



Stakeholders Rather than Shareholders: On the Human Rights Obligations of Business

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- (1) The Universal Declaration of Human Rights
- (2) Shareholder vs. Stakeholder Understanding of Business
- (3) Human Rights and Business: the Idea of Human-Rights Due Diligence
- (4) Moral Leadership in Business

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December 10, 1948: Eleanor Roosevelt, Chair of UN Human Rights Commission

Human rights

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Every single person deserves certain protections and provisions, and making sure of that is a globally shared responsibility

Formulating a basic stance on human equality, based on dignity



SAN FRANCISCO

1945

Issue-specific
predecessors:
transnational
movements
formulated in
terms of rights

Anti-slavery movement

Labor movement

Women's emancipation movement

Red Cross and other humanitarian efforts

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Anti-slavery movement

Labor movement

Women's emancipation movement

Red Cross and other humanitarian efforts

Human-rights movement of the 20th-century
became umbrella to all of these

Roughly speaking

- (1) Predecessor movements
- + (2) calamities of 20th century (world wars, Great Depression)
- + (3) new thinking about state possibilities in New Deal and elsewhere

→ UN/UDHR/human rights movement



SAN FRANCISCO

1945



December 10, 1948: Eleanor Roosevelt, Chair of UN Human Rights Commission

Preamble bases rights
on non-religious
foundations – trying
to be inclusive

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PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

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End of preamble declares an educational mission

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Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

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Universal Declaration of Human Rights



In addition to extensive civil and political rights, social security provisions are substantial

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Article 22.

Everyone, as a member of society, has the **right to social security** and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the **economic, social and cultural rights indispensable for his dignity and the free development of his personality.**

(...)

Article 25.

(1) Everyone has the right to a **standard of living adequate for the health and well-being of himself and of his family**, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.



UDHR itself is not a legally binding document

International HR movement: achievements

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- Millions globally identify with HR causes, thousands are professional HR workers or sophisticated volunteers
- Substantial progress in international law, new institutions (ICC)
- Much human right litigation in regional and domestic courts
- Large number of local, national, international NGOs
- Increasing emphasis on HR education in schools, colleges, law schools



Chilean human rights superstars
(from across political spectrum)

Alejandro Álvarez
(1868-1960)



Hernán Santa Cruz
(1906-1999)



Michelle Bachelet
(*1951)



By coincidence: visiting Harvard on Oct 18, 2019



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In the background: neoliberalism of Friedrich August von Hayek and Milton Friedman –
leave as much to markets as possible





Chicago Boys circa 1957, left to right: Luis Arturo Fuenzalida, Alberto Valdés, Larry Sjaastad, Pedro Jeftanovic, and Sergio de Castro.



Shifts from pre-neoliberal period

Weakening regulations, social safety nets, and unions; outsourcing government functions to private contractors; offshoring production; encouraging the ascendance of finance; and stipulating that maximizing shareholder value was primary if not sole purpose of corporations

1976 paper with now more than 100,000 citations that transformed neoliberal ideas into business strategy – formulated shareholder primacy, linking CEO compensation to stock performance

**Theory of the Firm: Managerial Behavior,
Agency Costs and Ownership Structure**

Michael C. Jensen
Harvard Business School
MJensen@hbs.edu

And

William H. Meckling
University of Rochester

Shareholder primacy
contributed to explosion in
executive compensation
and stagnation in workers'
wages, emphasis on short-
term performance rather
than long-term health of
firms – and of societies in
which they operate

