



Teaching Business and Human Rights Workshop

Discussion Summary

May 15-16th, 2014

Columbia University

New York

Contents

- Overview 2
- Acknowledgements..... 2
- Opening Sessions..... 3
- I. In-house Teaching and Training..... 5
- II. Poverty and Development 7
- III. State of Play of Corporate Accountability 10
- IV. Engaging Stakeholders 12
- V. Teaching Tools: Materials, Exercises, Assignments..... 15
- VI. Update on Forum Activities 17
- Appendix 1: Resources Mentioned 18
- Appendix 2: Participant List..... 20

Overview

The fourth annual Columbia University **Teaching Business and Human Rights Workshop** (May 15-16, 2014) brought together 28 individuals teaching the subject at 22 universities – including schools of law, business, and international affairs – in six countries.

As demand for business and human rights education grows worldwide, individuals teaching business and human rights face a number of challenges. It can be difficult to find the right place in the traditional university curriculum for a relatively new, multi-disciplinary subject. A dynamic and evolving field makes identifying materials and structuring the course an ongoing task. Instructors experiment with the best ways to teach specific topics. This year's Workshop provided an opportunity for teachers to engage with corporate responsibility executives and advocates, to discuss key themes in their courses, and to share what works (and doesn't) in the classroom.

The global network of individuals teaching business and human rights is expanding. The online Columbia Teaching Business and Human Rights Forum, launched after the first Workshop in 2011, now connects more than 190 individuals teaching business and human rights at 119 institutions in 27 countries around the world. The Forum has become a unique platform for collaboration.

Through the Workshop, the Forum and ongoing collaboration, we strive to promote and strengthen business and human rights education and practice worldwide.

Acknowledgements

This Discussion Summary was prepared by Samantha Holt, Columbia Law School, LL.M. (2014). Discussion Summaries of prior Workshops are available at the [Business & Human Rights Resource Centre](#).

The Columbia University Institute for the Study of Human Rights and the Columbia Law School Human Rights Institute have provided indispensable support for the Workshop.

We are grateful to all Workshop participants for provoking a rich exchange of ideas, tools and techniques.

Joanne Bauer
Adjunct Professor
School of International and Public Affairs
Columbia University

Anthony Ewing
Lecturer in Law
Columbia Law School

Opening Sessions

Book Project: “Teaching Business and Human Rights”

The Workshop began with a discussion led by Anthony Ewing on the idea of a collaborative book project on business and human rights teaching.

The discussion was framed around three questions:

1. What kind of project can advance Business and Human Rights (BHR) education?
2. How can the Forum best leverage the expertise of its members to advance BHR education?
3. What kinds of teaching materials could this network produce to advance BHR education?

Participants identified the need for a “Teaching Business and Human Rights Handbook.” The Handbook would advance business and human rights education by providing teachers an online resource they can use to supplement what they already teach, or to help them introduce new topics in their courses. Distinct from a casebook, textbook or edited volume, the primary audience for a Handbook would be individuals teaching or planning to teach the subject. Participants suggested building out the Handbook with topical modules using a common template, leveraging the expertise of Forum members. An online Handbook could be updated regularly and distributed easily.

Several participants volunteered to work on the Handbook project.

A Conversation with Corporate Responsibility Leaders

This session, which was open to the public, featured two corporate responsibility executives: Marcus Chung, VP, Social Responsibility & Vendor Compliance, The Children’s Place; and Paula Luff, VP, Corporate Social Responsibility, Hess. Moderated by Teaching Forum member Christine Bader, author of *The Evolution of a Corporate Idealist: When Girl Meets Oil* (2014), the panel discussed a range of topics of particular interest to students taking business and human rights courses, including:

- The day-to-day work of getting a company on board with a business and human rights agenda;
- Major challenges to implementing the corporate responsibility to respect human rights within a company;
- Interactions with the General Counsel’s office;
- How the objective of creating shared value relates in practice with the corporate responsibility to respect human rights;
- The growing demand for multidisciplinary business and human rights education; and
- The skills they seek for their corporate responsibility teams.

In response to Bader’s opening question, “What does your day-to-day work look like?” Paula Luff explained that she joined Hess to build its corporate responsibility program at the behest of the CEO, John Hess, who was eager to have one in place. Over time, the company came to understand that engaging stakeholders, and not just philanthropy, is an essential function of a company “because stakeholders are critical to our success as a company.”

Marcus Chung was brought on to The Children’s Place in a social compliance role. After starting, he soon began work on shifting the emphasis of the company’s corporate responsibility approach to

“thinking about the impact we have on our communities in a different way.” Like Luff, Chung spends his time “influencing various stakeholders both internally and externally – government officials, vendors, factory managers, etc. to understand why the company expects certain standards to be met.”

Both Chung and Luff emphasized the importance of reporting to the right people. Luff reports to the General Counsel and Operations; Chung reports to the Head of Global Sourcing, but also has a dotted line to the General Counsel. After Global Sourcing, he connects most often with the legal team.

Both executives spoke to the importance of “speaking the language of the people at the company you are trying to bring along.” (Luff) Luff gave the example of speaking with Hess’ drillers in Indonesia, who could not relate the Alien Tort Statute to their work, but became very attentive when she moved on to describe scenarios where protesters could impact their jobs and day-to-day operations.

When asked if international standards, such as the UN Guiding Principles (UNGPs), play a role in his day-to-day work, Chung said that it helps him in his work to know about the UNGPs, but he rarely invokes international standards with internal or external stakeholders: “I don’t talk about the right to education. Rather I talk about the programs the company has in place to educate factory workers.”

