including with regard to protecting human rights, is often evaluated in terms of Rawlsian conceptions of justice and fairness. While the Ruggie "Protect, Respect, and Remedy Framework" places MNCs in the role of respecting human rights and recognizes the role of governments to respect *and* remedy,^{lx} others have argued that a corporate duty to act is feasible and theoretically supported on justice and fairness grounds.

One leading scholar that has addressed the obligations of MNCs in this way is Nien-hê Hsieh. He roots this discussion in notions of justice developed by John Rawls, particularly in *The Law of the Peoples*.^{lxi} In one instance Hsieh specifically examines the positive obligations contemplated in the Global Compact.^{lxii} He begins by presenting three principles, the Principle of Assistance, the Principle of Limited Scope, and the Principle of Accountability, which, in turn, describe the conditions where a MNC is obligated to act, the limits of the required assistance, and when MNCs "have an obligation to support mechanisms that enable those affected by [MNC] activities to contest corporate decisions in areas that related to the fulfilling of those obligations."^{lxiii} He concludes that there is a duty for MNCs to assist those in need, including an obligation to alleviate the conditions under which human rights are imperiled.^{lxiv} Moreover, there are also arguments that rebut the shareholder primacy account of why MNCs should refrain from assisting stakeholders in need.^{lxv}

In another article, Hsieh focuses on the duty of MNCs to promote just background institutions.^{lxvi} As with the earlier discussion of an MNC duty to act with regard to human rights, this assertion lends support to the notion that MNCs should go beyond simply respecting human rights and take an active role in supporting just institutions. Thus, it follows that, plausibly, MNCs can be held to a standard that connotes an obligation to not only refrain from bribery, but also to fight corruption, especially when human rights are at stake.

Other scholars have also recently engaged with the question of if or when MNCs have affirmative duties to stakeholders. For instance in the CSR context, Florian Wettstein argues for CSR efforts to go beyond a mandate that MNC's refrain from causing harm and for a positive responsibility to society.^{lxvii} He sees human rights as a "blind spot" in CSR, meaning that human rights has "played a peripheral role" in CSR debates.^{lxviii} In effect, he calls for MNCs to take a capability based minimum approach to remedial obligation to protect human rights.^{lxix} He concludes MNCs have a duty to assist in *realizing human rights*—thus to improve the human rights situation where they operate.^{lxx} He adds that to limit MNCs only to a duty to do no harm, or remediate harms when capable, endangers "the prospect of achieving holistic collaborative solutions for today's large-scale human rights challenges in serious jeopardy by letting one of the most powerful parties in the mix off the hook."^{lxxi}

In a slightly different framing of his argument Wettstein applies this corporate imperative to human rights violations that are within the purview of corporations and asserts that MNCs have a duty to speak up when those violations occur.^{lxxii} This essentially turns the idea of corporate personhood back on itself with the implication being that if MNCs have political power and rights of their own like individuals or even governments, they will also necessarily have a duty to denounce human rights violations and support the achievement of human rights.

Stephan Wood's work adds another voice to the debate over if and when MNCs must act regarding human rights issues.^{lxxiii} In essence, his defense of the leverage-based approach is determined by the power and influence that corporations

have in a given situation as a determinant of their level of duty.^{lxxiv} This role of the MNC to act is also related to the relationships it enjoys that contribute to its level of potential positive influence.

Others have argued for limitations on how far MNCs must go in addressing human rights where they operate. For example, MNCs may be constrained by their nature and expertise, and the necessary reservation of certain powers and obligations to governments and not corporations.^{lxxv} The basis for the Protect, Respect and Remedy framework has also been critiqued on several grounds, including the capacity and private orientation of corporations.^{lxxvi}

II. PROMOTING HUMAN RIGHTS BY COMBATING CORRUPTION

In this Part we continue to push forward the recognition that MNCs sometimes have a duty to act argue that the exacerbating effect of corruption on human rights is an opportunity for companies to go beyond simply complying with their legal obligations. We argue that companies must see combating corruption and promoting human rights as connected and complementary moral duties in the countries where they operate. To do so we draw on the successes of the now standard and integrated corporate social responsibility efforts of MNCs to provide a path for a new MNC mindset toward promoting human rights and fighting corruption in a single effort.

