

BUSINESS, SOCIAL RESPONSIBILITY, AND HUMAN RIGHTS
LAW 263.2

SYLLABUS – FALL 2014 (PRELIMINARY)

Tuesdays and Thursdays, 11:20 a.m. to 12:35 p.m.
115 Boalt Hall
3 units

Jamie O'Connell
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Assistant: Cynthia Palmerin,
cpalmerin@law.berkeley.edu

Office hours: To be determined. (You are welcome to drop in unannounced, or reserve a slot in advance by signing up on the Google document linked from the course website.)

COURSE OVERVIEW

Large corporations now routinely spend millions of dollars to protect human rights and the environment. Shell Nigeria builds hospitals and schools in the Niger Delta. Nike employs hundreds of inspectors to improve conditions for the factory workers who produce its shoes across Asia and Latin America. Since the Snowden revelations, Google has scrambled to shield users' data from the National Security Agency. Other examples abound, across industries and around the globe.

"Don't be evil" (Google's slogan) may be one motivation for these companies, but something more mundane is also at work: many companies believe they will do *well*, financially, if they do *good*, ethically. This course examines questions that lawyers in large law firms, corporations, NGOs, and government agencies regularly confront:

- *What does it mean for a company to "do good"? Should it care?*
- *When does it serve a company's interest to take costly action to address human rights, labor, and environmental concerns?*
- *What tactics have activists used to shift public opinion, media frames, and the law and thereby change companies' incentives?*

Students will learn skills and knowledge necessary to succeed in the expanding field of corporate social responsibility and human rights. Companies want to minimize the risk that a human rights scandal will damage their relationships with consumers. Advocacy groups want to stop corporate behavior they see as harmful. Serving these clients requires business and political acumen, as well as traditional legal skills – and the ability to combine all of those to produce insightful, practical analyses and recommendations.

We will learn through seminar-style discussion, lectures, role play, and small group exercises. Several guest speakers from companies and nonprofits will provide insights from their experiences on the ground.

EVALUATION AND GRADING

Grades will be based on the following factors:

- 20% Class participation
- 10% Short written assignment
- 70% Final examination or paper

The intellectual value of a seminar depends on the quality of discussion. My goal is to create an energetic, but comfortable, forum for intellectually creative exchange from which we all learn. Attendance and participation therefore are essential. Participation includes active, thoughtful listening as well as speaking – you will be recognized for both. I will sometimes call on people in order to promote the broadest participation.

If you must miss or be late to any class, please notify me by email as soon as possible, and in advance if the absence is anticipatable. The class participation component of your grade takes into account both that absences are sometimes necessary and that they risk reducing the intellectual quality of the seminar. An absence is excusable if it is for a reason you cannot reasonably control, such as sickness, a family emergency, or a job interview that cannot be scheduled at a different time. One excusable absence does not affect your class participation grade. Additional excusable absences will count as if you were present, but silent. Unexcused absences will diminish your class participation grade significantly.

It is essential that you do all assigned **reading** carefully before class. If an emergency prevents you from preparing, please inform me of it at the beginning of class. Because the course is highly cumulative, you will need to catch up by the next class, as you will if you are absent.

A **short written assignment** will be **due [deadline to be determined, but in the middle of the semester], via email to me with a copy to my assistant, Cynthia Palmerin** (cpalmerin@law.berkeley.edu). (Tardiness will be penalized.) You will write a substantial – 3 to 5 page, single-spaced – letter to a company analyzing a human rights issue it faces and advocating that it take particular action(s). I will provide more guidance early in the semester and am happy to provide feedback on your ideas as you work on the assignment.

The bulk of your grade will be determined by a 12-hour, take-home **final examination**. It will be limited open-book, meaning that you will be allowed to consult class readings and notes.

You may substitute a 20-30 page analytic paper for the final examination. The paper would be due at the end of exam period. If you are interested in writing one, please email me two or three paragraphs describing your possible topic **by class time on Thursday, September 18**. (If you are considering several topics, write a couple of paragraphs on each.) This will help us assess the topic's feasibility. The paragraphs should reflect some real thinking about the topic – often it's useful to think about what you will *not* cover, as well as what you will – but I do not expect you to have done any research before this point.

Writing Requirement: The paper can fulfill the Writing Requirement if it is at least 30 pages long and you both draft and, in response to my feedback, revise it by the end of the semester. This will require settle a timetable at the beginning of the semester, so please consult me as soon as possible if you are interested in fulfilling the Writing Requirement.

READINGS

There is no textbook for this course. Readings draw from academic monographs and articles, by social scientists as well as legal scholars; reports by public policy institutes, international institutions, and non-

governmental organizations (NGOs); newspaper and magazine articles; business school case studies; and legal documents such as court decisions and statutes.

The vast majority of the readings for this course are free to you, either as a member of the public (e.g., NGO reports) or as a student with access to the UC Berkeley libraries' electronic resources. These are posted on or linked from the course website on bspace. You can purchase the one required book, Adam Hochschild's *King Leopold's Ghost*, at the Boalt bookstore or many used bookstores (such as Moe's on Telegraph). You need to purchase the required business school case study, for class 5, through a link from our course website to the Harvard Business School Publishing website. A short reader of excerpts from books, which are not available to us free in electronic form, will be available soon at Copy Central on Bancroft Way.