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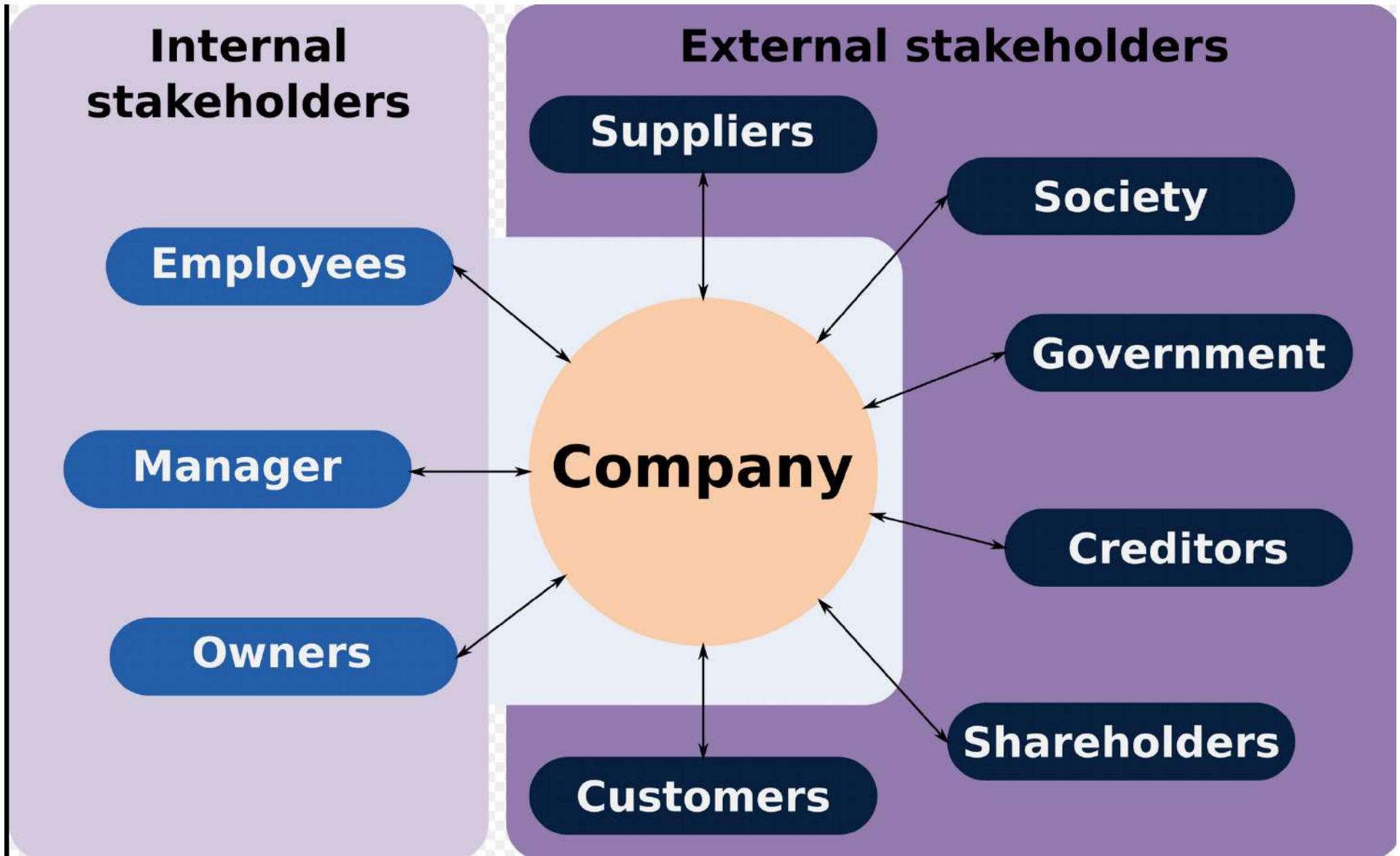
Eventually there was much resistance to doctrine of shareholder primacy

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- Corporate Social Responsibility movement
- Eventually UN Global Compact to bundle and focus such initiatives
- Growing out of Global Compact, principles of ESG investing (combining metrics of firms' **E**nvironmental, **S**ocial, and corporate **G**overnance practices with financial analytics in portfolio construction)
- By end of 2018, ESG investing accounted for 25% of all assets under management globally

From shareholder to
stakeholder capitalism

- Ideas around such initiatives gave rise to thinking about corporations in terms of stakeholders (of which shareholders are one group)
- Stakeholders: all who are substantially affected by corporation's behavior



From shareholder to
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- Ideas around such initiatives gave rise to thinking about corporations in terms of stakeholders (of which shareholders are one group)
- Stakeholders: all who are substantially affected by corporation's behavior
- Ultimately this leads us to 2011 UN Guiding Principles on Business and Human Rights

Stakeholder-
understanding of
capitalism
increasingly endorsed

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- E.g., in 2019, U.S. Business Roundtable issued new statement on “purpose of corporations,” signed by 181 of 200+ membership
- In British Academy’s 2019 report “The Future of the Corporation”
- In World Economic Forum 2020 Davos Manifesto