Internally, both Luff and Chung have used the UNGPs to guide their work. Nonetheless, for both companies it is still early days for the UNGPs. In 2010, Hess developed a human rights policy and is now undertaking stand-alone human rights impact assessments (HRIA). At the Children’s Place the UNGPs informed the development of the company’s code of conduct. But in his conversations with Operations or Sourcing, Chung avoids discussion of HRIAs, opting instead to break the procedure down into steps that are easy to communicate.

During the discussion period the panelists were asked questions about: Rana Plaza and whether apparel brands will be raising their prices to account for the rising labor costs; whether human rights are showing up in enterprise risk management (ERM); the extent to which each company conducts internal human rights training; and what universities could be doing better in this field. In response to the last question, both panelists suggested making corporate responsibility research more accessible to corporate managers.

Bader concluded the session by asking the panelists what advice professors should be giving their students about how to land a corporate responsibility job. “Read Christine’s book!” Chung advised. He also cautioned that students should look beyond the job title to the job description, or they may wind up in a purely compliance role. Depending on the company, it is possible to do corporate responsibility work in investor relations, operations, or within an investment or private bank. In terms of how to land the job, Chung said, “It’s the soft skills that will get you a job in this space.” He added that private sector experience is important: “If you haven’t worked in the private sector it may be hard to get into this space.” Luff agreed with Chung and added “communication” to the list of critical skills. The pace of companies today moves quickly and you need to be able to succinctly communicate what you need over e-mail or phone.

Bader also asked whether a law degree was helpful. Chung thought it was, since understanding legislation or having the skill to point to a policy and know how to interpret it is a good skill to have. This is not a problem when talking to the General Counsel, as they already have this

understanding. But when you are talking to a vendor, for example, a legal background can be helpful to understand a policy, be able to think it through, and explain what controls to put in place.

I. In-house Teaching and Training

This session addressed the demand for, and forms of, in-house training on BHR: What does human rights training look like inside a company? How can corporate practice examples be employed in the classroom? How can universities better prepare future business advisors and managers? Sarah Dolton-Zborowski, who teaches at Fordham Law School and has held positions at both BSR and PVH Corp, shared her insights on the subject.

Sarah Dolton-Zborowski, Fordham Law School and PVH Corp.

At both BSR and PVH, Dolton-Zborowski's work involved raising awareness of BHR across all company business functions. Her remarks addressed this process, from both in-house and consulting perspectives, as well as how professors of BHR can better prepare students to become effective BHR influencers and leaders.

There are varied reasons why a company may conduct human rights training:

- To ensure compliance with policies and procedures, codes of conduct;
- To develop and meet key performance Indicators (KPIs) and the requirements of corporate social responsibility (CSR) reporting frameworks;
- To mitigate risk; and
- To derive business value from strong human rights performance (the business case).

While there are many ways to build a company-wide program, depending on size, sector and their stage of integration, Dolton-Zborowski highlighted four effective tools:

1. ***External human rights forums*** – Inviting stakeholders from other functions in the company to these events so that they become immersed in the human rights issues and have a chance to express their own challenge and concerns. This often serves as the launching pad for further engagement internally.
2. ***Internal human rights symposium*** – An internal, two-day event with presentations, issue-specific booths, etc., to which associates from all parts of the business are invited. While requiring a great deal of work to plan, a company-wide symposium of this kind can be particularly effective in catalysing broad business engagement where the CSR function has traditionally been 'siloes' and business integration is in its infancy or non-existent.
3. ***Human rights field visits*** – While this strategy is logistically complex and often costly, it can be an effective means for senior managers, particularly at the executive board level, to connect with conditions on the ground.
4. ***Internal human rights training workshops*** – Smaller programs tailored for particular functions, driven by a perceived need, for example, and area that has been identified as a source of human rights impacts. This is the most simple and often the most effective tool.

The key to successful training is tailoring it to the needs of the target audience. Dolton-Zborowski has created a context framework with four core elements that together inform the training content and format:

1. **Company type:** What is the company's size, sector, and governance structure? What are its product categories and sourcing model? Is it consumer facing or business-to-business? What are the human rights risks? Where do they sit in the business? What is the likelihood of occurrence?
2. **Business function:** What is the business scope, strategy, activities, KPIs, policies, procedures, tools and level of resources? What particular aspects of human rights does a particular business unit need to know about? What specific role does it play in due diligence, tracking, reporting, and risk mitigation? What format of training is this department going to be most receptive to and what terminology are they familiar with?
3. **Knowledge base:** What level of human rights knowledge is required of the particular audience? How much information is too much? Is the knowledge base standard across the group or mixed? For example, delivering human rights training to a group of social auditors may require explaining core human rights in detail, while a product design may only require a broader understanding and innovative cross-sector examples.
4. **Business driver:** What is the appetite of the audience? Do they want to be there or *have to be there*? Is the training about achieving compliance? Meeting KPI targets? Executing existing/future projects? Political or based on executive mandate?

Dolton-Zborowski believes corporate human rights training offers insight for classroom teaching and how professors can best prepare students for working in this field. She identified two types of students: 1) those who want to be BHR professionals, whether in government, business, or an NGO, and require specialist knowledge of BHR to perform their roles; and 2) those pursuing careers as business professionals more broadly, and who will be the subjects of future corporate human rights training and business integration

Up and coming BHR specialists are expected to have subject-matter expertise. Yet they also need cross-functional knowledge, including training on how to operate within a company, liaise with a variety of stakeholders, and assess a company's operations.