All of our sessions suggest far more questions than we can possibly discuss. You are welcome to raise any of these in class, but I will focus our discussions on a few to allow us to consider them in some depth. Before doing the reading, go over the **reading questions** that I will post, by the previous Wednesday night, in the folder for the session on bspace. These will help you focus on what is most important in the readings for purposes of the course and class session. You will be well prepared for class if you arrive ready to discuss them.

If I modify a session's reading assignment, for example to address new developments, I will post the new readings on the course website and alert you by email by the preceding Thursday evening.

ELECTRONIC DEVICES IN CLASS

The norms for using electronic devices in classes are not clearly settled: different people have different ideas about what behavior is professional, productive, and considerate. Regardless of what one *thinks* is the best way to behave, it is tempting to use electronic devices to satisfy one's curiosity about a question that arises, to alleviate one's anxiety by knocking off small tasks, or for other understandable reasons. In a small group engaged in a collective intellectual endeavor – like this class – individual disengagement, even if intermittent and brief, is very costly, to the person disengaging and to others.

In this course, you are welcome to use a laptop, tablet, or other device only for two specific purposes: to take notes on what occurs in class and to consult the readings if you do not use hard (printed) copies. You may not use them during class for any other purpose. Prohibited activities include – but are not limited to – checking email, reading text messages, and accessing websites other than readings on our bspace site. Please use class to engage with the course material and the people in the classroom; if your mind wanders, try to bring it back to class, but at a minimum do not give in to the temptation to use your device to wander away electronically. *It is very easy – for me and others around you -- to tell if someone is using a device for any purpose other than taking notes or consulting the readings.*

ACADEMIC INTEGRITY

Nearly all of you always to work to the highest standards of academic integrity. Only a few students cheat or commit plagiarism, but on a large campus, many incidents occur every year. The Boalt authorities and I take these offenses very seriously. **Plagiarism may result in failing the course, suspension, or even expulsion, and may be reported to bar licensing authorities.**

Violations of principles of academic integrity can be caused by ignorance or accident, as well as by bad faith. While inadvertent violations may be less wrong in a moral sense, it can be very difficult to distinguish them from ones caused by bad faith, and so they may be penalized just as severely. **Prudence, as well as principle, should motivate you to understand the applicable standards and to observe them scrupulously.**

The UC Berkeley Center for Student Conduct and Community Standards provides the following examples of cheating and plagiarism, but notes that they are “not exhaustive.” (See <http://campuslife.berkeley.edu/conduct/integrity/definition>.)

Cheating

- Cheating is defined as fraud, deceit, or dishonesty in an academic assignment, or using or attempting to use materials, or assisting others in using materials that are prohibited or inappropriate in the context of the academic assignment in question, such as:
- Copying or attempting to copy from others during an exam or on an assignment.
- Communicating answers with another person during an exam.
- Preprogramming a calculator to contain answers or other unauthorized information for exams.
- Using unauthorized materials, prepared answers, written notes, or concealed information during an exam.
- Allowing others to do an assignment or portion of an assignment for you, including the use of a commercial term-paper service.
- Submission of the same assignment for more than one course without prior approval of all the instructors involved.
- Collaborating on an exam or assignment with any other person without prior approval from the instructor.
- Taking an exam for another person or having someone take an exam for you.

Plagiarism

- Plagiarism is defined as use of intellectual material produced by another person without acknowledging its source, for example:
- Wholesale copying of passages from works of others into your homework, essay, term paper, or dissertation without acknowledgment.
- Use of the views, opinions, or insights of another without acknowledgment.
- Paraphrasing of another person’s characteristic or original phraseology, metaphor, or other literary device without acknowledgment.

Any time you use others’ words or ideas in work you submit for this course, you must properly attribute them. That means fully identifying the original source and the extent of your use of words or ideas from it, usually using a footnote and (in the case of specific words) quotation marks. *The format of the source does not affect this requirement* – it applies to material taken from books, academic journal articles, popular magazines, campus publications, websites, emails, blog posts, even tweets and text messages.

Please always feel free to ask – in class, after class, over email, or during office hours – if you feel any uncertainty about what academic honesty requires, generally or for a specific assignment. I am happy to discuss this topic in as much depth as may be helpful to you.

I. FOUNDATIONS

A. Introduction

1. Tue., Aug. 26:
“Business, Social
Responsibility, and
Human Rights”: What
and Why

HUMAN RIGHTS WATCH, *ON THE MARGINS OF PROFIT: RIGHTS AT RISK IN THE GLOBAL ECONOMY* (2008). Read: 1-2, 4-5, 7, 9-13, 32-36. [website]

DAVID VOGEL, *THE MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY* (2005). Read: 1-5, 12-13 (excerpts from Ch. 1: “The Revival of Corporate Social Responsibility”). [website]

Christopher Avery, *The difference between CSR and human rights*, CORP. CITIZENSHIP BRIEFING, Aug./Sept. 2006. [website]

Geoffrey Colvin, *Should Companies Care?*, FORTUNE, June 11, 2001. [website]

Milton Friedman, *The Social Responsibility of business is to Increase its Profits*, N.Y. TIMES MAG., Sept. 13, 1970. [website]

Recommended

Browse: Gap Inc., “Social Responsibility Data Dashboard: Goals and Progress.” [website]

2. Thu., Aug. 28:
Exploiting the Congo

ADAM HOCHSCHILD, *KING LEOPOLD’S GHOST* (1999). Read: 1-18, 33-40¶1, 42¶1-46, 61-74, 87¶1-87¶3, 101-102¶3, 108¶1-135¶2, 158¶2-166, 225-234. [book] See this note about notation:¹

Maps of the Belgian Congo in 1884 (first map on page) and 1909, from Yale Genocide Studies Program (scroll down). [website]

3. Tue., Sep. 2: The
Congo Human Rights
Campaign

ADAM HOCHSCHILD, *KING LEOPOLD’S GHOST* (1999). Read: 177¶2-217, 235-249, 250-252, 257¶2-259¶3, 265¶2-266part¶1, 270¶4-274, 277part¶1-283¶1, 292-299¶2, 304¶4-306, 309-313part¶1. [book]

¹ Some of the excerpts from *King Leopold’s Ghost* begin or end in the middle of a page. It’s fine to read the entire page in those cases, but the following notation will allow you to save a paragraph or two here and there if you like.