Increased enforcement of the FCPA and other anti-bribery legal developments have created a sea change in how much attention corporations pay to combating corruption. The next step is to move corporations away from viewing anti-corruption as solely a compliance issue, and to see these efforts as a matter of corporate social responsibility, especially as it relates to business and human rights. This means that corporations should focus not just on ensuring that their employees and agents do not pay bribes, but that they should also use their resources to assist the efforts to reduce the levels of corruption in those developing countries with significant governance problems.

This evolution requires that corporations change their mindsets in at least two simply different ways. First, corporations must not view anti-corruption as an end in itself (for example, avoiding the payment of bribes that would create FCPA liability), but instead view anti-corruption as an essential part of its efforts to respect human rights. Second, corporations must treat anti-corruption as a matter of corporate social responsibility, and not simply legal compliance. The legal department clearly must be involved in the corporation's anti-bribery efforts, as the current FCPA enforcement practices create significant legal risks for companies. In addition, as enforced, the FCPA's provisions are complex and require expert legal advice. However, those in the corporation responsible for human rights issues and CSR more generally, must also be involved. Anti-corruption cannot be isolated from those other CSR activities.

To work towards reducing corruption in a country—as it relates to a company's business activities in that country and as it relates to its obligations to respect human rights—corporations need to evolve along the lines of the model developed by Simon Zadek.^{lxxvii} According to Zadek, firms typically first take a very defensive view of a particular social or environmental issue—they deny any responsibility for having to solve the problem. When they accept responsibility, the focus initially is on risk mitigation with respect to legal liability and harm to their reputation in the market.^{lxxviii} With respect to corruption, it seems that many corporations are at this stage.

In the next stages, corporations recognize that the adoption of compliance programs are not sufficient to address the problem of corruption. They realize that they must take a more comprehensive view of the problem and perhaps make operational changes to correct the problem. The final stage for socially responsible corporations in Zadek's view is the "civil" stage.^{lxxix} At this stage, corporations are committed to solving the problem and seek draw in others (e.g., other industry members, civil society organizations, and governments) to work together to raise the standards of the industry. This stage is, thus, crucial to establish a proactive approach to corporate social responsibility and to general sustainable social returns.

The following sets out what is necessary to push corporations to enter the "civil" stage as it relates to combating corruption for the purposes of respecting human rights. These actions can be categorized as policies, procedures, publication, and participation.^{lxxx} These are actions that corporations should voluntarily implement to meet their obligations with respect to corruption and human rights. In addition, there is also a role for governments, civil society organizations, social investors, and others, to push corporations to meet these requirements.

A. POLICIES

Policies refer to the corporation's commitment to combating corruption. Through codes of conduct, corporations instruct their employees on the standards the corporation expects them to follow. In addition, these codes demonstrate the company's commitment to ethical behavior to its stakeholders.^{lxxxi} In this way, codes of conduct are part of the stakeholder dialogue on what constitutes corruption and what obligations corporations have to protect against it. Thus, if corporations explicitly link corruption and human rights obligations in their codes of conduct, then this dialogue is pushed further ahead and the foundations of progress are set.

From a business and human rights perspective, corporations' policies should not focus simply on compliance with the FCPA or UK Anti-Bribery Act, for example. Instead, the focus should be expanded to understand what policies are

needed to ensure that corruption does not prevent the ability of the corporation to respect human rights. Likewise, the company's human rights policies should be integrated with its anti-corruption policies.

B. PROCEDURES

The concept of procedures refers to the implementation of the company's policies. Surprisingly, despite the attention given to anti-bribery laws, many corporations still have not implemented procedures that allow the corporation to identify corruption risks and then protect against those risks.^{lxxxii} For example, one survey found that only "40% of respondents believe their controls are effective at identifying high-risk business partners or suspicious disbursements."^{lxxxiii} If many corporations are not appropriately protecting against their own direct involvement in corruption, it is quite likely that even fewer are addressing corruption as it relates to human rights issues.