Future business professionals are often candidates in business, social science, or engineering degree programs, with little to no exposure to corporate social responsibility or BHR concepts. The Principles of Responsible Management Education (PRME), part of the UN Global Compact, is already bringing significant changes to this space. On campuses there are significant advantages in undertaking cross-disciplinary collaboration in teaching this topic across different schools - in other words, providing academic integration as a means to preparing students for business integration.

There is also a need for greater collaboration between academia and the business community in the form of commissioned research projects to further the BHR agenda. Businesses can benefit from research that presents international and comparative perspectives, and/or data and trending that could be used to support companies in making the internal "business case." Through collaboration with business, a business friendly format can be created that makes the information more accessible to key business stakeholders.

Discussion

Making the business case. In response to a question about how to make the business case across business functions, Dolton-Zborowski said that the key is speaking the language of the business, and relating business benefits to strong human rights performance in a way that is relevant to the given function. For example, it can sometimes be effective for a sourcing department to understand the correlation between excessive working hours as a human rights infringement and detrimental impacts to product quality, time to delivery, etc. Using the ‘total cost’ concept, and highlighting that beyond direct costs, human rights infringement creates indirect brand, reputational, legal, and remediation costs, can also be an effective tool. Dolton-Zborowski also noted that it can be difficult to make the business case without data, and in this way being equipped with relevant statistics when having a discussion about human rights with business stakeholders can ground the discussion. There is an opportunity for business to partner with academia in collecting company non-specific data sets and assessing trends globally.

Access to company data. Picking up on the point about academics generating data, a participant noted that companies need to be willing to be more transparent so that academics have data to evaluate. Dolton-Zborowski responded that this is the value of business-academic collaborations and noted that PVH has sponsored a CSR Clinic at Fordham University and works with students on business-relevant projects.

Access to industry data. Another participant commented that there is also a need for industry-wide data that could then be analysed by a group of academics, which is why full transparency is needed. Dolton-Zborowski acknowledged the benefits of this, but noted that a key challenge may be adhering to and managing antitrust requirements and protocols.

Flexibility in in-house BHR training. One participant asked whether Dolton-Zborowski finds she has to change things up during a training session. Dolton-Zborowski said that this almost always happens. It is often difficult to establish the full context, including the extent of human rights knowledge of a given team or a group. Moreover, as a consultant delivering these trainings, one may find attendees, session objectives, and desired content changing at the last minute. It is important to be flexible and be prepared to adapt to what you find once you arrive and start delivering the training.

How students can become BHR professionals. One participant asked Dolton-Zborowski about her background. Dolton-Zborowski started broadly in business and IT, moved into sourcing and procurement, and then into corporate law before moving into corporate sustainability. She noted that students who want to move into this field today need to have a broad business skill base in addition to specialized CSR and BHR knowledge. This allows individuals to effectively engage with and influence within a company and wear a number of hats, not just CSR/BHR.

II. Poverty and Development

This session explored the theme of global poverty, inequality, and development, with an emphasis on how professors are integrating it into their BHR courses. While globalization, poverty, and development, together with conflict, form the backdrop against which the BHR movement has grown, the question for this session is the extent to which these topics should be made central in a business and human rights course. If so, how should it be taught? What are the most effective approaches and teaching tools?

The lead speaker for this session was David Bilchitz, who teaches at the University of Johannesburg and has also done work on poverty, including his book, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* (2007).

David Bilchitz, University of Johannesburg (via Skype)

In Bilchitz's courses the relationship between poverty, development, and human rights is central. Poverty and development relate not only to socioeconomic rights, but also to civil and political rights. Two key questions are: 1) Do corporations only have negative obligations? 2) If companies have positive obligations, how far do these obligations extend?

Bilchitz takes the position that corporate responsibility in relation to fundamental rights should extend beyond merely negative obligations and must include positive obligations. Negative obligations alone cannot address poverty and the pressing issues in the developing world. In South Africa, for example, corporations are expressly bound by the constitution and are regarded as entities that have social obligations.

In teaching one needs to get students to look at the question of whether companies also have positive obligations by examining the normative literature. Students need to interrogate Ruggie's assumption that companies should only be responsible for not harming rights and Milton Friedman's notion that corporations' social obligations are restricted. The issues that arise are not just purely legal, but also economic and philosophical, as these disciplines ultimately underpin a lot of the main BHR issues.

One specific BHR issue that helps to bring the issue of positive obligations into focus is the role of pharmaceutical companies in fighting HIV/AIDS. Do pharmaceutical companies have an obligation to make drugs available at a reduced price or even for free to individuals suffering from the virus? If HIV/AIDS drugs are unaffordable, it is as if a drug didn't exist for those who cannot access it. Patent law creates monopolies that allow such drugs to be placed beyond the reach of many people. Is it justifiable to set up a corporate system whereby a drug is allowed to save the lives of only the privileged few?

In his course, Bilchitz explicitly considers the role of corporations in society and their relationship with various stakeholders. He considers the way in which to conceptualise corporations as being between the state and individuals. He then compares and contrasts these roles with his students and talks about the role of legislation to make sure companies adhere to their obligations. He also poses the question to students: What are the limitations of a corporation with respect to rights realization and what is their role in poverty and development as a whole? A debate ensues as to the extent to which profit maximisation should govern corporate ends and whether it is necessary to ensure corporates reduce profits to reach social ends.

