The Business of Human Rights: Patterns and Remedies in Corporate Abuses in Latin America

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ABSTRACT

Businesses are often implicated in human rights violations. Yet the patterns behind the abuses or how to prevent them remain systematically understudied and thus unknown. Under what situations are businesses likely to commit human rights violations? What are the policies or processes that might reduce the likelihood that violations occur? Although states and state-agents are usually considered accountable for human rights violations, the role of businesses in such abuses has received increasing attention. To date, however, no scholar or human rights practitioner has systematically analyzed these abuses.

This paper endeavors to answer those questions using recently gathered data on Latin American corporate violations and accountability efforts in the oil and gas industry. It presents initial findings from systematically collected data on alleged business human rights abuses. In so doing, it makes a preliminary contribution in terms of empirically grounded theory to explain when, why, and where business human rights abuses occur, and to explore the factors that reduce such violations.
INTRODUCTION\textsuperscript{1}

Under what situations are businesses likely to commit human rights violations? Moreover, when are businesses likely to commit human rights violations? And, does the timing of those violations tell us anything about the policies or processes that might reduce the likelihood that violations occur?

Despite the growing concern over in academic, policy, and advocacy circles over corporate human rights violations, scholars, policy makers, and advocates still lack sufficient or systematic evidence to answer these questions. This paper aims to begin filling that gap. We begin by generating testable hypotheses from the literature on business and human rights. Next, we present an original and unique dataset on alleged corporate human rights violations. We use these data to run preliminary tests of the existing hypotheses and to reflect on patterns of abuse and possible ways to reduce such violations.

GLOBAL & CORPORATE EFFORTS TO ADDRESS ABUSE: A BRIEF HISTORY

While discussions about businesses’ respect for human rights have been occurring for some time, this issue is especially prevalent today. Today, corporations have an unprecedented reach with the largest 44 companies generating over 11 percent of global GDP.\textsuperscript{2} Corporations sometimes have a larger GDP than the countries in which they work. With the increased size and influence of corporations, few mechanisms

\textsuperscript{1} This paper is based upon work supported by the National Science Foundation and the Arts and Humanities Research Council under Grant No. 1228519. Any opinions, findings, and

\textsuperscript{2} http://www.globaltrends.com/images/stories/corporate%20clout%20the%20worlds%20100%20largest%20economic%20entities.pdf
are in place to hold corporations responsible and thus, there is increased concern about promoting responsible corporate behavior. Though we still see the ramifications of this “governance gap” in the daily news, efforts to address it have a relatively long history.

As a result of the dissatisfaction with corporate human rights behavior, beginning in the 1970s initiatives emerged to more specifically recognize businesses’ responsibility and accountability for human rights violations. These are often referred to in general terms as corporate social responsibility (CSR).

The initial CSR phase in the 1970s is widely viewed as unsuccessful due to the failure of creating either long-standing or widely agreed upon sets of standards (Sagafi-nejad 2008; Ruggie xvii; 46). Nonetheless, these initial efforts flagged the importance of corporate respect for international human rights. Some examples include the UN established Center on Transnational Corporations (UNCTC 1974), the Organization of Economic Cooperation and Development (OECD)’s Declaration on Decisions on International Investment and Multinational Enterprises and its Guidelines for Multinational Enterprises (1976), and the International Labor Organization (ILO)’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977). The 1977 Sullivan Principles on Apartheid and the 1977 US Foreign Corrupt Practices Act (FCPA) further shows evidence of international mobilization around business and human rights (Mwangi et al. 2013, 205).

Efforts continued in the 1980s and 1990s suggesting that a momentum was set in place. Primarily in response to environmental disasters, industry sectors
adopted initiatives like the Chemical Manufacturers Association’s Responsible Care Program (1984). The MacBride Principles of 1984 were aimed at the conduct of US companies engaged in business in Northern Ireland. The Fair Labor Association (1998) involved an apparel industry response to global attention to Nike’s sweatshop practices. These industry sector efforts signal recognition of CSR. They may also be viewed as strategic action within companies’ control that could offset the demand for binding, costly, and restrictive legislation.