Thus, as with policies, when corporations develop and implement human rights due diligence procedures, those procedures must be sure to include anti-corruption. One way corporations conduct due diligence is through external certification. For example, companies seek SA8000 certification of its suppliers to ensure those suppliers use safe workplaces and meet minimum standards of decent working conditions.^{lxxxiv} Corporations should work to ensure that those organizations take anti-corruption into account as it relates to those standards. For example, due in part to a 2012 factory fire at a factory in Pakistan that was SA8000 certified, Social Accountability International is in the process of updating its standards to better account for the harms of corruption.^{lxxxv}

C. PUBLICATION

Publication involves the disclosure of the corporation's managerial efforts to combat corruption (its policies and procedures) and how well it is meeting those standards. As stated above, although early versions of the GRI (the leading standards for sustainability reporting) left out reporting indicators on anti-corruption, those standards now include such matters. More recently, the UN Global Compact and Transparency International have published guidelines for reporting on anti-corruption efforts.^{lxxxvi} Consistent with what was stated above, these indicators focus on the corporation not being a participant in wrongful payments.

The next step should include integrating the anti-corruption reporting indicators with the corporation's efforts on other matters of human rights. This will not only encourage corporations to more fully consider these issues, but also facilitates learning. As stated in the UN Global Compact guidance, "[R]eporting on anti-corruption activities based on a consistent reporting guidance enables different stakeholders to share information, raise awareness, learn from each other and improve practices."^{lxxxvii}

D. PARTICIPATION

For both corruption and human rights, multi-stakeholder initiatives are needed to address the problems. In both areas, multi-stakeholder initiatives have made significant progress in driving forward the agenda and allowing corporations to work together (and with governments and civil society organizations) to begin implementing possible solutions. The next step is for existing multi-stakeholder initiatives—or the development of new multi-stakeholder initiatives—to focus on the relationship between corruption and human rights. Such initiatives can push corporations to find those ways where they can improve human rights by helping to reduce corruption (as opposed to just not being an active participant in a corrupt transaction) and then share best practices. Through the collective voice of a multi-stakeholder initiative, corporations can influence governments and find ways to help reduce the corrupt environment surrounding the corporation's activities (either direct activities or in its supply chain) in any particular country.

Such initiatives can become the "institutional entrepreneurs" that bring about the necessary changes needed. As Misangyi and colleagues state:

anticorruption reforms must be championed by institutional entrepreneurs who possess the requisite capabilities for doing the institutional work necessary to successfully establish the new institutional order. Such entrepreneurs must have a critical understanding of the existing institutional order and must be able to construct a new anticorrupt institutional logic—a new collective identity that defines anticorruption roles and practices in a legitimate manner and that legitimates the social resources necessary to have the anticorrupt order prevail.^{lxxxviii}

In sum, we advocate for a proactive, cohesive approach by MNCs to both act against corruption and to promote human rights, all under the umbrella of corporate social responsibility. To accomplish this effort we find that a policies, procedures, publication, and participation framework is a promising mechanism to organize and promote these actions.

CONCLUSION

While not without its critics, the push to raise awareness and promote corporate action to fight corruption and protect human rights continues to gain momentum. Although the recognition that corruption negatively impacts human rights has fueled the anti-corruption movement, the movements to encourage corporations to respect human rights and to combat corruption have proceeded in parallel. These two movements must be brought together if we are to achieve meaningful, sustainable improvements in the areas of human rights related to business. This suggests a more expansive role for corporations to combat corruption, rather than simply taking efforts to ensure that their employees or agents do not pay bribes. To promote these goals, this article set out a multi-prong approach for corporations. This approach proceeds within a framework of developing and implementing effective policies and procedures, that is marked by the transparency of a publication regime, and, finally, that involves participation in multi-stakeholder initiatives to achieve the benefits of collective action.

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ⁱ Comm'n on Hum. Rts., Subcomm., 55th Sess., *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 13, 2003).

ⁱⁱ Special Representative of the Secretary-General, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011), available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [hereinafter *Guiding Principles*].

ⁱⁱⁱ James A. Barta & Julia Chapman, *Foreign Corrupt Practices Act*, 49 AM. CRIM. L. REV. 825, 851 (2012).

^{iv} *Id.* at 851-52.