- “part¶1” means a partial paragraph spilling over from the previous page.
- “¶1” is the first *full* paragraph on a page.
- In counting paragraphs on a page, you should not count headings, but should count items in bulleted lists (each item, regardless of its length, being a separate paragraph) and paragraphs formatted as block quotations. Even one-line paragraphs count, as long as they are text rather than headings.
- For example, “16¶3-18part¶1” means you should start reading at the beginning of the third full paragraph on page 16 and stop at the end of the first partial paragraph (i.e., the beginning of the first full paragraph) on page 18.

4. Thu., Sep. 4: Into the Modern Era

Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443 (2001). Read: 452-60. [website]

SEAN D. MURPHY, PRINCIPLES OF INTERNATIONAL LAW (2006). Read: 3-10, 60-63, 65-68, 78. [reader]

United Nations Office of the High Commissioner for Human Rights, Fact Sheet: “The International Bill of Rights” (n.d., rev. 1) (excerpt). [website]

Asian Development Bank & International Labor Organization, Core Labor Standards Handbook (2006). Read: Excerpts summarizing ILO Core Conventions C-29 (Forced Labor, 1930), C-87 (Freedom of Association and Protection of the Right to Organize, 1949), C-98 (Right to Organise and Collective Bargaining, 1949), C-100 (Equal Remuneration, 1951), C-105 (Abolition of Forced Labour, 1957), C-111 (Discrimination [Employment and Occupation], 1958), C-138 (Minimum Age, 1973), and C-182 (Worst Forms of Child Labour, 1999). [website]

Macartan Humphreys, Jeffrey D. Sachs & Joseph E. Stiglitz, *Introduction: What is the problem with natural resource wealth?*, in ESCAPING THE RESOURCE CURSE 1 (Macartan Humphreys, Jeffrey D. Sachs & Joseph E. Stiglitz eds., 2007). Read: 3-14. [reader]

If you have not read a human rights treaty before: Skim International Covenant on Civil and Political Rights or International Covenant on Economic, Social, and Cultural Rights. [website]

B. Extractive Industries: Security, Environmental Degradation, and Community Relations

5. Tue., Sep. 9: Shell’s Nigeria Debacle

Joshua Hammer, “Nigeria Crude,” HARPERS, June 1996. [website]

HUMAN RIGHTS WATCH, THE PRICE OF OIL: CORPORATE RESPONSIBILITY AND HUMAN RIGHTS VIOLATIONS IN NIGERIA’S OIL PRODUCING COMMUNITIES (1999). Read: 1-17, 96-98 (can skip footnotes). [website]

Lynn Sharp Paine & Mihnea C. Moldoveanu, *Royal Dutch/Shell in Nigeria (A)*, Harvard Business School Field Case Study No. 9-399-126, rev. Oct. 1, 2009. Exhibits are optional/for reference – do not feel obligated to go through them. [buy through website]

6. Thu., Sep. 11:
Shell's Post-1995
Reforms, Freeport
McMoRan and the
Voluntary Principles
on Security and
Human Rights

HUMAN RIGHTS WATCH, *THE PRICE OF OIL: CORPORATE RESPONSIBILITY AND HUMAN RIGHTS VIOLATIONS IN NIGERIA'S OIL PRODUCING COMMUNITIES* (1999). Read: 166-69. [website]

SHELL GROUP, *PROFITS AND PRINCIPLES: DOES THERE HAVE TO BE A CHOICE?* (1998). Read: 2 (first page of "Introduction"), 5-7, 36-37 (excerpted copy on website). [website]

Kristian Tangen, "Shell: Struggling to Build a Better World?," Fridtjof Nansen Institute Report 1/2003 (2003). Read: 3-15. [website]

Simon Handelsman, *Mining in Conflict Zones*, in *BUSINESS AND HUMAN RIGHTS: DILEMMAS AND SOLUTIONS* 125 (Rory Sullivan ed. 2003). Read: 126-32. [reader]

Freeport McMoRan, "Human Rights Policy," Feb. 3, 2009. [website]

SEAN D. MURPHY, *PRINCIPLES OF INTERNATIONAL LAW* (2006). Read: 96, 103-107. [reader]

Bennett Freeman & Genoveva Hernández Uriz, *Managing Risk and Building Trust: The Challenge of Implementing the Voluntary Principles on Security and Human Rights*, in *BUSINESS AND HUMAN RIGHTS: DILEMMAS AND SOLUTIONS* 243 (Rory Sullivan ed. 2003). [reader]

Skim to get a sense of the nature of the document (not for details of specific provisions):
GOVERNMENT OF THE UNITED STATES & GOVERNMENT OF THE UNITED KINGDOM, *THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS* (2000). [website]

