VALUING RESPECT

BY *Shift*

RIGHTS-RESPECTING CORPORATE CULTURE

Identifying the cultural norms and values that underpin business respect for human rights

BY JOHN F. SHERMAN III

About Valuing Respect

Valuing Respect is a global collaborative platform, led by Shift, to research and co-create better ways of evaluating business respect for human rights. Our aim is to develop tools and insights that can help both companies and their stakeholders focus their resources on actions that effectively improve outcomes for people.

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About Shift

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team facilitates dialogue, builds capacity and develops new approaches with companies, government, civil society organizations and international institutions to bring about a world in which business gets done with respect for people's fundamental welfare and dignity. Shift is a non-profit, mission-driven organization.

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Introduction

This paper focuses on the foundational role of culture in supporting a key aspect of responsible business conduct—the *Corporate Responsibility to Respect Human Rights*, as defined in the *UN Guiding Principles on Business and Human Rights* ("UNGPs").[1] It underpins the Valuing Respect Project,[2] a collaborative effort led by Shift,[3] which aims to develop better ways to evaluate business respect for human rights, and to deliver practical tools, indicators, and evaluation methodologies. The project's goal is to empower companies and their stakeholders to allocate resources towards actions that make a real difference to daily business conduct and the daily lives of people that companies affect.

Defining and evaluating culture is a cornerstone of this effort. Herein, we posit four values and norms in a corporate culture that are especially, and perhaps uniquely, predictive of human rights outcomes. They are:

i. **Respect for the dignity of *all* individuals and empathy with them** (to motivate the organization to know and care about its involvement in human rights harm to people, including to remote individuals and communities);

ii. **Openness and learning** (to motivate the organization to seek out human rights issues and learn from its mistakes);

iii. **Individual empowerment and responsibility** (to encourage employees to raise and address human rights issues responsibly);

iv. **Coherence** (to ensure that the organization respects human rights, notwithstanding inevitable tensions with other business goals).

This paper is based on a literature review in the field of business and human rights and other related fields with more mature evaluation methodologies, such as safety and business ethics. In addition, interviews were conducted with over a dozen experts and executives in these fields, whose valuable input is gratefully appreciated.

Corporate culture as a leading indicator of human rights harm

It has been said that 'culture eats strategy for breakfast'. The right culture is critical for any organization—whether private, public or not-for-profit—to meet its strategic goals, mission and objectives. Investors, business leaders, management theorists and regulators have focused on the role of corporate governance and culture in reinforcing ethical or responsible business conduct. Well-known examples come from realms of business ethics, anti-corruption and bribery, and health and safety.

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[1] United Nations, Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (2011), available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[2] https://www.valuingrespect.org

[3] https://www.shiftproject.org

A prior paper in the Valuing Respect Project[4] viewed respect for human rights through the lens of lagging and leading indicators. These terms are used in the safety context to distinguish between past outcomes (lagging indicators) and indicators that predict their likelihood (leading indicators). It identified culture as a leading indicator of adverse safety outcomes (i.e., accidents and deaths). It hypothesized that culture is also a leading indicator of business-related human rights impacts beyond safety. That is, culture predicts the likelihood of bad outcomes for individuals and communities, and predicts the effectiveness of efforts to embed rights-respecting practices and behaviors in the company.

This paper dives deeper into the concept of corporate culture. It attempts to answer several questions.

- What is corporate culture, and why is it important?
- How can corporate culture predict bad outcomes for people?x
- How is corporate culture relevant to business respect for human rights?
- What are the values and norms in a corporate culture that are especially, and perhaps uniquely, predictive of human rights outcomes?

A. What is corporate culture, and why is it important?

Achieving the right culture is critical to companies, and has been identified as a top priority of corporate leadership:

- As Lou Gerstener, the former CEO of IBM, wrote, "culture is not just one of several examples of organizational success… it is the game."[5]
- Harvard Business School Professor James L. Hackett found that as much as half of the difference in operating profit between organizations could be attributed to effective cultures.[6]
- An EY survey of major companies found that 86% of respondents view culture as very important or fundamental to their company's overall performance and strategy, backed up by 92% who say that investing in culture has improved their financial performance.[7]

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[4] John Sherman, Viewing the Valuing Respect Project through the Lagging v. Leading Indicator Lens (September 2018), available at https://www.shiftproject.org/valuing-respect/the-conversation/viewing-valuing-respect-lagging-leading/

[5] Ben W. Heineman, Jr., The Inside Counsel Revolution: Resolving the Partner-Guardian Tensions, ABA, 2016, p. 464 n.1. (Heineman)