Bilchitz then used the example of whether publishers have a duty to make some of their books free to students who can't afford them - or whether it should be mandatory for lawyers to undertake *pro bono* work and reduce their billable targets at the same time. You need to work through with students various issues that affect corporations, and help determine the extent and limits of their obligations.

Discussion

Teaching poverty and development in the United States. An American participant said she hasn't explicitly addressed poverty and development in her BHR course as she felt there was a

great challenge in teaching this topic in the US. As compared to South Africa, in the United States there is not as robust a domestic conversation on poverty and inequality, although it is beginning. She said she was particularly interested in introducing discussions of morality and economics in the U.S. context in her course, and suggested one way to do this might be to talk about inequality arising in Silicon Valley. Residents there recently overtook a Google conference to protest increased rents, believing that Google's presence was responsible. This might be an interesting way to supplement the case studies she already presents in her BHR course.

Help students develop a more sophisticated view on the responsibilities of business. A participant said students come to her course on economic and social rights thinking companies are the "bad guys." During the semester, she tries to help her students develop a more sophisticated view. She begins the course with a focus on both negative and positive obligations of governments and business. At some point in the course it is common for students to have a shift of thinking about responsibility: some are often surprised that students come around to a different view, questioning whether companies should have *any* obligations. Students tend to return to their former position that there are no positive obligations for companies, and that you can only limit the negative impacts of companies, that realizing rights is the role of governments. Some conclude that it is hard to define the role of business in society within a human rights framework. Another participant added that his students express the view that since it is so hard to define companies' positive obligations, they shouldn't be expected to do so.

Another participant said that students' resistance to the notion of positive obligations could be dealt with by challenging them to absolve corporations and states from them altogether. Then you can remind students that human rights are constantly evolving – that in the past twenty years we have witnessed the evolution of social and economic rights, which have become better defined over time. This will hopefully happen in the corporate sphere over time in relation to their positive obligations.

Bilchitz agreed the subject is challenging. He tries to get his students to a level where they can at least have a sophisticated conversation about it and can identify the main normative and legal issues and take a position

"Shared value." One participant expressed frustration with Michael Porter's idea of "shared value," which companies immediately "jumped all over" – as compared with BHR, which they often resist. The participant was curious as to whether within companies there is any intersection of the two projects or linking of the two concepts.

Another participant asserted that "shared value" has been attacked recently by academics. In her view, the popularity of the concept was on the decline, while the business case for human rights is still very important. The success of "shared value," she noted, is that it uses the right language to communicate ideas for companies, both internally and externally: it is business jargon and unthreatening. Another participant questioned whether companies would care whether academics had begun to criticize the concept of shared value and predicted they would continue to use it. He also questioned how human rights could be strategically placed in this debate.

Challenges teaching poverty and development. Participants discussed the difficulties with including this topic within a BHR course. One participant identified two challenges: 1) The notion that company conduct can both benefit and harm rights at same time. For example, sourcing in Bangladesh has been linked to serious labor rights abuses, and yet Bangladeshis need the jobs. Is a company violating or upholding rights when it sources from there? 2) Identifying the cause of the deprivation. Is it in fact the company?

Joanne Bauer, who moderated the session, responded that she uses two sources in her course that each provide a framework in which to assess the impact on poverty and development of any given investment: 1) An Oxfam paper by Kate Raworth, et. al, "From Poverty to Power Background Paper: The Private Sector and Poverty Reduction;" and 2) A chart found in a 1978 book by Thomas Biersteker, *Distortion or Development: Contending Perspectives on the Multinational Corporation*, titled, "Seven Key Disputed Issues about the Role and Impact of Multinational Corporations in Developing Countries."

III. State of Play of Corporate Accountability

This session offered participants the opportunity to consider the most promising avenues for holding companies accountable for human rights. Two current issues were discussed in depth: the prospect of a BHR treaty; and the development of increasingly sophisticated multi-stakeholder initiatives.

Joshua Cooper, Director, Hawaii Institute for Human Rights, Lecturer, University of Hawaii

Joshua Cooper led with a presentation on the development of a BHR treaty, which has been hotly debated over the past year. In March, Cooper attended a two-day workshop at the UN Human Rights Council in Geneva, sponsored by Ecuador and South Africa, two states pushing for a BHR treaty. NGOs were heavily represented and eager for this new development, whereas business, which only had a small number of representatives, made it clear in their interventions that they would prefer to work with the UNGPs.

The business representatives were outnumbered by academics, activists, and diplomats who voiced the opinion that the current instruments and institutions were inadequate to address specific situations. Moreover, there was a distinct North-South divide at the conference, where the South (Cuba, Bolivia and South Africa) was pushing for a treaty, and the United Kingdom and the EU stressed that national action plans on BHR would be more effective. There were also discussions on business and climate change, and environmental degradation generally. It was argued that environmental degradation impacting human rights (the right to clean water, food, health, etc.) is usually caused by corporate activity and that the Global North a responsibility to remedy the problem. Alluding to Texaco/Chevron's operations, Ecuador made clear its concern that it had been subject to human rights violations at the hands of multinationals, and there has been no justice. Until there is relief for the communities of the Amazon who are victims of these abuses, there needs to be a treaty, Ecuador argued.

Notably, the International Commission of Jurists (ICJ) also supported the treaty. The ICJ representative expressed the view that a BHR treaty could be a good place to consolidate all the pre-existing BHR work in one place.