Recommended

"Shell Apologizes" statement (video). [website]

7. Tue., Sep. 16: The Best Disinfectant?: The Extractive Industries Transparency Initiative (EITI)

Skim: MSI INTEGRITY & HARVARD LAW SCHOOL INTERNATIONAL HUMAN RIGHTS CLINIC, 2013 MSI EVALUATION REPORT (WORKING DRAFT): EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI) (May 2013). Read: 2-4. [website]

Rationale for revenue transparency:

Matthew Genasci & Sarah Pray, *Extracting Accountability: The Implications of the Resource Curse for CSR Theory and Practice*, 11 YALE HUM. RTS. & DEV. L.J. 37 (2008). Read: 49-54 (excerpts). [website]

Alex Kardon, *Matthew Genasci & Sarah Pray, "Extracting Accountability: The Implications of the Resource Curse for CSR Theory and Practice,"* 11 YALE HUM. RTS. & DEV. L.J. 59 (2008). Read: 61-63. [website]

EITI's requirements, structure, and activities:

HUMAN RIGHTS WATCH, A NEW ACCOUNTABILITY AGENDA: HUMAN RIGHTS IN THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (2013). Read: 3-8. [website]

Extractive Industries Transparency Initiative, "EITI Fact Sheet," May 2013. [website]

Revenue Watch Institute, "Transparency Standard Raises the Bar, Requires 39 Countries to Release Data on Individual Oil, Gas and Mining Licenses," May 22, 2013. [website]

EITI's impact:

SCANTEAM, ACHIEVEMENTS AND STRATEGIC OPTIONS: EVALUATION OF THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE: FINAL REPORT (May 2011). Read: 1-4, 22-26. [website] *Note: This is the report of an official, but independent, evaluation commissioned by EITI.*

HUMAN RIGHTS WATCH, A NEW ACCOUNTABILITY AGENDA: HUMAN RIGHTS IN THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (2013). Read: 8-12. [website]

Recommended

Describing recent, major developments in efforts to promote transparency: Publish What You Pay Canada, "Publish What You Applauds Historic EU Parliament Transparency Vote as Canada Announces Similar Plans," June 12, 2013. [website]

C. Supply Chains, Consumer Pressure, and Labeling

8. Thu., Sep. 18:
Conflict Diamonds
and the Kimberley
Process Certification
Scheme

TOM PERRIELLO & MARIEKE WIERDA, THE SPECIAL COURT FOR SIERRA LEONE UNDER
SCRUTINY (Mar. 2006) Read: 4-9 (Part I). [website]

PARTNERSHIP AFRICA CANADA, THE HEART OF THE MATTER: SIERRA LEONE, DIAMONDS, AND
HUMAN SECURITY (SUMMARY) (2000). Read: 1-3 (can skip timeline). [website]

SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION, 2 WITNESS TO TRUTH: REPORT OF
THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION (2004). Read: Executive
Summary, paras. 37-45. [website]

Andrew J. Grant & Ian Taylor, *Global Governance and Conflict Diamonds: The Kimberley Process
and the Quest for Clean Gems*, 93 ROUND TABLE 385 (2004). [website]

Clive Wright, *Tackling Conflict Diamonds: The Kimberley Process Certification Scheme*, 11 INT'L
PEACEKEEPING 697 (2004). Read: 702-707. [website]

European Commission, "EC Chairmanship of the Kimberley Process: From conflict
diamonds to prosperity diamonds" (n.d., est. Jan. 2007). [website]

Recommended

BLOOD DIAMOND (Warner Bros. 2006), starring Leonardo Di Caprio and Jennifer
Connelly.

9. Tue., Sep. 23:
Kimberley Process
Certification Scheme:
Challenges and
Limitations

HUMAN RIGHTS WATCH, DELIBERATE CHAOS: HUMAN RIGHTS ABUSES IN THE MARANGE
DIAMOND FIELDS OF ZIMBABWE (2010). Read: 1-3. [website]

IAN SMILLIE, ASSESSMENT OF THE KIMBERLY PROCESS IN ENHANCING FORMALIZATION AND
CERTIFICATION IN THE DIAMOND INDUSTRY – PROBLEMS AND OPPORTUNITIES (2011).
[website] Read: 1-7.

Charmian Gooch, "Why We Are Leaving The Kimberley Process – A Message From Global
Witness Founding Director Charmian Gooch," Dec. 5, 2011. [website]

Hugh Williamson, *Multiple Stakeholder Coalitions in Crisis*, FINANCIAL TIMES, June 7, 2010.
[website]

Short readings on consumer behavior. [website]