[6] Sean Silverthorne, The Profit Power of Corporate Culture, Harvard Business School Research and Ideas (2011), available at https://hbswk.hbs.edu/item/the-profit-power-of-corporate-culture

[7] EY, Is your board yet to realise the true value of culture? (2016), available at https://www.ey.com/Publication/vwLUAssets/ey-is-your-board-yet-to-realise-the-true-value-of-culture/$FILE/ey-is-your-board-yet-to-realise-the-true-value-of-culture.pdf (EY Culture)

- The same EY survey found: that 97% of respondents say that culture is a focus of investors: that 83% of shareholders factor organizational culture into their investment decisions, but that 88% of organizations do not provide detailed information about their culture in their public filings or annual reports.

Harvard Business School Professor John Kotter refers to **culture** as the "norms of behavior and shared values of a group of people. **Norms of behavior** are common or pervasive ways of acting that are persist because group members tend to behave in ways that teach these practices to new members, rewarding those who fit in and sanctioning those that do not. **Shared values** are important concerns and goals shared by most of the people in a group that tend to shape group behavior and that often persist over time even when group membership changes."[8]

Culture is actual, not aspirational. In more vernacular terms, culture is 'the way things are done', as opposed to what the company wants to have done.

Culture has organizational and individual dimensions. In the organizational dimension, culture encompasses the company's actual goals, incentives, resources, and leadership for desired conduct. In the individual dimension, it encompasses how employees and managers at all levels of the company learn, through their personal interactions in their daily work, how things are actually done at the company. For example, if a company's senior leadership publicly commits to keep its employees safe at work, but undercuts safety budgets, employees quickly learn that the company is really prioritizing profit over people.

Because culture involves individual beliefs based on first hand learning, it can't be engineered.[9] But it can be shaped with the right leadership. The late Professor Michael Hoffman, former Director of the Hoffman Center for Business Ethics, told us in an interview that shaping a culture to be ethical means managing the tension between corporate and individual accountability for behaving in an ethical manner.[10] Corporations must set and enforce standards and expectations that apply to all individuals in a company. At the same time, they must respect the moral agency of individuals in the organization to act consistently with their own beliefs and values, and not just march to the beat of the corporate drum.

Culture is organic, diverse and dynamic. Culture is organic because it results from informal learning at the individual level of what values are really important to the company, and how people should make decisions and act.[11] Culture is diverse, particularly in large, complex organizations with different business units, different operations in different countries, and different legacies from prior owners or executives.

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[8] John Kotter, Leading Change (HBS Press, 1996), p. 148.

[9] Michael McGrath, Safety Education: Culture, Leadership and Learning in the Workplace: A critical discourse analysis (2018), PHD dissertation for the University of Victoria, available at https://dspace.library.uvic.ca/bitstream/handle/1828/8967/McGrath_Michael_PhD_2018.pdf?sequence=1 (McGrath).

[10] Interview with Mike Hoffman, July 20, 2018.

[11] McGrath, above.

And culture is dynamic because it evolves over time as the company, its leadership, and its personnel change.

Shaping a corporate culture is both a top down and bottom up process. Although the board and senior leadership of a company are ultimately responsible for a company's culture, the critical role of middle management in shaping culture should not be ignored. They are on the front line of articulating to individuals what the company stands for. This is where informal learning takes place, which is where employees learn how things are done. According to Kevin Hills, Head of Corporate Integrity for EY:

> "Local leaders have a vital role to play in managing culture. … Boards need to connect with them, get them really believing in and living the big plans, the purpose, the values. That's the way a culture is activated throughout the organisation. That doesn't mean that everyone thinks in exactly the same way — you have to account for differences — but it does mean that the organisation will be better aligned in what it does and how it does it."[12]

It is common to describe cultures thematically, according to the particular norms and values that the organization wants to promote; e.g., a performance culture, an ethics culture, a safety culture, a rights-respecting culture, etc. This is workable as shorthand, but conceptually it is better not to think about separate and distinct thematic cultures within a company. Rather, it is better to ask whether the norms and goals of an organization's overall culture promote the organization's particular goals.[13]

B. How can corporate culture predict bad outcomes for people?

Corporate culture can predict future problems, including harm to people. Perhaps one of the most closely analyzed examples of how culture can predict bad outcomes is the Texas City Refinery explosion, which was the largest industrial accident in the US in recent times.[14]

In 2005, the BP Texas City Refinery exploded as the plant was restarting from a shutdown for routine maintenance. Fifteen people were killed, 180 were injured, and the immediate community suffered extensive damage. The explosion damaged buildings three quarters of a mile away. 43,000 people were ordered to shelter in place. BP suffered losses of over $1.5 billion. At the time, BP had a corporate level goal of "no accidents, no harm to people'.