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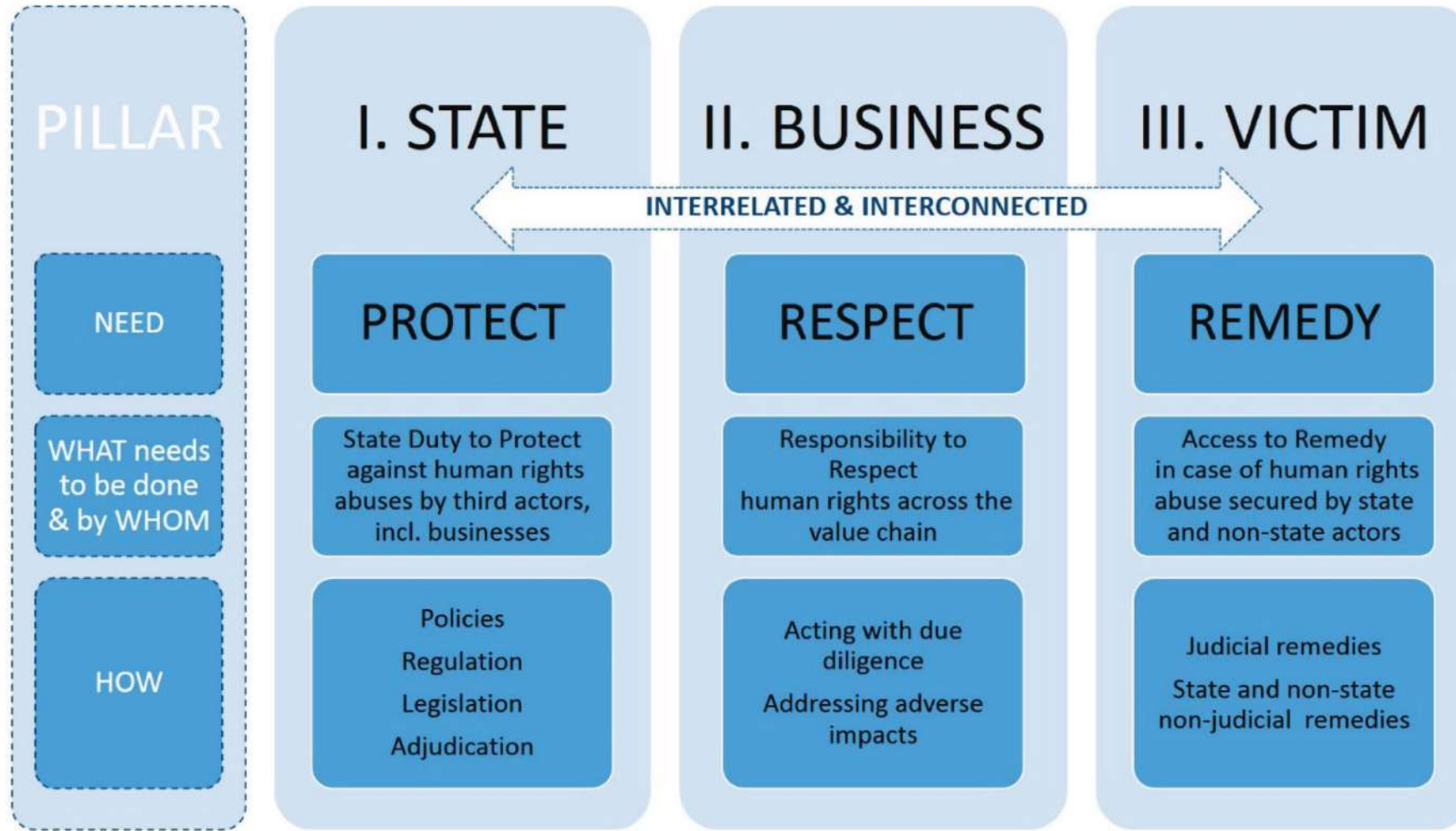
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2011 UN Guiding
Principles of Business
and Human Rights
(UNGPs)

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- First time UN issued guidance to states and firms on respective duties and responsibilities in relation to business and human rights
- Endorsement elevated UNGPs beyond pure voluntarism, into domain of “soft law”
- Formulated concept and practice of multi-fiduciary obligations of corporate management and boards

UN Guiding Principles on Business and Human Rights – schematic overview



POLICY	DUE DILIGENCE PROCESSES				ACCESS TO REMEDY
Adopt a policy commitment to respect internationally recognised human rights	Identify actual and potential negative outcomes for people, arising from investees	Prevent and mitigate the actual and potential negative outcomes identified	Track ongoing management of human rights outcomes	Communicate to clients, beneficiaries, affected stakeholders and publicly about outcomes, and the actions take	Enable or provide access to remedy

Human rights due diligence

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- “Whole business” approach:” success results from company’s governance, leadership and culture – cannot be achieved on basis of mere checklists and compliance
- Reflects general categories of stakeholder – employees, suppliers, customers and communities – but avoids common critique that these categories are too expansive, and interests of members too varied, for executives to consider in deliberations

Human rights due diligence

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- For committed businesses, social audits in factories and farms are not a policing exercise of suppliers aimed at forcing short-term fixes
- Instead it is process of discovery that looks to understand how various factors and incentives may drive workplace abuses, including whether and how their own purchasing (or other) practices may be part of problem

Work in progress

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- Dynamic mix of approaches by states and corporations needed to transform how businesses behave on a global scale
- Both mandatory and voluntary measures – encompassing everything from authoritative guidance for business, to positive incentives, to sanctions and appropriate forms of liability

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Moral Leadership

Is about identifying and tackling challenges that tear society apart – which in Chile presumably includes inequality and a strong sense of exclusion that many citizens have

Is about making sure those are heard who are normally ignored and not seen at all

Involves corporate managers and board members – to take all stakeholders seriously in a spirit of human-rights due diligence

Moral Leadership

Is also very rewarding

You help create an inclusive and socially and environmentally sustainable system that secures social peace

Gabriela Mistral, Chilean Nobel Laureate, about her country:
“The whole land is like one favored spot of human life.”



Gabriela Mistral, Chilean Nobel Laureate, about her country:

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Strong moral leadership in business and a stakeholder understanding of capitalism in one way of keeping it so





THANKS FOR YOUR ATTENTION