10. Thu., Sep. 25:
The Garment Industry: Macro- and Microeconomics
- John Weiss, Export Growth and Industrial Policy: Lessons from the East Asian Miracle Experience, Asian Development Bank Institute Discussion Paper No. 26, Feb. 2005. Read: 2-3. For reference: data in table on 4-7 – shown in graphical form in next reading. [website]
- Business, Social Responsibility, and Human Rights, Garment Industry and Economic Development, handout based on data in Weiss pp. 4-7, created July 2013. [website]
- Business, Social Responsibility, and Human Rights, Economic Growth of Selected Asian Countries, 1960-2012, created July 2013. [website]
- KARINA FERNANDEZ-STARK, STACEY FREDERICK & GARY GEREFFI, THE APPAREL GLOBAL VALUE CHAIN: ECONOMIC UPGRADING AND WORKFORCE DEVELOPMENT (2011). Read: 6, 11 and Fig. 1, 57 Fig. A-1. [website]
- SHAE GARWOOD, ADVOCACY ACROSS BORDERS: NGOS, ANTI-SWEATSHOP ACTIVISM, AND THE GLOBAL GARMENT INDUSTRY (2011). Read: 17-19. [reader]
- Kathy Chu, *China Manufacturers Survive by Moving to Asian Neighbors*, WALL ST J., May 1, 2013 (excerpts). [website]
- Business, Social Responsibility, and Human Rights, Model Cost Breakdown for \$20 T-Shirt, July 2013. [website]
- Various authors, *Why Clothes Cost What They Do*, WELL-SPENT.COM, Jan. 25, 2012 (excerpts). [website]
- Selected reader comments to *Why Clothes Cost What They Do*, WELL-SPENT.COM, Jan. 25, 2012. [website]
11. Tue., Sep. 30:
Labor Rights in the Garment Industry: The Anti-Sweatshop Movement
- Bob Herbert, *Children of the Dark Ages*, N.Y. TIMES, July 21, 1995. [website]
- Bob Herbert, *Brutality in Vietnam*, N.Y. TIMES, Mar. 28, 1997. [website]
- Bob Herbert, *Sweatshop U.*, N.Y. TIMES, Apr. 12, 1998. [website]
- Paul Krugman, *In Praise of Cheap Labor: Bad jobs at bad wages are better than no jobs at all*, SLATE, Mar. 21, 1997. [website]
- Benjamin Powell, *In Defense of "Sweatshops"*, LIBRARY OF ECON. AND LIBERTY (online), June 2, 2008. [website]
- Keith Bradsher, *Two Sides to Labor in China*, N.Y. TIMES, Mar. 30, 2012 (excerpt). [website]
- Liza Featherstone & Doug Henwood, *Clothes Encounters: Activists and Economists Clash over Sweatshops*, LINGUA FRANCA, Mar. 2001. [website]

12. Thu., Oct. 2:
Labor Rights in the
Garment Industry:
FLA, WRC, and the
Code-Monitoring
Model

Dara O'Rourke, *Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring*, 31 POL'Y STUD. J. 1 (2003). Read: 1-14, 16-25 (excerpted). [website]

Read for tone as well as content:

United Students Against Sweatshops, "What's Wrong with the FLA?" [n.d.].
[website]

Fair Labor Association, "Is It the FLA *versus* the WRC, or the FLA *and* the WRC?",
Mar. 29, 2006. [website]

For reference

Fair Labor Association, "Protecting Workers' Rights Worldwide" (n.d., accessed
Aug. 20, 2013). [website]

Fair Labor Association, "Transparency" (n.d., accessed Aug. 20, 2013). [website]

Worker Rights Consortium, FAQs. [website]

Recommended for additional detail on the codes

Fair Labor Association Workplace Code of Conduct. [website]

Worker Rights Consortium, Model Code of Conduct. [website]

Recommended: Labor conditions are an issue in many other industries' supply chains, too

Charles Duhigg & David Barboza, *In China, Human Costs Are Built Into an iPad*, N.Y.
TIMES, Jan. 25, 2012. [website]

Charles Duhigg & Steven Greenhouse, *Electronic Giant Vowing Reforms in China
Plants*, N.Y. TIMES, Mar. 29, 2012. [website]

13. Tue., Oct. 7:
Labor Rights in the
Garment Industry:
The Code-Monitoring
Model in Practice

T.A. Frank, *Confessions of a Sweatshop Inspector*, WASH. MONTHLY, Apr. 2008. [website]

Richard Locke, Matthew Amengual & Akshay Mangla, *Virtue out of Necessity?: Compliance,
Commitment, and the Improvement of Labor Conditions in Global Supply Chains*, 37 POL. & SOC'Y
319 (2009). Read: 320-339, 342-347. [website]

Recommended

Declan Walsh & Steven Greenhouse, *Certified Safe, a Factory in Karachi Still Quickly
Burned*, N.Y. TIMES, Dec. 7, 2012. [website]

14. Thu., Oct. 9:
Labor Rights in the
Garment Industry:
What Next?

Worker Rights Consortium, “The Designated Suppliers Program – Revised” (Feb. 17, 2012) (excerpts). [website]

Scott Nova & Ben Hensler, Memorandum to WRC Affiliate Universities and Colleges re: Business Review Process for the Designated Suppliers Program, Dec. 16, 2011 (excerpts). [website]

Scott Nova (executive director, WRC), Letter to university members on Designated Suppliers Program, Oct. 11, 2005. [website]

Auret van Heerden (executive director, FLA), Letter to Scott Nova on Designated Suppliers Program, Mar. 30, 2006. [website]

Fair Labor Association, “Sustainable Compliance Methodology” (July 23, 2012). [website]

Richard Locke, *Can Global Brands Create Just Supply Chains?*, BOSTON REV. (online), May 21, 2013 (excerpts). [website]

Julfikar Ali Manik, Steven Greenhouse & Jim Yardley, *Western Firms Feel Pressure as Toll Rises in Bangladesh*, N.Y. TIMES, Apr. 25, 2013. [website]

Recommended

Steven Greenhouse & Jim Yardley, *As Walmart Makes Safety Vows, It’s Seen as Obstacle to Change*, N.Y. TIMES, Dec. 28, 2012. [website]