The US Chemical Safety and Hazard Investigation Board (CSB), among others, investigated the cause of the accident. The immediate cause of the explosion was the release of flammable liquid geyser into the air from a pressure relief valve, which was ignited by a truck engine exhaust outside the plant. At the organizational level, the CSB identified faulty corporate culture as a root cause of the explosion.

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[12] EY Culture, above.

[13] McGrath, above.

[14] U.S. Chemical Safety and Hazard Investigation Report: Refinery and Fire (115 Killed, 180 Injured), BP Texas City, Texas (March 23, 2005), available for download at https://www.csb.gov/bp-america-refinery-explosion/ (CSB).

In 2004, BP had commissioned an independent safety culture assessment of the refinery, involving a survey of over 1000 employees and interviews with 112 people, including members of the leadership team and supervisors. The CSB's organizational findings regarding its root cause analysis of the 2005 explosion show a marked correspondence with the prior cultural assessment:

Pre-explosion cultural assessment of the plant	Post-explosion CSB key organizational findings in its root cause analysis
• Production pressures caused managers to compromise on safety; • Production and budget were recognized and rewarded before anything else at the plant; • The quality and quantity of learning at the plant was inadequate; • Safety errors resulted from lack of time, staffing and knowledge; • Employees felt blamed for getting hurt, and root cause analysis stopped at employee error; • There was an exceptional fear of catastrophic incidents; • Leadership turnover and organizational transition made safety management difficult; • The strong safety commitment of the business unit leader was undermined by a lack of emphasis on production and performance, and lack of resources for inspection, auditing, and training; and • A "check the box mentality" existed for safety risks.[15]	• Plant management prioritized production and cost-cutting above safety; • It lacked a reporting and learning culture; • Its refinery managers did not lead by example on safety; • It didn't pay sufficient attention to the safety impacts of changes in people, policies, or organizational structure; • It relied on misleading leading indicators of safety that didn't take into account the risk of explosion; • Its personnel were not encouraged to report safety problems and feared retaliation for doing so; • Its response to numerous surveys, studies, and audits that identified deep-seated safety problems at the refinery was "too little, too late".[16]

Although hindsight is always perfect, the response of the plant to the concerns raised in the survey was "too little, too late". High level commitments to ensure a safe workplace were undermined by the

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[15] CSB, pp. 173-174.
[16] CSB, pp. 25-26.

prioritization of production and cost cutting over people; poor leadership on safety; a tick-box approach to safety risk assessment; a closed and fearful culture; and failing to take sufficient action to respond to worker safety fears. Therefore, the Texas Refinery explosion is a cautionary tale of why companies should pay attention to their culture by listening closely to the concerns of their workforce, and react promptly and effectively.

C. How is corporate culture relevant to business respect for human rights?

In order to determine the elements of corporate culture that are relevant to business respect for human rights, it may be useful to provide context on the background and context of the UNGPs.

What are the UNGPs?

Since their unanimous endorsement by the UN Human Rights Council in 2011, the UNGPs have become the authoritative international standard for responsible business conduct with respect to human rights. The UNGPs provide a blueprint for how states must protect human rights from business-related human rights abuse, how businesses should respect human rights, and how states must, and businesses should, provide or enable remedy to those who have been harmed by business-related human rights abuse.[17] The UNGPs are increasingly reflected in national laws and regulations, in the work of multi-stakeholder and standard-setting bodies (including the OECD Guidelines for Multinational Enterprises and the International Standard Organization Corporate Responsibility Standard 26000), in the practices and policies of leading companies, and in the advocacy of civil society.[18]

The second pillar of the UNGPs—the Corporate Responsibility to Respect Human Rights—expects that companies "should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved" (UNGP11). It expects that they will: (a) promulgate and embed a public commitment to respect human rights across the company; (b) conduct human rights due diligence to know their human rights impacts, and show that they are addressing them; and (c) provide remedy for those adverse impacts that they cause or contribute to.

The public commitment to respect human rights is the foundation on which rights-respecting norms and values are built. Guiding Principle 16 expects that senior leadership will embed respect for human rights from the top of the company to the bottom.