Cooper said there is a growing global movement for a binding treaty and predicted there will be a resolution on this in Geneva in June. (Note: On June 26, 2014, the UN Human Rights Council adopted a resolution to set up a Working Group to draft a BHR treaty.¹)

¹ UN Human Rights Council, "Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights," UN doc. A/HRC/26/L.22 (20 June 2014).

Discussion

Will a treaty really happen? A number of participants expressed skepticism that there was enough support among states for a treaty resolution, since only Ecuador, South Africa and Cuba are sponsoring it. From a teaching perspective, however, many Workshop participants view a prospective BHR treaty as an important development for the topic of the international politics of BHR. A number of participants still teach the Draft Norms, for example, and expect to include the treaty debate in their course going forward.

Justine Nolan, University of New South Wales and NYU Stern Center for Business and Human Rights

Justine Nolan addressed multi-stakeholder initiatives (MSIs) as a tool for corporate accountability. The past twenty years have seen the development of voluntary MSIs by non-state actors. While the UNGPs are a useful framework for BHR, the tough issues require specific standards, and there is a role for MSIs. How do you assess whether a MSI is reputable and effective?

According to Nolan, the fact that most companies are not joining MSIs is a sign that they must be doing something right. It is critical to examine different MSIs to determine which ones work and which ones don't. What are the factors that make MSIs effective? What is the legitimacy of this form of private rule making?

One structural weakness of MSIs is that they only apply to the companies who join them. And yet the number of companies that join an MSI is not necessarily a measure of success. Companies may join MSIs as a cover for inaction. It is important to consider how influential the companies are that sign on. Strengthening of governance over time is a key determinant of the effectiveness of MSIs.

Another question is whether governments should be represented in MSIs, alongside companies and civil society.

Nolan noted that MSIs provide good case studies for teaching: you can look at a crisis through this lens and trace the development of an MSI from that point. Since many MSIs are sector specific and have developed rules for that sector, they allow you to drill down on corporate behavior in that sector.

Discussion

Making sure an MSI doesn't get "too comfortable." A workshop participant who has been involved in MSIs noted that there are often intense fights in the early stages of an MSI over the negotiation of codes. Over time relationships of trust develop. But it's important to ask whether things then get too comfortable. Should MSIs find ways of kicking adherents out when they are lowering the standard?

MSIs as a teaching tool. Several participants agreed that MSIs are an effective teaching tool, as they can be a good way to frame materials. One participant designs a role-play around setting up an MSI on conflict minerals. The exercise, which asks students to plan the first meeting of a new MSI, allows students to consider who should be at the table, the purpose the meeting, how tough-going the negotiations can be, and the politics of MSIs generally.

Gaps in MSI information. There was a general consensus that there is not a lot out of material on MSIs. One participant noted that there is no one source for the histories of different MSIs. Another identified two gaps: 1) research on processes: what each MSI does, how they work, an analysis of the different stakeholders and roles and what works well in terms of each process; and 2) qualitative analysis: how do you know an MSI is effective? No participant was aware of an MSI that can measure its impact.

Other means of holding corporations accountable. Of course, an international treaty and MSIs aren't the only forms of accountability. As one participant noted a fuller discussion should also include what's happening in terms of legal accountability in different jurisdictions. In the US there is a project, organized by the International Corporate Accountability Roundtable (ICAR), that partners with law schools in states around the US to research state law and propose legal reforms at the state level around corporate accountability.²

IV. Engaging Stakeholders

This session explored how to effectively introduce students to the perspectives and experiences of victims of human rights abuses, advocacy organizations and other BHR stakeholders. The session also delved into the complexities of stakeholder engagement and common pitfalls for companies. Adam Kanzer of Domini Social Investments and Noelle Damico of National Economic and Social Rights Initiative (NESRI) joined the workshop for this session and provided remarks to kick off the discussion. The session was moderated by Meg Roggensack, who co-teaches at Georgetown University Law School.

Adam Kanzer, Managing Director and General Counsel, Domini Social Investments

Domini is a mutual fund manager in New York. Domini bases all its investment decisions on environmental, social and governance (ESG) factors in line with the stakeholder theory of the corporation, *i.e.* the idea that the profitability of a corporation depends on its relationship with a multitude of stakeholders, including its customers, suppliers and the communities in which it operates. The healthier these relationships are, the better the long-term investment prospects will be. ESG performance is also a good indicator of quality management; the management team will be on the ball if they understand the various risks (current, medium and long term) associated with these relationships. As a large cap investor Domini deals with a wide range of companies, whose understanding of ESG issues and human rights impacts varies.

While Domini views stakeholder engagement and responsiveness as critical, it can be challenging for companies to know who their stakeholders are and what issues they confront. Kanzer described three examples:

- 1. Know who speaks for a local community and engage the appropriate stakeholders.** A coalition of investors was talking to Enron about the proposed leasing of Enron land in the Colombia Hills area of Washington to build a wind farm. The land is sacred to a local Native American tribe that was trying to get Enron to understand that to convert the lease into a

² See ICAR, Nationwide Law School Partnership Project:

<http://accountabilityroundtable.org/analysis/nationwide-law-school-partnership-project/>

wind farm would be contrary to their beliefs. The negotiations didn't progress very far: Enron kept saying the company had no current plans to build the wind farm, while the tribal chief believed he had an obligation to future generations to make sure the area was secured. Negotiations suddenly broke down when the investor coalition realized they had been speaking with representatives of the "river" tribe when in fact it was the "hill" tribe that had community authority over the area. Enron discovered this first, began negotiations with the hill tribe and reached an agreement, undercutting the objectives of the investor coalition.