Steven Greenhouse, *Retailers Split on Contrition After Collapse of Factories*, N.Y. TIMES, Apr. 30, 2013. [website]

Steven Greenhouse, *Obama to Suspend Trade Privileges with Bangladesh*, N.Y. TIMES, June 27, 2013. [website]

15. Tue., Oct. 14:
Labeling and
Consumer Pressure

Dara O’Rourke, *Citizen Consumer: Opening the Debate*, BOSTON REV., Nov. 1, 2011. Read: Excerpts. [website]

Juliet Schor, *Citizen Consumer: Response to O’Rourke*, BOSTON REV., Nov. 1, 2011. [website]

KIMBERLY ELLIOTT, *IS MY FAIR TRADE COFFEE REALLY FAIR?* (2012). Read: Excerpts. [website]

Scott Sherman, *The Brawl Over Fair Trade Coffee*, THE NATION, Aug. 22, 2012. Read: Excerpts. [website]

Recommended

A free-market critique of the fair trade model: MARC SIDWELL, *UNFAIR TRADE* (2008). [website]

D. Legal Advocacy

16. Thu., Oct. 16:
The Alien Tort
Claims Act and the
Challenges of
Litigation

Read quickly (not for details): Doreen McBarnet & Patrick Schmidt, *Corporate accountability through creative enforcement: human rights, the Alien Tort Claims Act and the limits of legal impunity*, in THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW 148 (McBarnet et al. eds., 2007) (excerpts). [reader]

Robert Barnes, *Supreme Court limits civil lawsuits alleging atrocities committed abroad*, WASH. POST, Apr. 17, 2013. [website]

Peter Spiro, *Samuel Moyn Applauds the Death of the Alien Tort Statute*, OPINION JURIS (blog), May 3, 2013. [website]

OXFORD PRO BONO PUBLICO, OBSTACLES TO JUSTICE AND REDRESS FOR VICTIMS OF CORPORATE HUMAN RIGHTS ABUSE (2008). Read: 2-4, 354-358. [website]

MARK D. TAYLOR, ROBERT C. THOMPSON & ANITA RAMASASTRY, OVERCOMING OBSTACLES TO JUSTICE: IMPROVING ACCESS TO JUDICIAL REMEDIES FOR BUSINESS INVOLVEMENT IN GRAVE HUMAN RIGHTS ABUSES (2010). Read: 20-22. Note: *Entire* publication – not just the assigned excerpt – is posted on bspace because document does not allow editing. [website]

Jamie O’Connell, *Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?*, 46 HARV. INT’L L.J. 295 (2005). Read: 338-339. [website]

Recommended

On the technical nature of much of human rights litigation against corporations:
Richard Meeran, *Tort Litigation Against Multinational Corporations for Violation of Human Rights: An Overview of the Position Outside the United States*, 3 CITY U. HONG KONG L. REV. 1 (2011). Read: 21-23 (excerpts). [website]

17. **MAKEUP FOR
VETERAN’S DAY:**
Fri., Oct. 17: Legal
Advocacy in
Unconventional
Forums
**Guest speaker
(tentative): Natalie
Bridgeman-Fields,
Founder and
Executive
Director,
Accountability
Counsel.**

Bio of Natalie Bridgeman Fields. [website]

ACCOUNTABILITY COUNSEL, ACCOUNTABILITY RESOURCE GUIDE (v. 7.1 July 2012). Read: iv. [website]

Banktrack, ECA Watch & Center for International Environmental Law, “Financing Human Rights Abuse: The Role of Public and Private Financial Institutions,” Dec. 2012. Read: Excerpt from 1-3. [website]

Accountability Counsel, “Support to Communities in Oaxaca, Mexico,” n.d., c. 2013. [website]

Accountability Counsel, “India: Tata Tea in Assam,” 2013. [website]

SOMO & ACCOUNTABILITY COUNSEL, COMPLIANCE ADVISOR OMBUDSMAN (n.d.). [website]

SOMO & ACCOUNTABILITY COUNSEL, WORLD BANK INSPECTION PANEL (n.d.). Read: 1-4. [website]