This is an exercise in shaping corporate culture. It means that respecting human rights should become part of the DNA of the company; i.e., the ways things are done in fact. It is not a tick-box compliance exercise, but instead requires embedding respect for human rights in diverse systems, processes and behaviors across an organization. In short, respect for human rights must become ingrained in company culture.

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[17] Zeid Ra'ad Al Hussein, Ethical Pursuit of Prosperity (23 March 2015), available at
https://www.lawgazette.co.uk/comment-and-opinion/ethical-pursuit-of-prosperity/5047796.article .
[18] John G. Ruggie, Just Business (Norton, 2013).

What is familiar about respecting human rights as a cultural norm and value?

For responsible companies, treating people with dignity, respect and fairness is fully consistent with, and is reflected in, their existing norms and values. Therefore, seeking to embed respect for human rights is not an entirely new effort that exists in a cultural vacuum. Companies already have experience in promoting human-rights-related norms and values, and in supporting the reduction of risk to internal and external stakeholders in such fields as business compliance and ethics, safety, and diversity, to name a few.

A 2005 Harvard Business School survey of the codes of conduct of leading multinational companies revealed that, prior to the 2011 UNGPs, businesses had already publicly committed to embedding human rights-respecting norms in their culture, without necessarily labeling them as such.[19] Some examples are:

- Expecting that employees will come home safe and sound at the end of the workday;
- Expecting that employees will be free from workplace discrimination;
- Expecting that the company's operations, products and services will not physically harm people;
- Expecting that a company's waste products will not pollute drinking water.

Awareness of the company's responsibility to identify and address human rights harm can also reinforce existing values in other areas of corporate concern, such as anticorruption, since corruption is closely related to human rights harm (e.g., the case building inspector bribery leading to the 2013 Rana Plaza factory collapse in Bangladesh).[20]

What is new?

At the same time, the UNGPs have unique and special features that should be reflected in a company's culture. Business respect for human rights is not just 'old wine in new bottles', or business as usual. In fact, at the heart of the UNGPs are a number of new expectations of conduct that have not yet been fully embedded in corporate cultures and governance systems. These expectations represent a 'new normal' of what it means to be a responsible corporation in the 21st Century.

The list below articulates some of those expectations:

- A mindset shift to managing risks to people, instead of just risks to the business;
- A focus on impacts on all people within the value chain, and not only to workers, communities or consumers who are one or two tiers away in the chain;

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[19] Lynn Paine, Rohit Deshpane, Joshua D. Margolis, and Kim Eric Bettcher, Up to Code: Does Your Company's Conduct Meet World Class Standards?, Harvard Business Review (December 2005), available at https://www.hbs.edu/faculty/Pages/item.aspx?num=20749 .

[20] David Hess, Business, corruption, and human rights: towards a new responsibility for corporations to combat corruption, 2017 Wisconsin Law Review 641, available at http://wisconsinlawreview.org/wp-content/uploads/2017/11/Hess-Final.pdf .

- A preparedness to problem-solve, provide remedy, and address complex, systemic issues in partnership with others. This includes:
  - The idea that, where it is involved in adverse human rights impacts, the company should use its leverage to drive positive change. Where leverage does not exist, the company should seek to increase it;
  - The idea that the company should be prepared to provide for, or support, the remediation of victims when things go wrong;
- An approach to relationships with employees and external stakeholders, including those whose rights have been adversely affected, which starts from the premise of trust, empowerment and cooperation rather than distrust, control and conflict;
- A practice of open communication about progress, ongoing challenges and failures or shortfalls regarding efforts to address risks to people; and
- A commitment to always meet the standards of international human rights and labor norms, even if national law does not require it, or even contradicts it.

D. What are the values and norms in a corporate culture that are especially, and perhaps uniquely, predictive of human rights outcomes?

In light of the unique and new standards of business conduct that the UNGPs embody, this paper posits four interdependent and interrelated norms and values that a company should foster and sustain, in order to have a culture that respects human rights in the fullest sense. They are:

I. **Respect for the dignity of *all* individuals and empathy with them** (to motivate the organization to know and care about its involvement in human rights harm to people, including to remote individuals and communities);

II. **Openness and learning** (to motivate the organization to seek out human rights issues and learn from its mistakes);

III. **Individual empowerment and responsibility** (to encourage employees to raise and address human rights issues responsibly);

IV. **Coherence** (to ensure that the organization respects human rights, notwithstanding inevitable tensions with other business goals).