2. Companies do not always know what their stakeholders want. A number of years ago Disney was licensing its characters for use in the McDonald's Happy Meals toy program. Disney and McDonald's decided to begin a project with a group of investors, including Domini, to test a new model for achieving sustained compliance with the brands' labor standards. The project was piloted at ten supplier factories in Southern China. The project involved extensive interviews with workers. The group expected to hear that the factory problems stemmed from issues regarding safety, wages, working hours, or overtime. Instead, they learned that the workers' most consistent concern was the food served in the factory cafeteria. This was a wakeup call for the group that basic quality of life issues may be paramount for workers and of greater concern than the typical labor rights covered by corporate codes of conduct and monitoring programs. One factory chose to hire cooks to address the dietary needs of workers from different provinces.

3. How do you know who your stakeholders are? Privacy issues arise for information and communication technology (ICT) companies when governments make requests for sensitive content or information from the user. When there are millions of users around the world, how do you know who your stakeholders are? How can you create a grievance mechanism or provide a remedy?

Noelle Damico, Senior Fellow, National Economic and Social Rights Initiative (NESRI)

Damico has spent the past twelve years working for the Presbyterian Church (U.S.A.) coordinating its involvement in the Coalition of Immokalee Workers' Campaign for Fair Food to end poverty wages and human rights abuses, including modern slavery, in the Florida tomato industry. The Campaign for Fair Food works to get buyers in fast-food, supermarket and foodservice to legally bind themselves to:

- Pay at least an additional penny per pound for tomatoes, which is passed on to the workers in their pay checks by growers, increasing their earnings by 60%; and
- Purchase only from growers who abide by a code of conduct established by the Fair Food Program.

When the Campaign launched, advocacy was initially aimed at growers. But large corporate buyers were squeezing growers through contracts, buying millions of pounds of tomatoes at below market price; so the Campaign turned its attention to corporate buyers with a successful consumer boycott against Taco Bell. Now twelve corporations (including Wal-Mart, McDonald's and Aramark) and over 90% of Florida tomato growers are working with the Coalition of Immokalee Workers (CIW) through the Fair Food Program. Since the program's inception in 2011, over \$15 million has been paid in the form of fair food premiums by participating corporations and distributed to workers to augment wages.

It was critical that the advocacy efforts and the design of the Fair Food Program be driven by farmworkers. As they bore the brunt of the human rights violations they were best placed to design the solution. The program covers over 30,000 workers harvesting tomatoes on participating farms.

CIW has trained over 15,000 workers on their rights, and the Fair Food Standards Council investigators are on call 24-7 to respond immediately and confidentially to workers' calls. Now with Wal-Mart onboard, the Fair Food Program is poised to expand to other crops and to other states in the U.S.. As a worker driven model of social responsibility, the UN Working Group on Business and Human Rights has declared the Fair Food Program, a "promising model for change."

Discussion

Roggensack began the discussion by noting that students often struggle to understand what is a stakeholder, and to differentiate the various types of stakeholders. For example, in the labor rights arenas sometimes students have a hard time distinguishing an international organization like the ILO from an MSI like the Fair Labor Association (FLA), or an NGO like the International Labor Rights Forum (ILRF).

Roggensack also noted the importance of engaging stakeholders throughout the process – beginning at the front end, for example, elaborating an internal code, to complaints mechanisms. In this way as teachers we need to show that engagement comes in many forms, all along the path from initial policy formation and risk assessment through ongoing monitoring and implementation, to remediation.

Forum members shared how they address the issue of stakeholders in their classes, including techniques for mapping and differentiating stakeholders:

Role playing. A couple of years ago the Interfaith Center on Corporate Responsibility (ICCR) held a workshop at which participants role played the case of Coke losing its license to operate in Kerala, India after being accused of draining the local aquifer. It worked well and could be modelled in the classroom. During the ICCR role play, the "corporate counsel" registered that a democratically elected government that granted their license to operate. This political dynamic makes the idea of talking to different communities about their license to stay much more challenging.

Human trafficking thematic focus. One participant uses the CIW example in the human trafficking section of her course. She said this "hard hitting" case gets students to think about where our food comes from and market-based solutions to the problem.

NGO op-ed assignment. Another participant gets students to think from an advocacy perspective by assigning them to write an op-ed about a specific corporate human rights issue from the point of view of an NGO.

Getting the company's side of the story. Another participant gives students an assignment to talk to a company and then come back to class and tell that side of the story. This requires students to understand the company's point of view and the face-to-face interaction with the company often changes students' thinking.

Availability of ESG data. In response to a question about the availability of the ESG data Domini uses for investment decisions, Kanzer replied that there isn't enough quality data: companies that provide ESG data do so voluntarily, making it difficult for investors get comparable and reliable

data. One participant noted that he is currently doing a study with the Shanghai Stock Exchange in relation to the theory that to increase a company's stock price you need ESG data. This is based on the fact that when companies are pulled into indexes their stock price goes up, so even if you have a lousy human rights record, your stock price may go up if you report on ESG issues.

V. Teaching Tools: Materials, Exercises, Assignments

During this session participants shared materials, classroom exercises and assignments they have found to be effective. Erika George, who teaches at the University of Utah, presented the negotiation exercise she uses in her classes. Michael Santoro discussed the teaching cases he uses at Rutgers Business School, commenting also on their potential use in law school classes.