II. Digging Deeper: Drivers of Corporate Action

A. The Rational Model and Corporate Realities

18. Tue., Oct. 21: Managers' Motivations
- Dorothy Thornton, Robert A. Kagan & Neil Gunningham, *When Social Norms and Pressures Are Not Enough: Environmental Performance in the Trucking Industry*, 43 LAW & SOC'Y REV. 405 (2009). Read: 405-408. [website]
- Robert A. Kagan, Neil Gunningham & Dorothy Thornton, *Explaining Corporate Environmental Performance: How Does Regulation Matter?*, 37 LAW & SOC'Y REV. 51 (2003). Read: 51-78 (skim II.A.-II.C). [website]
19. Thu., Oct. 23: Changing Corporate Behavior: Beyond the Voluntary/Binding Dichotomy
- INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, BEYOND VOLUNTARISM: HUMAN RIGHTS AND THE DEVELOPING LEGAL OBLIGATIONS OF COMPANIES (2002). Read: 7-9. [website]
- Neil Gunningham, Robert A. Kagan & Dorothy Thornton, *Social License and Environmental Protection: Why Businesses Go Beyond Compliance*, 29 LAW & SOC. INQUIRY 307 (2004). Read: 308-309, 319-324, 328-332. [website]
- Joe W. (Chip) Pitts III, *Business, Human Rights, & the Environment: The Role of the Lawyer in CSR & Ethical Globalization*, 26 BERK. J. INT'L L 479 (2008). Read: Part IV (485-489). [website]
- Harold Hongju Koh, *Bringing International Law Home*, 35 HOUS. L. REV. 623 (1998). Read: 627-636. [website]
- Examples of how companies can "internalize" norms: DANISH INSTITUTE FOR HUMAN RIGHTS & HUMAN RIGHTS AND BUSINESS PROJECT, HUMAN RIGHTS COMPLIANCE ASSESSMENT (HRCA) QUICK CHECK (2006). Read: 84-86. [website]
20. Tue., Oct. 28: Engaging Companies to Promote Change
- Business for Social Responsibility, "Our Mission and How We Work" (excerpt) (n.d., last visited Oct. 22, 2013). [website]
- Faris Natour, Brief Biography. [website]
- BUSINESS FOR SOCIAL RESPONSIBILITY, APPLYING THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS TO THE ICT INDUSTRY: VERSION 2.0: TEN LESSONS LEARNED (2012). Read: 3, 5-9, 11-12. [website]
- BUSINESS LEADERS INITIATIVE FOR HUMAN RIGHTS ET AL., A GUIDE FOR INTEGRATING HUMAN RIGHTS INTO BUSINESS MANAGEMENT (1st ed. 2006). Read: Excerpts from pages 11, 16-17, 19, 22-27. [website]
- Guest speaker:**
Faris Natour,
Director, Human Rights, Business for Social Responsibility

21. Thu., Oct. 30:
Internal Influences on
Company Behavior

Note: *Organizational Irrationality and Corporate Human Rights Violations*, 122 HARV. L. REV. 1931 (2009). Read: 1931-1941. [website]

Review:

From Class 5: Lynn Sharp Paine & Mihnea C. Moldoveanu, *Royal Dutch/Shell in Nigeria (A)*, Harvard Business School Field Case Study No. 9-399-126, rev. Feb. 5, 2009.

From Class 6: SHELL GROUP, PROFITS AND PRINCIPLES: DOES THERE HAVE TO BE A CHOICE? (1998). Read: 2 (first page of “Introduction”), 5-7, 36-37 (excerpted copy on website).

From Class 6: GOVERNMENT OF THE UNITED STATES & GOVERNMENT OF THE UNITED KINGDOM, THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS (2000).

B. Ruggie, The Guiding Principles, and Beyond

22. Tue., Nov. 4:
The Subcommission
Norms and Ruggie’s
Diagnosis

Scott Jerbi, *Business and Human Rights at the UN: What Might Happen Next?*, 31 HUM. RTS. Q. 299 (2009). Read: 304-306. [website]

United Nations Sub-Commission on the Promotion and Protection of Human Rights, “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights,” U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). [website]

David Kinley, Justine Nolan & Natalie Zerial, “*The Norms are dead! Long live the Norms*”: *The politics behind the UN Human Rights Norms for corporations*, in THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW 459 (Doreen McBarnet et al. eds., 2009) (excerpts). [reader]

John G. Ruggie, Opening Remarks to Geneva Consultation, Oct. 5, 2009. Read: 1-6. [website]

John G. Ruggie, “Protect, Respect, and Remedy: A Framework for Business and Human Rights,” Report to the United Nations Human Rights Council, U.N. Doc. A/HRC/8/5 (2008). Read: paras. 1-26. [website]

NOTE: Ruggie has said that the ultimate goal of his efforts as Special Representative was to “achiev[e] the maximum reduction in corporate-related human rights harm in the shortest possible period of time.” Source: John G. Ruggie, Remarks to Sir Geoffrey Chandler Speaker Series, Jan. 11, 2011.

23. Thu., Nov. 6:
The Ruggie Process
and the Guiding
Principles
- John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 AM. J. INT'L L. 819 (2007). Read: 838-840. [website]
- JOHN GERARD RUGGIE, JUST BUSINESS: MULTINATIONAL CORPORATIONS AND HUMAN RIGHTS (2013). Read: 128-32, 141-52, 157-58. [website]
- John G. Ruggie, Remarks to Sir Geoffrey Chandler Speaker Series, Royal Society for the Encouragement of Arts, Manufactures and Commerce, Jan. 11, 2011. Read: Excerpts from 5-11. [website]
- David Bilchitz, *The Ruggie Framework: An Adequate Rubric for Corporate Human rights violations?*, 7 SUR 199 (2010). Read: 215-218. [website]
- Jonathan Kaufman, *A Blueprint for Responsible Conduct: What I Like About Ruggie's Guiding Principles*, EARTHRIGHTS INTERNATIONAL (blog), Apr. 4, 2011. [website]
- Jonathan Kaufman, *Ruggie's Guiding Principles Fail to Address Major Questions of Obligations and Accountability*, EARTHRIGHTS INTERNATIONAL (blog), Apr. 5, 2011. [website]
- John G. Ruggie, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," U.N. Doc. A/HRC/17/31 (Mar. 21, 2011). Read: "General principles" (on p. 6) and bolded text of the principles themselves (bolded), plus commentary to Principle 2 (on p. 7). Unbolded commentaries to the other principles are merely recommended, not required. [website]