It is relatively easy for a company to promulgate high-level policies to respect human rights. However, it is much more difficult to make them part of the company's DNA, as inconsistent management conduct at all levels can easily undercut those policies. Each of these norms and values is discussed below, drawing from experience in more mature fields of business management of stakeholder risk, such as business integrity, safety, and diversity.

I. Treating individuals with respect and empathy

The first norm and value, treating individuals with respect and empathy, is fundamental to the concept of human rights.[21] Respect means treating individuals with dignity and appreciating that they all have inherent human rights, whatever their "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[22] Empathy is the cognitive ability to stand in another's shoes and understand how they feel.[23] Ernest Wilson, Dean of the Annenberg School for Communication and Journalism at the University of Southern California, defines empathy as "a deep emotional intelligence that is connected to cultural competence. Empathy enables those who possess it to see the world through others' eyes and understand their unique perspectives."[24]

Respect and empathy are particularly critical values for respecting human rights in a company with globalized operations and interests. Psychological studies have shown that remoteness from the individual being harmed makes it more difficult to respect their dignity and empathize with them. Indeed, remoteness from harm in which companies are involved has been identified as a factor that desensitizes senior corporate management even to gross human rights abuses in the company's supply chain.[25]

Respect for individual dignity and empathy combine with and reinforce each other in the business responsibility to respect human rights. The UNGPs explicitly expect that companies will identify and address risks to people and communities from *their* perspective. Doing so requires engaging with affected stakeholders or their representatives and understanding how they feel. The stakeholder perspective is

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[21] See, Linda Hunt, Inventing Human Rights: A History (Norton, 2007) and the Corporate Responsibility to Respect Human Rights: An Interpretive Guide (2012) by the UN Office of the High Commissioner of Human Rights', available at http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf (Interpretive Guide).

[22] Article 2, Universal Declaration of Human Rights (1948), available at http://www.un.org/en/universal-declaration-human-rights/

[23] See e.g., Eliot M. Hirsch, MD, The Role of Empathy in Medicine: A Medical Student's Perspective, AMA Journal of Ethics (June 2007), available at https://journalofethics.ama-assn.org/article/role-empathy-medicine-medical-students-perspective/2007-06

[24] Ernest J. Wilson, III, Empathy Is Still Lacking in the Leaders Who Need It Most, Harvard Business Review (2015), available at https://hbr.org/2015/09/empathy-is-still-lacking-in-the-leaders-who-need-it-most

[25] Stef Monaco, Milgram, The social mechanics of gross human rights violations, and President Trump (2017), available at https://www.researchgate.net/publication/317620651_Milgram_the_social_mechanics_of_gross_human_rights_violations_and_President_Trump .

baked into the UNGPs, and is increasingly reflected in state corporate governance codes[26] and in enterprise risk-management standards.[27]

The ability to respect the dignity of individual persons and to empathize with them is becoming an increasingly important attribute for success in a global, digitized economy. An EY survey of companies shows that empathy is increasingly recognized as an important cultural value for several reasons:

- Communication with customers is increasingly a two-way street;
- Companies operate in diverse markets around the world; and
- Companies are increasingly abandoning rigid hierarchies in favor of more collaborative approaches with their own workforce.[28]

Digital video communication has the potential to raise greater awareness by businesses of their impacts on individuals working for the company who may be remote from corporate headquarters; e.g., enabling executives and boards in the Global North to see real-time impacts on workers from their operations in the Global South.[29]

It is true that some corporate cultures may emphasize so-called hard-nosed attributes of toughness, ruthlessness, and top-down compliance. However, according to an EY study, suppressing empathy can lead to robotic and bad decision-making, and poor risk management."[30] For example, the inability of a mining company to effectively understand and manage operations in different countries and cultures, due to a lack of awareness of the concerns and impacts on external stakeholders, can cause misunderstandings that lead to company-community conflict, which can have highly adverse impacts on people, communities, and the company's bottom line.[31]

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[26] E.g., UK Financial Reporting Council, UK Corporate Governance Code 2018, available at https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code: Jan Eijsbouts, Corporate Codes as Private Co-Regulatory Instruments in Corporate Governance and Responsibility and Their Enforcement, Indiana Journal of Global and Legal Studies, Vol. 24 #1 (Winter 2017), available at https://www.repository.law.indiana.edu/ijgls/vol24/iss1/8/ .

[27] International Organization for Standardization, ISO 31000 – Risk Management, available at https://www.iso.org/iso-31000-risk-management.html .

