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## The Alchemy of Business & Human Rights (Part II): A Pendulum Swing?

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In the [previous blog in this series](#), we began looking at the alchemy of the new **Business & Human Rights (BHR)** field: the almost mystically successful transformation that occurred when these two worldviews were brought to a space — the magic “&” — which traded antagonism for mutual respect and cooperation. But we also reviewed some long-standing criticisms, and some new, more reflective concerns about what the relationship hidden in the “&” means for core human rights values and indeed the very nature of BHR as a human rights field. Some of these concerns, we noted, are coming from the most prominent voices in the field.

### John Ruggie on being part of the solution — and part of the problem

One example is [a recent public letter](#) by BHR “founder” Prof. John Ruggie himself, addressed to the new [Global Commission on Business and Sustainable Development](#). The Commission is a new institution aiming to “investigate how businesses can realise significant long-term economic rewards” of sustainable development. It was launched from the altitudes of Davos, Switzerland at this year’s [World Economic Forum](#). A review of the new Commission’s website leaves the impression that it has taken the corporate human rights empowerment and optimism that BHR has nurtured over the years and dosed it up a notch; one prominent blow-up quote from Commissioner and former UNDP chief Mark Malloch-Brown states that “A massive prize awaits business if it successfully ushers in an era of shared prosperity and increased sustainability.” Another by Commissioner and Unilever CEO Paul Polman talks about the “trillions of dollars [in] new markets” that Polman believes can and should be “unlocked” through sustainable development.

While collaborative and optimistic in tone, as one would expect from a famous bridge-builder like Ruggie, his letter nonetheless gets rather confrontational as it expresses some alarm at the new Commission’s framing of the “business case”:

[W]hen it comes to the social side of the development picture too many companies are quick to jump to promotional initiatives, skipping the essential starting point of reducing negative impacts on people associated with their own business activities and value chains. . . . Too many companies today put resources into social development initiatives that are worthy on their face, while ignoring serious negative impacts on people in their own operations and value chains. So they end up giving with one hand while taking away—or enabling others to do so—with the other.

This is the language of BHR skeptics, making its appearance under Ruggie’s byline rather noteworthy. Ruggie has moved from being the UN Special Representative for BHR to serving as chairman of the [Shift Project](#), whose mission is “Putting Principles into Practice” and which “work[s] with a small number of select business participants that are serious about implementation of the [UN Guiding Principles on Business and Human Rights](#)” (UNGPs). Shift lists a few such participants, including marketing powerhouses as Coca-Cola, PepsiCo, H&M, Heineken, and L’Oréal. Ruggie, who is likely up to his elbows in the hard work of convincing these companies to implement the sort of impact-reducing policies he refers to in his letter, probably knows better than anyone what the leaders of these corporations need to hear as the movement enters the next phase of its development, and his letter suggests that it is not a new round of well-varnished optimism about gold at the end of the rainbow.

The insistence that corporations can’t ignore their own negative impacts also carries a deeper message about the corporate role in the overall process. As noted in the [last blog](#), corporations and their executives accepted Ruggie’s invitation to be “part of the solution” with such gusto that it may have led them into something of a hero complex, seeing themselves as responsible for the vindication of rights beyond their own spheres of action, and further as leaders in defining what the vindication of rights means and looks like. These are roles traditionally held by human rights advocates and, more importantly, by affected communities and individuals (“victims”) as a core part of their empowerment, autonomy, and self-determination.

While it is not clear that these roles cannot be shared, it does seem that the balance involved of any such sharing — that magic “&” again — is not completely and mutually understood. There has already been plenty of criticism over the extent to which victims sometimes have to compete for agency or leadership *vis a vis* their own advocates/NGOs. It would hardly be fair to require them to further compete against well-resourced corporations and prestigious CEOs (even apart from the tricky issues raised if the corporation trying to lead the human rights response is the same corporation the community feels abused it in the first place).

**Puvan Selvanathan on the business “moral compass”**

[Another letter](#) that recently rocked the BHR world even harder came from Puvan Selvanathan, one of the five members (until his resignation in the letter) of the [UN](#)

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[Working Group](#) (UNWG). The UNWG is the central public sector actor in the BHR field that essentially replaced Ruggie when his mandate expired and that hosts the [annual UN Forum on Business and Human Rights](#). Selvanathan's resignation was unexpected, as was the almost fiery tone of his [letter](#).

Selvanathan does not comment on the work of the UNWG itself, but focuses on the larger failure of the framework of UN institutions in the field, arguing that Office of the High Commissioner on Human Rights (OHCHR) is “unwelcoming” to business and “entirely ‘stick,’” while the other related entity, the Global Compact, is “solely ‘carrot,’” offering “unconditional association with the UN” and thus “wast[ing] the opportunity to be the authority and chaperone that business urgently seeks on the human rights agenda.” While Selvanathan unequivocally agrees that business is a valuable asset to the human rights agenda, he seems to have serious doubts as to the progress of the field's understanding and use of that asset. Under the heading of a question that is asked all too infrequently in the BHR discourse, namely “Will a business choose to make less profit voluntarily?,” Selvanathan writes:

I have come to understand that businesses are machines designed to do only certain things and will always strive to do them as efficiently and cost-effectively as possible. The loudest calls within a company for higher goals are distant echoes if even a whisper for profit exists. I am deeply wary of CEOs who claim to be guided by a moral compass because they ultimately only navigate waters their shareholders chart.