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^{vi} See Philip M. Nichols, *Corruption as an Assurance Problem*, 19 AM. U. INT'L L. REV. 1307, 1308 (2004) ("Although particular definitions of corruption may be different, its conceptualization appears to be universal, and corruption is universally condemned. Corruption was condemned in the past just as

It is condemned now. Corruption is condemned by monotheists, pantheists, and other religious schools of thought"). *Id.* For a further view discussion of the religious traditions abhorring corruption, see Philip M. Nichols, *Multiple Communities and Controlling Corruption*, 88 J. BUS. ETHICS 805, 809 (2009).

^{vii} UNITED NATIONS GLOBAL COMPACT, *Transparency and Anti-corruption*, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/anti-corruption.html> (last viewed May 31, 2013).

^{viii} *Id.* (emphasis added).

^{ix} TRANSPARENCY INTERNATIONAL, *Who We Are, FAQs—1. How Do you Define Corruption?* http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/ (last viewed May 31, 2013).

^x TRANSPARENCY INTERNATIONAL, *What is the Corruption Perceptions Index (CPI)?—3. What is corruption and how does the CPI measure it?* ("Corruption is the abuse of entrusted power for private gain. This is the working definition used by Transparency International (TI), applying to both the public and private sectors. The CPI focuses on corruption in the public sector, or corruption which involves public officials, civil servants or politicians"), http://www.transparency.org/cpi2011/in_detail (last viewed May 31, 2013).

^{xi} Antonio Argandoña, *Private-to-Private Corruption*, 47 J. BUS. ETHICS 253 (2003). See also *Private-to-Private Corruption: The Last Piece of the Puzzle* in STRATEGIES FOR BUSINESS, GOVERNMENT AND CIVIL SOCIETY TO FIGHT CORRUPTION IN ASIA AND THE PACIFIC (2009), available at <http://www.oecd-ilibrary.org/docserver/download/2809011ec009.pdf?expires=1366904780&id=id&accname=ocid195144&checksum=851FE2E57A39FD649E24977E2AAEF3BA> (last viewed May 31, 2013).

^{xii} TRANSPARENCY INTERNATIONAL, *Bribe Payers Index—Overview*, <http://www.transparency.org/research/bpi/overview> (last viewed May 31, 2013).

^{xiii} Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213 (codified as amended in sections of 15 U.S.C. § 78), amended by Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418 (codified as amended in sections of 15 U.S.C. § 78), and International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366 (codified as amended in sections of 15 U.S.C. § 78).

^{xiv} OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS (2011); available at <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/38028044.pdf> (last viewed May 31, 2013).

^{xv} UNITED NATIONS GLOBAL COMPACT, *Transparency and Anti-corruption*, *supra* note 6.

^{xvi} UN GLOBAL COMPACT, *Corporate Sustainability in the World Economy Brochure* (2011), available at http://www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf (last viewed May 31, 2013) (“business, as the primary driver of globalization, can help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere and contribute to a more sustainable and inclusive global economy.”). *Id.* at 2.

^{xvii} In full, the Global Compact’s Principle 10 states: “Businesses should work against corruption in all its forms, including extortion and bribery.” UNITED NATIONS GLOBAL COMPACT, *Transparency and Anti-corruption*, *supra* note 6.

^{xviii} UNITED NATIONS, DECLARATION OF HUMAN RIGHTS, *Article 7* (1948).

^{xix} GLOBAL REPORTING INITIATIVE, *What is GRI?*, <https://www.globalreporting.org/information/about-gri/what-is-GRI/Pages/default.aspx>

^{xx} See THE GLOBAL REPORTING INITIATIVE, *Anti-corruption Working Group – Background*, <https://www.globalreporting.org/reporting/latest-guidelines/g4-developments/g4-working-groups/Pages/Anti-corruption.aspx> (last viewed May 31, 2013).

^{xxi} EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE, <http://eiti.org/eiti> (last viewed May 31, 2013).

^{xxii} Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (hereinafter “Dodd-Frank”).

^{xxiii} *Id.* at §1502, Conflict Minerals.

^{xxiv} *Id.*

^{xxv} Alien Tort Statute, 28 U. S. C. §1350 (2012) (the statute, passed in 1789, states that, “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”).