[28] EY, The Route to risk reduction: better rules or better decisions? (2017) p. 6, available at https://www.ey.com/Publication/vwLUAssets/EY-the-route-to-risk-reduction-better-rules-or-better-decisions/$FILE/EY-the-route-to-risk-reduction-better-rules-or-better-decisions.pdf (EY, Risk Reduction).

[29] Interview with Gareth Llewellyn, CEO of the UK Driver and Vehicle Standards Agency, on August 10, 2018.

[30] EY, Risk Reduction, above.

[31] Rachel Davis and Daniel Franks, Costs of Company-Community Conflict in the Extractive Sector, Shift and Corporate Responsibility Initiative, Harvard Kennedy School, (May 2014), available at https://www.shiftproject.org/resources/publications/costs-company-community-conflict-extractive-sector/ .

II. The need for an open and learning culture

The second norm and value, an open and learning culture, is not unique to respecting human rights. As noted by the UK Financial Reporting Council, a key feature of a healthy culture is an "open culture which supports employees when they speak up, and acts as an early warning system for management if behavior starts to slide."[32] A culture where employees feel that it is in their best interest to keep bad news to themselves (e.g., "my boss doesn't want to hear about it, because she won't be able to convince her boss to help to fix it") inhibits learning. Recall that in the Texas Refinery case, the plant did not have a culture that encouraged raising of problems or learning from past mistakes.

The need for an open and learning culture applies with particular emphasis to respect for human rights. This arises from the expectation in the UNGPs that companies will listen to, learn from, and respond to the concerns of stakeholders. In order to listen and learn effectively, a company needs to be prepared to hear bad news, and respond constructively rather than defensively.

This need to listen and learn permeates the UNGPs, such as in the development of a human rights policy commitment, and in exercising each of the elements of human rights due diligence. It underlies the need for operational level grievance mechanisms, which act in part as a key source of feedback on management's human rights performance.[33] Finally, the expectation that companies will track their human rights performance, and be prepared to communicate it, particularly to affected stakeholders, is designed to build trust. Doing so requires a willingness to identify problems early, rather than let them fester until they erupt and cause widespread harm.

In short, the elements of the responsibility to respect are anchored in a culture that values learning and listening. This includes:

- Actively seeking out problems;

- Being open to affected and other stakeholders worldviews;

- Accepting and being accountable when bad things happen; and

- Being transparent about problems internally and externally – even when problems are not fixed.

For example, Ed Potter, the former Director of Global Workplace Rights at The Coca-Cola Corporation, stressed the importance of early identification of issues, particularly through stakeholder engagement.[34]

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[32] UK Financial Reporting Council, Corporate Culture and the Role of Boards: Report of Observations (July 2016), https://www.frc.org.uk/getattachment/d246eacb-5774-4912-98e1-c03f1c8f692f/Corporate-Culture-and-the-Role-of-Boards-Report-of-Observations-tagged.pdf .

[33] John Ruggie, Piloting principles for effective grievance mechanism: A report of lessons learned, Report to the UN Human Rights Council (2011), A/HRC/17/31/Add.1, available at https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31-Add1.pdf .

[34] Interview with Ed Potter on August 8, 2018.

Adam Kanzer, Head of Stewardship (Americas), for BNP Paribas Asset Management, looks for companies that are aware of the issues, even if they don't yet have all the solutions in place.[35]

Moreover, the job description of human rights professionals in a company includes seeking out potential issues, not avoiding them.[36] This requires not a little courage in an organization, and must be supported by authentic open and learning cultural norms and values.

Finally, in supply chain disputes between buyers and suppliers regarding human rights disputes, an open and learning culture moves the dialog away from finger pointing to a more collaborative effort to determine the root cause of an impact, which may have resulted from the contribution of both parties. Studies show this is much more likely to result in improved human rights performance.[37]

III. Empowering individuals to act responsibly with respect for human rights

The third norm and value, individual empowerment and responsibility, means that all members of an organization should view themselves as responsible, as appropriate, for their own individual actions that impact human rights. They are not lab animals, but are individuals with their own moral agency when it comes to their involvement in the company's human rights outcomes.

As noted earlier, middle management plays a critical role in shaping culture, since they are at the front line of teaching new employees how things are actually done. Moreover, human rights managers have expressed frustration because they felt they were marginalized in the organization, without adequate resources and voice, and were rarely rewarded for helping the company avoid disasters.[38]

Whether or not they have explicit authority with respect to human rights, many members of an organization can nevertheless make decisions or take actions that impact human rights. For example, lawyers and engineers in an automobile company who discover a safety-related design defect in a product should feel empowered as individuals to argue robustly to high-level executives that the company should promptly disclose this information to customers to prevent accidents.[39] In another example, in-house lawyers working on an M&A due diligence team should be trained to bring possible human rights issues to the attention of the company's human rights specialist so that they can be evaluated prior to the acquisition, rather than have them erupt after the closing.[40]

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[35] Interview with Adam Kanzer on August 7, 2018.