**Tue., Nov. 11:
VETERANS DAY –
no class**

24. Thu., Nov. 13:
Beyond Ruggie: The
Guiding Principles
and Multistakeholder
Initiatives"
- Guest speaker:
Justine Nolan,
Deputy Director,
Australian
Human Rights
Center, former
Director,
Business and
Human Rights
Program, Human
Rights First**
- Scott Jerbi, *Taking Stock: The Business and Human Rights Agenda is Gaining Ground but Stronger Accountability and U.N. Leadership is Still Needed*, INSTITUTE FOR HUMAN RIGHTS AND BUSINESS COMMENTARY (online), June 10, 2013 (excerpt). [website]
- Mazars & Shift, "Developing Global Standards for the Reporting and Assurance of Company Alignment With the UN Guiding Principles on Business and Human Rights: A Discussion Paper," May 1, 2013. Read: Excerpt from 3, 5-10. [website]
- International Trade Union Confederation, Statement on The Shift-Mazars Discussion Paper on "Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights," July 2013. Reads: Excerpt from 3, 5-6. [website]
-

III. Looking Forward: Technology Companies, Free Speech, And Privacy

25. Tue., Nov. 18: Who Decides? Censorship, Public and Private
- Jeffrey Rosen, *Google's Gatekeepers*, N.Y. TIMES, Nov. 30, 2008. [website]
- Claire Cain Miller, *Google Has No Plans to Rethink Video Status*, N.Y. TIMES, Sep. 14, 2012. [website]
- Dan Levin, *New Scrutiny on Censorship Issues for U.S. Companies in China*, N.Y. TIMES, Mar. 2, 2010. [website]
- Jillian C. York, *Untouched by the First Amendment*, N.Y. TIMES ROOM FOR DEBATE, Aug. 20, 2013. [website]
- Somini Sengupta, *Twitter Yields to Pressure in Hate Case in France*, N.Y. TIMES, July 12, 2013. [website]
- GLOBAL NETWORK INITIATIVE, WHO WE ARE, WHAT WE DO, WHY IT MATTERS (n.d.). [website]
- GLOBAL NETWORK INITIATIVE, PRINCIPLES ON FREEDOM OF EXPRESSION AND PRIVACY (n.d.). [website]
- GLOBAL NETWORK INITIATIVE, IMPLEMENTATION GUIDELINES FOR THE PRINCIPLES ON FREEDOM OF EXPRESSION AND PRIVACY (n.d.). Read: Section 3. [website]
- YouTube Community Guidelines, at http://www.youtube.com/t/community_guidelines (n.d., last visited Oct. 23, 2013). Expand and read all Community Guideline Tips at bottom of page. [website]
- Watch: YouTube video: From beginning to 2:25 (2 mins, 25 seconds in): "PKK Are Not Terrorists They Are Freedom Fighters," at <http://www.youtube.com/watch?v=8ouv0A6ZSXY>. [website]
-
26. Thu., Nov. 20: Surveillance I: Demanding Dictators
- Rainey Reitman, *Cisco and Abuses of Human Rights in China: Part 1*, DEEPLINKS (blog), Aug. 22, 2011. Read: Excerpts. [website]
- Hu Kunming, *A History of the "Yahoo! Incident"*, 1 CHINA RTS. FOR. 38 (2008). Read: 38-39part¶1. [website]
- Guest speaker from information and communications technology industry, to be announced.**
- Vernon Silver & Ben Elgin, *Torture in Bahrain Becomes Routine With Help from Nokia Siemens*, BLOOMBERG MARKETS, Aug. 22, 2011. [website]

27. Tue., Nov. 25:
Surveillance II:
Snowden and
Beyond --
Companies and the
NSA

Browse: *Timeline of Edward Snowden's Revelations* (online graphic), AL JAZEERA AMERICA (online), n.d. (June 2014), at <http://america.aljazeera.com/articles/multimedia/timeline-edward-snowden-revelations.html>. [website]

Charlie Savage, Claire Cain Miller & Nicole Perlroth, *N.S.A. Said to Tap Google and Yahoo Abroad*, N.Y. TIMES, Oct. 30, 2013. [website]

James Risen & Laura Poitras, *N.S.A. Report Outlined Goals for More Power*, N.Y. TIMES, Nov. 22, 2013 (excerpts). [website]

Claire Cain Miller, *Tech Companies Concede to Surveillance Program*, N.Y. TIMES, June 7, 2013. [website]

Glenn Greenwald, Ewen MacAskill, Laura Poitras, Spencer Ackerman & Dominic Rushe, *Microsoft handed the NSA access to encrypted messages*, GUARDIAN, July 11, 2013. [website]

Charlie Savage, *Phone Company Pushed Back Against N.S.A.'s Data Collection, Court Papers Show*, N.Y. TIMES, May 14, 2014. [website]

Claire Cain Miller, *Revelations of N.S.A. Spying Cost U.S. Tech Companies*, N.Y. TIMES, Mar. 21, 2014. [website]

Charles Arthur & Dominic Rushe, *NSA scandal: Microsoft and Twitter join calls to disclose data requests*, GUARDIAN (online), June 12, 2013. [website]

David E. Sanger & Nicole Perlroth, *Internet Giants Erect Barriers to Spy Agencies*, N.Y. TIMES, June 6, 2014. [website]

Recommended:

Michael P. Lynch, *Privacy and the Threat to the Self*, N.Y. TIMES, June 22, 2013. [website]

Stewart Baker, *Be Afraid of the Privacy Advocates*, N.Y. TIMES ROOM FOR DEBATE, May 23, 2014. [website]

**Thu., Nov. 27: NO
CLASS: Happy
Thanksgiving!**

28. Tue., Dec. 2:
Conclusion

No new readings.