^{xxvi} See *Kiobel v. Royal Dutch Petroleum Co.*, 569 U. S. ___ (2013) at 14 (slip opinion) (“Corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices...[i]f Congress were to determine otherwise, a statute more specific than the ATS would be required.”).

^{xxvii} Matthew Most, *Another Factory Fire Kills More Garment Workers*, ABC NEWS (Jan. 27, 2013), available at <http://abcnews.go.com/Blotter/factory-fire-kills-garment-workers/story?id=18327767> (last viewed Apr. 26 2013).

^{xxviii} See Julfikar Ali Manik & Jim Yardley, *Death Toll at 256 in Bangladeshi Building Collapse*, NY TIMES (Apr. 25, 2013), available at <http://www.nytimes.com/2013/04/26/world/asia/bangladeshi-collapse-kills-many-garment-workers.html?pagewanted=all> (last viewed Apr. 26 2013); see also Julhas Alam, *87 dead in Bangladesh garment factory collapse*, Associated Press (Apr. 24, 2013), available at <http://news.yahoo.com/87-dead-bangladesh-garment-factory-collapse-111905010--finance.html> (last viewed May 31, 2013).

^{xxix} As the story continued to evolve, the death toll appears to be closer to over 1,100. This event also sparked a quickly organized agreement among several western retailers who had connections to the collapsed factory to promote worker safety in the future. See ACCORD ON FIRE AND BUILDING SAFETY IN BANGLADESH (May 12, 2013) available at: <http://www.workersrights.org/linkedddocs/accord%20on%20fire%20and%20building%20safety%20in%20bangladesh%205.12.2013.pdf> (“The undersigned parties are committed to the goal of a safe and sustainable Bangladeshi Ready-Made Garment (“RMG”) industry”). *Id.* at 1. However, in the weeks that followed other companies opted to either work on their own worker safety initiatives or resist calls to join the garment manufacturers pact, in part due to fears of creating new legal liabilities by the agreement. See, e.g., Steven Greenhouse, *As Firms Line Up on Factories, Wal-Mart Plans Solo Effort*, NY Times (May 14, 2013); Steven Greenhouse, *U.S. Retailers See Big Risk in Safety Plan for Factories in Bangladesh*, NY Times (May 22, 2013); and Jessica Wohl, *As some retailers back Bangladesh accord, U.S. group lashes out*, Reuters (May 15, 2013); available at, http://newsandinsight.thomsonreuters.com/Legal/News/2013/05_-_May/As_some_retailers_back_Bangladesh_accord,_U_S_group_lashes_out/ (last viewed May 31, 2013).

^{xxx} The day after the collapsed garment factory tragedy Brigadier General Ali Ahmed Khan, the Bangladeshi official in charge of the National Fire Service, “said that an initial investigation found that the [collapsed] building violated codes, with the four upper floors having been constructed illegally without permits.” In the days following the collapse the politically-connected building owner remained in hiding. Manik & Yardley, *supra* note 37.

The belief that various multinational clothiers based in developed countries bore some responsibility for the tragedy is illustrated by the reaction of worker rights NGOs:

‘The front-line responsibility is the government’s, but the real power lies with Western brands and retailers, beginning with the biggest players: Walmart, H & M, Inditex, Gap and others,’ said Scott Nova, executive director of Worker Rights Consortium, a labor rights organization. “The price pressure these buyers put on factories undermines any prospect that factories will undertake the costly repairs and renovations that are necessary to make these buildings safe.

Id.

^{xxxix} Janet Keeping & Iftekhar Zaman, *Bangladeshi Factory Fires, Corruption and the Rule of Law*, TROY MEDIA (Dec. 20, 2012) (arguing that the corruption along attendant under-enforcement of safety and labor laws underlie the fatal factory fires in which over 110 workers died).

^{xxxix} David Hess & Thomas W. Dunfee, *Fighting Corruption: A Principled Approach*, 33 CORNELL INT'L L. J. 593, 613 (2000) (noting the problem of “bean curd” bridges in China, which collapse shortly after they are constructed due to corruption allowing incompetent companies to build the bridges and violate building codes).