Erika George, S.J. Quinney College of Law, University of Utah

The Socratic method of teaching, long relied upon by law school professors, can leave a significant gap between what occurs in the classroom and what happens in practice.³ George has created a negotiation simulation to better prepare her students for practice. Negotiation and mediation training is often not taught in law schools and the simulation presents an opportunity for students to build skills for legal practice.

With a small grant from the Center for Teaching & Learning Excellence at the University of Utah, George hired an undergraduate teaching assistant to develop an extended in-class negotiation exercise for law students. Focusing on the implementation of Dodd-Frank Section 1502 provision on conflict minerals transparency, the in-class exercise introduces students to the challenge of commercial operations in conflict regions and the on-going problems in the Democratic Republic of the Congo (DRC). It also gets students to think about a broader set of solutions beyond drafting letters or legal memoranda common in class exercises.

Students are assigned a stakeholder group for the negotiation: U.S. industry; Congolese militia; Congolese civilian; U.S. government; Congolese government; or U.S. consumer. Before the start of the negotiation, the students are provided with reading materials on process of negotiation and mediation. Each student group is given specific instructions indicating the goals of their particular stakeholder group; they are not aware of the instructions given to the other negotiation teams. By design, the goals conflict to give students an opportunity to mediate conflict.

At some point in the negotiation students switch to opposing stakeholder groups to better understand the interests of their negotiation partners. The exercise is video recorded. Students are also asked to review each other's videos and provide feedback. The exercise concludes with students reflecting on their own performance as a negotiator and the different styles of negotiation.

Students learn how to distinguish positions from interests. They also gain insight into their communication and conflict resolution styles. George also helps students to understand broader negotiation issues through the exercise, such as who needs to be at the negotiating table, power

³ See Sullivan, William M., Colby, Anne, Wegner, Judith Welch, Bond, Lloyd, and Shulman, Lee S., *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

differentials, and how to strategically use information. George ensures that the negotiations draw out the important human rights issues.

The negotiation usually takes up two and a half classes – one class for preparation, including training on negotiation skills, another for the actual negotiation, and half a class for feedback. It takes quite a bit of the professor's time to prepare the materials and to work out the logistics of securing multiple rooms for each negotiation and the recording equipment.

Participant comments: One participant suggested that optionally, one could have the students draft an agreement based on the conclusions they reached in their negotiation, perhaps in lieu of the video recording and evaluation. Other participants have also tried to simulate negotiations, but are only able to devote up to one class period for it, which is enough to give students just a taste of the process.

Michael Santoro, Rutgers Business School

Santoro described the case method of teaching used in business schools, asking participants to consider whether these materials might also be useful in BHR courses in law and other professional schools. Business school cases are derived from primary sources, and involve real companies. The cases are action-oriented, in the sense that students are asked to make a decision, not analyze a decision already made, as is often the case in law school exercises. The best cases for BHR classes, according to Santoro, are interdisciplinary— for example, including finance or marketing considerations -- and require a decision with ethical implications.

Law school versus business school teaching exercises. At law schools students are asked to analyze legal decisions to understand how a judge reached a certain decision. By studying legal decisions, students learn how the law works and also what the law is. At business schools, students do not analyze decisions made by others, but rather make decisions themselves based on facts presented in a case. By making decisions students develop managerial and leadership skills.

Selecting appropriate cases. While new cases often engage students, as they may be familiar with the specific situation ripped from today's headlines, classic cases can also be effective teaching tools. There are many providers of business cases, including Harvard, Stanford, Ivey Business School (Canada) and the University of Hong Kong. A convenient directory of cases is the Aspen Institute's Caseplace.org (www.caseplace.org).

Santoro uses Harvard Business School cases because they provide a lot of detail and often have teaching notes. He walked participants through the Harvard case site (<http://hbsp.harvard.edu/product/cases>). For law school professors deciding to use these cases, it would be necessary to embed more legal detail into the cases than would be found in the typical case.

Santoro walked participants through two Harvard Business School cases, using the case website:

1. "Cosco: Implementing Sustainability" (<http://hbr.org/product/COSCO--Implementing-Sustainability/412081-PDF-ENG>): China Ocean Shipping Company (COSCO) joined the UN Global Compact (UNGC) and initiated sustainability reporting practices in line with it. The case raises the following questions: What were the next steps in sustainability reporting, and should COSCO try to attain even higher reporting standards in the future? What would be the value in reaching higher sustainability and reporting standards, and how would

internal and external stakeholders react? What challenges lay ahead for the consistent implementation of higher standards across COSCO's subsidiaries? This case study gives students a non-Western perspective on corporate BHR decision-making.

2. "IKEA's Global Sourcing Challenge: Indian Rugs and Child Labor" (<http://hbr.org/product/ikea-s-global-sourcing-challenge-indian-rugs-and-child-labor-a/an/906414-PDF-ENG>): Ikea managers must respond to reports that their subcontractors are employing child labor in India. Should Ikea join an MSI, such as GoodWeave (formerly Rugmark)? In the actual situation, Ikea decided it couldn't join because they recognized that child labor is a complex issue and they couldn't suddenly root children out of their supply chain without harming them. Instead, they settled on a strategy of working with local NGOs to help the child workers complete school. This case study helps students understand how to deal with human rights issues from the perspective of a manager.

The art of teaching business cases. All students must prepare before class for an in-class case study – preparation per case takes an average of 2-3 hours. Study questions are a great way to help guide the student's reading. It is important to ensure that the same student is not dominating class discussion each week. Santoro recommends that teachers first read the teaching note that is provided, but then devise their own lesson plan, which might incorporate parts of the teaching note. He does not recommend teaching a case without a teaching note, however, unless the teacher is intimately familiar with the case prior to assigning it. It is important that students master the facts of the case before coming to class and then in reaching their decision, have students justify it based on the facts.