[36] Christine Bader, Evolution of a Corporate Idealist: when girl meets oil, Bibliomotion 2014, (Bader).

[37] Shift, Respecting Human Rights Through Global Supply Chains (August 2012), available at https://www.shiftproject.org/resources/publications/respecting-human-rights-global-supply-chains/

[38] Bader, above.

[39] E.g., Nathan Cisneros, Karina Shaw, and Lisa Rohrer, Driving Blind at General Motors (A), Harvard Law School Case Study (March 2015), available at https://casestudies.law.harvard.edu/driving-blind-at-general-motors-a/ .

[40] Anna Triponel, What Do Human Rights Have to Do with Mergers and Acquisitions? (2015), available at https://www.shiftproject.org/resources/publications/what-do-human-rights-have-to-do-with-mergers-and-acquisitions/ .

Therefore, it is important for corporations to empower all of its members to make human rights their business, and exercise sound and responsible judgment, by training them on the human rights issues that may be relevant to their particular jobs, and encouraging them to escalate those issues promptly within the company.

IV. Coherence

The fourth norm and value, coherence, is designed to avoid the cognitive dissonance that occurs when senior management acts contrary to its stated goals. Of course, tensions between competing company goals are inevitable. For example, budget goals and performance goals are in perpetual tension with each other. And both in turn will compete for attention with other goals, such as legal compliance, ethical conduct, safety, and respecting human rights. At the same time, acting inconsistently on human rights is a surefire way for a company to undercut its commitment to respect human rights. The analysis of the cultural failures leading to the Texas City Refinery explosion shows this clearly. Therefore, it is critical for companies to harmonize financial and performance goals with nonfinancial goals, such as respecting human rights; hence the need for coherence as an organizational and individual norm and value.

Cultural coherence means behaving consistently on human rights in an organization, both vertically (from the top down) and horizontally (across organizational silos). The need for coherence is a familiar theme in business ethics. For example, ignoring unethical and deceptive conduct that inflates quarterly profits in order to meet short-term earnings targets seriously undermines the credibility of a company's entire ethics system, leading to more unethical behavior at all levels of the organization.[41] This kind of dissonance between stated commitments and actual practices leads individuals to "no longer rely on their own values; rather they look to the organization to decide what is ethical".[42]

Recall that the corporate commitment to "no accidents, no harm to people" was undercut by the Texas City Refinery's prioritization of production above safety, the lack of resources it gave to safety, its unwillingness to learn about problems and heed the fears of its workers, its inattention to the safety impacts of personnel, policy, and organizational change, and its check-the-box approach to safety risks.

The UNGPs explicitly recognize that coherent behavior is critical to respecting human rights (UNGP 16, commentary). Harvard Kennedy School Professor John Ruggie, who authored the UNGPs in his capacity as Special Representative of the UN Secretary-General, notes that "because the responsibility to respect

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[41] David Hess, Ethical Infrastructures and Evidence-Based Corporate Compliance and Ethics Programs: Policy Implications from the Empirical Evidence, New York University Journal of Law & Business, Vol. 12, No. 2 (2016), available at https://deepblue.lib.umich.edu/bitstream/handle/2027.42/116105/1293_Hess.pdf?sequence=1&isAllowed=y .

[42] Ann E. Tenbrusnel, Kristin Smith-Crow, and Elizabeth E. Umphress, Building Houses on Rocks: The Role of the Ethical Infrastructure in Organizations, Social Justice Research, Vol. 16, No. 3 (September 2003), p. 297, available at https://link.springer.com/article/10.1023/A:1025992813613

is a baseline expectation, a company cannot compensate for human rights harm by performing good deeds elsewhere."[43]

For example, access to essential medicines (such as drugs for HIV/AIDS) is now recognized a part of the human right to health, and is enforceable under international and national laws.[44] However, a pharmaceutical company that "successfully lobbies to undermine flexibilities in patent rules or other cost-containment policies necessary to ensure widespread population access to a medicine, but then offers a voluntary price discount on that medicine, … should not be lauded for the pricing policy. Rather it should be recognized as having 'done harm' by undermining the state's efforts to protect its population's right to health."[45]

In sum, a company's failure to act coherently with respect to human rights will cause its commitment to respect human rights to be regarded as an insurance policy intended to insulate senior management and the board from criticism and liability, rather than the way things are actually done in the company.