^{xxxix} Jim Yardley, *Illegal Districts Dot New Delhi as City Swells*, NY TIMES (Apr. 27, 2013), available at

<http://www.nytimes.com/2013/04/28/world/asia/unauthorized-colonies-dot-new-delhi-seeking-legal-status.html?pagewanted=all> (discussing the reasons behind illegal construction in developing areas and stating that

“politicians preferred to keep colonies vulnerable so that residents remained more beholden to them for even incremental improvements.” One business owner located in an illegally constructed area told the reporters that, “petty officials routinely demanded bribes to allow new construction projects. Others said that the police routinely required payoffs, too.”).

^{xxxix} Nicholas Ambraseys & Roger Bilham, *Comment: Corruption Kills*, 469 NATURE 153 (Jan. 2011), available at <http://cires.colorado.edu/~bilham/NatureCorruption/CorruptionNature2011.pdf> (last viewed May 31, 2013) (the headline of the articles sums up the findings: “that 83% of all deaths from building collapse in earthquakes over the past 30 years occurred in countries that are anomalously corrupt”).

^{xxxix} *Id.*

^{xxxix} Robert Booth & Meirion Jones, *UK Businessman Found Guilty of Selling Fake Bomb Detectors to Iraq*, THE GUARDIAN, (Apr. 23, 2013), available at <http://www.guardian.co.uk/uk/2013/apr/23/somerset-business-guilty-fake-bombs> (last viewed May 31, 2013) (detailing how a British man was found “guilty on three counts of fraud over a scam that included the sale of £55m of devices based on a novelty golfball finder to Iraq.” These useless devices were sold to corrupt or duped Iraqi officials and then “installed at checkpoints in Baghdad through which car bombs and suicide bombers passed, killing hundreds of civilians [and] [l]ast month they remained in use at checkpoints across the Iraqi capital.”).

^{xxxix} Edward Wong, *After Earthquake, Chinese Seek Out Private Charities for Their Donations*, NY TIMES (Apr. 22, 2013) “The devastating earthquake that struck southwest China last weekend has drawn a flood of donations from across the country. But in contrast to the pattern after a major quake in the same region five years ago, those eager to bolster relief efforts are looking to donate to private charity organizations, not to official groups that now have a reputation for corruption.”

^{xxxix} David Barstow and Alejandra Xanic von Bertrab, *The Bribery Aisle: How Wal-Mart Got Its Way in Mexico*, NY TIMES MAG. (Dec. 17, 2012).

^{xxxix} *Id.* The investigation from the New York Times into Wal-Mart’s extensive corruption in Mexico concluded that the corruption was systematic and had a wide-range of illicit goals and harmful impacts:

Wal-Mart de Mexico was not the reluctant victim of a corrupt culture that insisted on bribes as the cost of doing business. Nor did it pay bribes merely to speed up routine approvals. Rather, Wal-Mart de Mexico was an aggressive and creative corrupter, offering large payoffs to get what the law otherwise prohibited. It used bribes to subvert democratic governance — public votes, open debates, transparent procedures. It used bribes to circumvent regulatory safeguards that protect Mexican citizens from unsafe construction. It used bribes to outflank rivals.

Id.

^{xli} *Id.*

^{xli} See, e.g., John Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights (Report of the Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises)*, UN INNOVATIONS 189 (Spring 2008). Ruggie frames the need for corporate due diligence related to human rights by asking, “Yet how do companies know they respect human rights? Do they have systems in place enabling them to support the claim with any degree of confidence?” *Id.* at 194. He concludes that “[m]ost do not” have such systems and argues that, “What is required is due diligence—a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it,” adding that [t]he scope of human rights related due diligence is determined by the context in which a company is operating, its activities, and the relationships associated with those activities.” *Id.*

^{xlii} UN Guiding Principles, *supra* note 2, at 13.

^{xlii} *Id.* (“Principle 11: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”).

^{xliii} *Id.* at 16 (Principle 15, commentary).

^{xliii} *Id.* at 15-16.

^{xliii} *Id.* at 71.18.