VI. Update on Forum Activities

The Teaching Forum will be developing a new web portal to host in one place the various online elements of the Teaching Forum, including the Discussion Board and the Syllabi Bank, as well as future activities and materials. The portal will be located on the newly launched website of the Columbia University Institute for the Study of Human Rights (ISHR), a cosponsor of the Teaching Forum.

Joanne Bauer led a discussion around content, levels of access (what parts of the website would be public and what parts would be for Forum members only), and what new materials (workshop papers, projects, teaching handbook, etc.) could be included. ISHR web developer, Yotam Amit, was on hand to discuss options and answer questions.

Appendix 1: Resources Mentioned

Books

Bader, Christine, *The Evolution of a Corporate Idealist: When Girl Meets Oil* (Bibliomotion, 2014)

Bilchitz, David, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* (Oxford, 2007).

Biersteker, Thomas, "Seven Key Disputed Issues about the Role and Impact of Multinational Corporations in Developing Countries," in *Distortion or Development: Contending Perspectives on the Multinational Corporation* (MIT, 1978).

Kinley, David, *An Awkward Intimacy: Why Human Rights and Finance must Learn to Love Each Other* (forthcoming).

Sen, Amartya, *Development as Freedom* (Oxford, 1999).

Stout, Lynn, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations and the Public*, (Berrett-Koehler, 2012).

Sullivan, William M., Colby, Anne, Wegner, Judith Welch, Bond, Lloyd, and Shulman, Lee S., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007).

Reports and articles

Kramer, Mark and Michael Porter, "Creating Shared Value," *Harvard Business Review* (Jan/Feb 2011, Vol. 89, Issue 1/2), pp 62-77.

Raworth, Kate, Sumi Dhanarajan and Liam Wren-Lewis, "From Poverty to Power Background Paper: The Private Sector and Poverty Reduction" 2008.
http://www.academia.edu/927342/The_Private_Sector_and_Poverty_Reduction

Crane, Andrew, Guido Palazzo, Laura J. Spence and Dirk Matten, "Contesting the Value of the Shared Value Concept," *California Management Review* (Winter 2014, Vol. 56, No. 2), pp. 130-153.

Sullivan, William M., Colby, Anne, Wegner, Judith Welch, Bond, Lloyd, and Shulman, Lee S., *Educating Lawyers: Preparation for the Profession of Law*. (Jossey-Bass, 2007).

Case studies

Aspen Institute, Caseplace: www.caseplace.org

Fairfood program:

Fair Food Program: Worker-Driven Social Responsibility for the 21st Century, Greg Asbed and Sean Sellers <http://billmoyers.com/2014/05/29/the-fair-food-program-worker-driven-social-responsibility-for-the-21st-century/#.U4un3Tm5MpA.twitter>

In Florida: A Penny Buys Progress, Steve Greenhouse, NY Times
http://www.nytimes.com/2014/04/25/business/in-florida-tomato-fields-a-penny-buys-progress.html?hp&r=0&assetType=nyt_now

Coalition of Immokalee Workers, <http://ciw-online.org>

Fair Food Standards Council, <http://fairfoodstandards.org>

Harvard Business School cases: <http://hbsp.harvard.edu/product/cases>

Other

Santoro, Michael and Florian Wettstein, "[Human Rights](#)," Oxford Bibliographies (2014).

UN Human Rights Council, "Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights," UN doc. A/HRC/26/L.22 (20 June 2014).

Appendix 2: Participant List

Sara Andersen	European University Institute, Department of Law, ITALY
Christine Bader	Columbia University, USA
Joanne Bauer	Columbia University, School of International & Public Affairs, USA
Dorothee Baumann-Pauly	NYU Stern School of Business, USA / HEC Lausanne SWITZERLAND
Nadia Bernaz	Middlesex University School of Law, UK
David Bilchitz*	University of Johannesburg, SOUTH AFRICA
Joshua Cooper	University of Hawaii, USA
Noelle Damico	National Economic & Social Rights Initiative
Sarah Dolton-Zborowski	Fordham University School of Law, USA
Anthony Ewing	Columbia Law School, USA
Nina Gardner	John Hopkins SAIS / Washington College of Law, American University, USA
Erika George	University of Utah, S.J. Quinney College of Law, USA
Chris Jochnick	Harvard Law School
Caroline Kaeb	Northwestern University School of Law / University of Connecticut, USA
Adam Kanzer	Domini Social Investments
Suzanne Kazenstein	Duke University Law School, USA
Lisa Laplante	New England School of Law, USA
Sheldon Leader	University of Essex, School of Law, UK
Marcia Narine	St. Thomas University School of Law USA
Terry Nelidov	University of Michigan, USA
Justine Nolan	NYU Stern School of Business, USA / University of New South Wales, AUSTRALIA
John Richardson	American University Washington College of Law, USA
Meg Roggensack	Georgetown University Law Centre, USA
Mila Rosenthal	Columbia University, USA
Michael Samway	Georgetown University / NYU Stern School of Business, USA
Michael Santoro	Rutgers Business School, USA
Mark Wielga	University of Denver, Sturm College of Law, USA
John Wilson	Columbia Business School, USA
Ursula Wynhoven	UN Global Compact/Fordham University School of Law, USA

* *via Skype*