E. A note on culture assessment

Evaluating cultural norms and values may be challenging and time consuming, but it is necessary. In the Texas City Refinery case, the company conducted cultural surveys and interviews that revealed trouble on the horizon, but then ignored the red flags they raised. According to the EY culture study referred to earlier, typical analytic tools of culture used by companies include "performance appraisals, interviews with current or exiting employees, whistleblowers or other built-in 'warning' systems, surveys of customers and employees, customer complaints and employee personality profiling."[46] Using 'big data' can provide additional insight, according to Hywel Ball, EY's Managing Partner, Assurance UK and Ireland:

> "While staff interviews, appraisals and surveys are widely used to assess culture, they do not give a 360-degree view… Over the past few years, data extraction and analytics have developed to the point that they can add great insight on culture."

Beyond conducting employee and manager surveys, evaluating human rights cultural norms and values requires understanding how its affected stakeholders, including those who are external to the company, perceive the company's culture in practice. As noted earlier, the UNGPs expect that as part of their responsibility to respect human rights, companies will engage robustly with stakeholders to understand and address their specific concerns from their perspective. In addition, the UNGPs also expect that companies will establish or participate in operational level grievance mechanisms to resolve human rights grievances promptly and directly with stakeholders. Such mechanisms are not only a means to remedy

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[43] Quoted in Suerie Moon, Respecting the right to access to medicines: Implications of the UN Guiding Principles on Business and Human Rights for the pharmaceutical industry, Health and Human Rights, Vol. 15, No. 1 (2013), available at http://apps.who.int/medicinedocs/en/m/abstract/Js20203en/ (Moon) .

[44] Moon, above.

[45] Moon, above.

[46] EY Culture, above.

harms, but also act as a valuable source of feedback to the company on its human rights performance. Therefore, the company's engagement with stakeholders and the feedback on its human rights performance should be an essential component of its evaluation of human rights norms and values.

Finally, as noted earlier, companies (particularly large multinational enterprises) are not monolithic. They may encompass numerous business units, with different operations in different regions and cultures, and have different historic legacies. Even within a single business unit, there may be unique subcultures in a single country (e.g., legal, operations, sales, finance, etc.). These subcultures may be in harmony with each other in many respects, but may have different views about norms and values that are important for human rights. The cultural assessment should take these differences into account.

Summary and Looking Forward

In sum, corporate culture consists of shared norms and values that explain how things are actually done in a company. They are not aspirational, but authentic. Having and sustaining the right culture is critical to a company's ability to meet its goals, since 'culture eats strategy for breakfast.' Shaping and sustaining the right culture is a top down, bottom up process that involves the participation of the board, senior executive leadership, middle management, and workers.

Culture is increasingly a matter of concern for investors, although currently few companies discuss culture in their annual reports and public filings. They should do so, since cultural failings can predict corporate disasters that can result in severe human rights harm, as shown by the Texas City Refinery explosion in 2005. Consequently, culture is a leading indicator of whether a company is respecting human rights.

The 2011 UNGPs expect: that companies will embed respect for human rights in their corporate DNA; that companies will conduct human rights due diligence to assess and address their human rights impacts; and that companies will remedy harm to people and communities that they have caused or contributed to.

There is much in the concept of respect for human rights that resonates with the existing cultures of responsible and ethical organizations. However, it is more than pouring old wine into new bottles. In light of the UNGPs, four cultural norms and values are especially, and perhaps uniquely, pertinent to respect for human rights:

- **Respect for the dignity of individuals and empathy with them** (to motivate the organization to know and care about its involvement in human rights harm to people, including to remote individuals and communities);

- **Openness and learning** (to motivate the organization to seek out human rights issues and learn from its mistakes);

- **Individual empowerment and responsibility** (to encourage employees to raise and act on human rights issues responsibly)

- **Coherence** (to ensure that the organization respects human rights, notwithstanding inevitable tensions that may pull it in another direction).

As a leading indicator that can predict human rights harm, culture can and should be evaluated to understand if a company is truly respecting human rights. Tools are available to do so, and are increasing in sophistication. Although senior leadership cannot engineer culture, it can, and should, take steps to mold it.

It is hoped that this analysis of culture will help to facilitate the development, and testing, of cross-industry indicators of rights-respecting leadership and governance, and to begin to enable companies to understand factors that lead to positive and sustained change in business practices and behaviors.

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