^{xlvii} UN Global Compact, Principle 2, available at:

<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/Principle2.html>

^{xlviii} International Organization for Standardization, *ISO 26000: Guidance on Social Responsibility*, 13 & 26 (2010) [hereinafter ISO 26000].

^{xlix} The UN Guiding Principles state that, “The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.” UN Guiding Principles, *supra* note 2, at 19.

^l ISO 26000, *supra* note 47, at 13 and 26. Likewise, the UN Guiding Principles state, “As a non-legal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.” UN Guiding Principles, *supra* note 2, at 18.

^{li} ISO 26000, *supra* note 47, at 26; *See also* UN Global Compact, Principle 2, *supra* note 46.

^{lii} ISO 26000, *supra* note 47, at 26.

^{liii} *Id.* at 26.

^{liv} R. Edward Freeman, *A Stakeholder Theory of the Modern Corporation*, from *ETHICAL ISSUES IN BUSINESS: A PHILOSOPHICAL APPROACH*, by Thomas Donaldson, Patricia H. Werhane, and Margaret Cording (eds.) (2002).

^{lv} For a practical distillation of the stakeholder theory developed by Professor R. Edward Freeman and others, see R. Edward Freeman, S. Ramakrishna Velamuri, and Brian Moriarty, *Company Stakeholder Responsibility: A New Approach to CSR*, THE BUSINESS ROUNDTABLE INSTITUTE FOR CORPORATE ETHICS BRIDGE PAPER SERIES (2006), available at <http://www.corporate-ethics.org/pdf/csr.pdf> (last viewed May 31, 2013) (discussing the evolution of the stakeholder theory, including four Levels of Commitment to the Stakeholder Approach—ranging from Basic Value Proposition, sustained stakeholder cooperation, a n understanding of broader societal issues, to ethical leadership—as well as ten Principles of Company Stakeholder Responsibility).

^{lvi} Yves Fassin, *The Stakeholder Model Refined*, 84 J. BUS. ETHICS 113 (2009) (providing an overview of the evolution of the stakeholder model and the expanded definition of individuals, groups, organizations, and societal components that can qualify as stakeholders relevant to corporate decision making).

^{lvii} For a lengthy analysis of the different definitions associated with the CSR, see Alexander Dahlsrud, *How Corporate Social Responsibility is Defined: an Analysis of 37 Definitions*, 15 CORP. SOC. RESPONSIB. ENVIRON. MGMT. 1 (2008).

^{lviii} For the classic shareholder maximization critique of CSR as anathema to the claim that the sole “business of business is business” and that CSR is an improper manager’s tax on owners, see Milton Friedman’s article *The Social Responsibility of Business is to Increase its Profits*, NY TIMES MAG. (Sept. 1970). For a more recent articulation of the shareholder primacy argument against CSR, see Aneel Karnani, *Editorial: The Case Against Corporate Social Responsibility*, WALL ST. J. (June 2012) (arguing that “in cases where private profits and public interests are aligned, the idea of corporate social responsibility is irrelevant: Companies that simply do everything they can to boost profits will end up increasing social welfare” and that “In circumstances in which profits and social welfare are in direct opposition, an appeal to corporate social responsibility will almost always be ineffective, because executives are unlikely to act voluntarily in the public interest and against shareholder interests.” Further Professor Karnani dismisses corporate autonomy in managing its relations with society and concludes that the “ultimate solution is government regulation [because] [i]ts greatest appeal is that it is binding... [and because] [g]overnment has the power to enforce regulation”).

^{lix} *See, e.g.*, Michael E. Porter & Mark R. Kramer, *Strategy & Society, The Link Between Competitive Advantage and Corporate Social Responsibility*, HARVARD BUSINESS REVIEW (2006); and Michael E. Porter & Mark R. Kramer, *Creating Shared Value*, HARVARD BUSINESS REVIEW (2011).

^{lx} *See* Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, *supra* note 40.

^{lxi} *See* Nien-hê Hsieh, *The Obligations of Transnational Corporations: Rawlsian Justice and the Duty of Assistance*, 14 BUS. ETHICS Q. 643 (2004).

^{lxii} *Id.* at 643-44.

^{lxiii} *Id.* at 645.

^{lxiv} *Id.* at 48-51.