As with Ruggie's letter, his language is a chill wind across the warm and trusting rhetoric that, as we saw in the [last blog](#), has been the hallmark of BHR. Elsewhere Selvanathan deepens his critique of corporations as not just amoral, but happily immoral if “state-sponsored [judicial] systems allow [them] to behave badly.” Selvanathan puts his weight behind what was, until the BHR era, an uncontroversial truth: it is only by changing rules (and the real consequences of breaking rules) that we can expect any corporation to deviate from the most efficient path to the greatest profit, largely irrespective of consequent human rights issues.

Selvanathan emphasizes that his critique is coming from “inside” the business perspective, given his own lengthy resume as a corporate executive at numerous multinational firms. He wants to respect the business perspective, but not submit to it uncritically. “Business respects boundaries and business craves clarity,” Selvanathan writes. For him, the consequence of this is clear: “if states wish for businesses to respect human rights then what that constitutes **must be made mandatory**.” As described in the [last blog](#), while this idea is hardly foreign to the BHR discourse, the rejection or at least deferral of the notion of truly binding obligations was one of the core compromises that brought businesses to the BHR table in the first place.

### The business of human rights?

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Both Ruggie and Selvanathan raise important questions about the real consequences of corporate leadership in a human rights field. But this may raise another question: is “Business & Human Rights” a human rights field after all? Or is something different, a hybrid that goes beyond human rights, or the impact of business on human rights, to include the business *of* human rights? To what extent is the mission of BHR to infiltrate the world of business with human rights principles and objectives, as is commonly emphasized, versus (or in addition to) infiltrating the world of human rights not just with business thinking, but with business objectives, such as making profit and opening new markets. An important ride-along with this, of course, is business *investment capital*.

Obviously people will have different reactions to the idea of literally capitalizing the human rights agenda. For present purposes, I would ask whether we have a sufficient understanding of and confidence in the terms of the deal. Are we sure that human rights values are sufficiently protected? In other words, whether such a wholesale embrace of their use as inputs in a new human rights market will not unduly erode the *innate* value that they have so successfully represented (as seen in the near universal acceptance of human rights over the last sixty years). And at a more practical level, are we confident that human rights practitioners are prepared to dance the dance with such a famously dynamic, well-resourced, and (for some) seductive partner as multinational business without falling in a secondary or submissive role? Concerns over relationship dynamics are woven throughout the Ruggie and Selvanathan letters, and we will look more closely at resource disparity issues in the next blog in this series.

The letters also reflect more than a little confusion over what the “deliverables” of this deal really are. The substance of the investment being asked of the business community is sound human rights practice (setting aside funding for big conferences and lots of consulting fees, which is a factor not to be overlooked). But what is the return? The easy answer, the answer we want, is that it is human rights results, with a convenient and harmonious companion dividend of additional (or at least sustained) profit. Yet the framing by the Global Commission, found objectionable by Ruggie, suggests that parties to the deal may have distinctly different perspectives on this, while Selvanathan suggests that the only way to trust corporations to achieve human rights results is to assume that they are actually seeking only to achieve profit.

### A pendulum swing?

No one could realistically expect the magic “&” in Business & Human Rights to have struck the right balance between such complex and autonomous worlds on the very first go. What the Ruggie and Selvanathan letters may presage is a recalibration of sorts; although in the real world, changes are less often made by scientific increment than by pendulum swings from side to side, which together hold the promise of an authentic center. I suspect we are seeing such a swing now, and I think it is due. Part of the effort will involve reexamining old compromises, like the issue of mandatory obligations raised by Selvanathan, and digging much deeper than the current “metrics” go. For example:

- Are we sufficiently confronting corporations’ strategic use of networks of wholly-owned

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subsidiaries to enjoy the benefits and profits of far-flung operations while effectively insulating themselves from liability?

- Even as we introduce new forms of grievance mechanisms, are we empowering communities to make their own choices, including resorting to traditional lawsuits and public pressure mechanisms even if corporations don't like it?
- As [one commentator recently asked](#), as we too lenient in letting corporations “get positive grades for the codes of conduct they sign onto or the community projects they lead without also taking into account the ways that they throw their weight around to avoid accountability, intimidate their critics and co-opt the political process”?

Even the business side of BHR should recognize the importance of periodic testing and recalibration of the BHR formula for its long-term legitimacy and viability. The fact that such prominent voices in the movement are leading the charge, and doing so ahead of the curve, is an impressive display of attentiveness and agility. A stronger and more effective BHR may be on its way.

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