^{lxv} *See generally* Nien-hê Hsieh, *Corporate Social Responsibility and the Priority of Shareholders*, 88 J. BUS. ETHICS 553 (2009) (discussing the scholarship of Tom Dunfee that challenges the shareholder primacy account and finds managerial discretion to exercise a positive duty to alleviate stakeholder suffering).

^{lxvi} Nien-hê Hsieh, *Does Global Business Have a Responsibility to Promote Just Institutions?*, 19 BUS. ETHICS Q. 251 (2009).

^{lxvii} Florian Wettstein, *Corporate Responsibility in the Collective Age: Toward a Conception of Collaborative Responsibility*, 117 BUS. & SOC’Y REV. 155, 166-71 (2012).

^{lxviii} *Id.* at 745-46.

^{lxix} *Id.* at 753-55.

^{lxx} *Id.* at 757-59.

^{lxxi} *Id.* at 759.

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- ^{lxxii} Florian Wettstein, *Silence as Complicity Elements of a Corporate Duty to Speak Out Against the Violation of Human Rights*, 22 BUS. ETHICS Q. 37 (2012).
- ^{lxxiii} Stepan Wood, *The Case for Leverage-Based Corporate Human Rights Responsibility*, 22 BUS. ETHICS Q. 3 (2012).
- ^{lxxiv} *Id.*
- ^{lxxv} John Douglas Bishop, *The Limits of Corporate Human Rights Obligations and the Rights of For-Profit Corporations*, 22 BUS. ETHICS Q. 119 (2012) (agreeing with Ruggie regarding corporate duties to refrain from human rights violations and to avoid complicity in human rights violations, but concluding that, “Corporations have no obligation to ensure human rights. To have such obligations, corporations would need many rights that ought to be reserved only for governments.”). *Id.* at 141.
- ^{lxxvi} Wesley Cragg, *Ethics, Enlightened Self-Interest, and the Corporate Responsibility to Respect Human Rights A Critical Look at the Justificatory Foundations of the UN Framework*, 22 BUS. ETHICS Q. 9, 21-22 (2012).
- ^{lxxvii} Simon Zadek, *The Path to Corporate Responsibility*, HARV. BUS. REV., Dec. 2004, at 125, 125-32.
- ^{lxxviii} *Id.* at 126.
- ^{lxxix} *Id.* at 127.
- ^{lxxx} David Hess & Thomas W. Dunfee, *Fighting Corruption: A Principled Approach; The C² Principles (Combating Corruption)*, 33 CORNELL INT’L L.J. 593, 622 (2000).
- ^{lxxxi} See K. Gordon and M. Miyake, *Business Approaches to Combating Bribery: A Study of Codes of Conduct*, 34 J. BUS. ETHICS 161, 162 (2001) (stating that “codes are often addressed to employees, as much as to the general public. They seek to heighten employees’ awareness of corporate policy and enlist their support in the fight against bribery.”).
- ^{lxxxii} PRICEWATERHOUSECOOPERS, CONFRONTING CORRUPTION: THE BUSINESS CASE FOR AN EFFECTIVE ANTI-CORRUPTION PROGRAMME 5 (2008), available at www.pwc.com/anti-corruption.
- ^{lxxxiii} *Id.*
- ^{lxxxiv} SOCIAL ACCOUNTABILITY INTERNATIONAL, *About SAI*, <http://www.sai-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1365> (last viewed May 31, 2013).
- ^{lxxxv} SOCIAL ACCOUNTABILITY INTERNATIONAL, *Fire Safety a Key Focus in SA8000 Revision* <http://www.sai-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=1435> (last viewed May 31, 2013).
- ^{lxxxvi} UN GLOBAL COMPACT & TRANSPARENCY INTERNATIONAL, REPORTING GUIDANCE ON THE 10TH PRINCIPLE AGAINST CORRUPTION (2009), available at http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/UNGC_AntiCorruptionReporting.pdf
- ^{lxxxvii} *Id.* at 11.
- ^{lxxxviii} Misangyi et al., *Ending Corruption: The Interplay Among Institutional Logics, Resources, and Institutional Entrepreneurs*, 33 ACAD. MGMT. REV. 750, 766 (2008).