Indeed, most of the global efforts have attempted to influence, rather than control or punish, business behavior. The initiative that has drawn the most attention is the 2000 UN Global Compact under the leadership of UN secretary-general Kofi Annan. One estimate suggests that the Global Compact has adherence in nearly every country of the world and 60 percent of the most important businesses (Mwangi et al 2013, 207). Additional efforts have followed and built on the Global Compact, such as the Voluntary Principles on Security and Human Rights (2000) and in 2002 the Kimberley Process Diamond Certification Scheme and the Extractive Industries Transparency Initiative (EITI).

In 2003 the UN Sub-Commission on the Promotion and Protection of Human Rights prepared a controversial document entitled “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.” Ruggie contends that the document overreached in terms of corporate responsibility and that it “found no champions on the [Human Rights] Commission” and was thus dropped (2013). Mantilla (2009) highlights the rejection by firms and states in contrast to support from the NGO community behind the
binding nature of the Norms. In 2005 the UN Commission on Human Rights (later Human Rights Council) created a Special Representative to investigate business and human rights (Ruggie xi, xviii-xx). By 2011 the Human Rights Council unanimously endorsed the “Guiding Principles” on business and human rights drafted by Special Representative Ruggie and it received widespread support from international governmental organizations (Ruggie xxi).

While NGOs, states, and international actors worked to create a framework with which corporations could be brought into the fold, corporate actors have also begun to pay increased attention to their own human rights track record. Some corporations engaged in this discussion only after substantial public outcry. Nike, for example, made a complete turn about in responsible sourcing after the media campaign criticized its use of sweatshops in the 1990s. Coca-Cola, too, has topped the list of corporations taking a more pro-active stance on environmental issues after communities protested the company’s water usage practices. More recently, Apple—somewhat begrudgingly—began to work with the ILO on improving labor practices at FoxConn, its largest supplier of Apple products.

These examples are prominent, in large part, because they are global consumer brands. While in an earlier era corporations that were outside of the consumers’ purview could avoid such criticisms, today a wider network of businesses are under public scrutiny and are responding accordingly. Many businesses are taking an active role as Global Compact members or as participants in industry-level pacts. While some are optimistic about the possible sea change at hand in terms of businesses’ respect for human rights, others continue to be
skeptical. Below, we explore some of the literature on business and human rights to identify the causal explanations behind businesses’ respect for, or violation of, human rights.

THEORY AND HYPOTHESES

Businesses tend to be pragmatic, responding to opportunities and costs. The attention corporate human rights violations and efforts to reduce them, have, thus, raised the costs to businesses and they have backed new opportunities to reduce those costs. The oft-cited quote from Milton Friedman that “The social responsibility of business is to increase its profits,”3 thus demands reconsideration. Businesses may best increase their profits through CSR.

Not all businesses would necessarily agree and those that do have only recently adopted this view. In this section we assess two broad approaches to understanding what, when and why businesses abuse human rights: the corporate logic approach and the state and society approach. Moreover, we will also hypothesize about the timing of those violations in an effort to better understand the policies or processes that might reduce the likelihood that violations occur.

Corporate Logic Approach

Previous research on corporate behavior shows that businesses have not fully embraced the global norm of respect for human rights. A study by Lim and Tsutsui (2012) finds “that organized hypocrisy is a stronger force in global CSR” than a substantive commitment to CSR that might change behavior (89). Further evidence

of the merely ceremonial nature of CSR can be found in a study of the largest 100 firms in Europe. While 90 percent included some kind of ethical business language, the language fell short of human rights protections. As the study states, “when it comes to human rights, it is less effective” either due to lack of understanding of the value of human rights, fear of investigation, or complexity of reporting.\(^4\) And yet some businesses are more likely to respect human rights than others. We suggest a number of potential firm-level causal explanations could be at play. We consider in particular firms’ and sectors’ reputation and visibility, the competitive environment in which they operate, and their own particular culture.

**Corporate Reputation and Visibility**

Numerous academic studies and industry surveys have documented the link between corporate reputation and the bottom line. Deitelhoff et al. (2010, 208) state this argument clearly: “the more the market success of a company depends on its image and reputation, the more the company will engage” in CSR. These companies are the most vulnerable to domestic and global civil society campaigns in part because of the negative attention they can bring to the company. Corporations are even more concerned about their reputation today as images and information can spread at unprecedented speed with the widespread use of Facebook and Twitter. This approach assumes therefore that companies will be most likely to adopt CSR strategies to avoid negative reputational concerns.

There are multiple ways in which firms might consider themselves vulnerable. Those with reputational concerns tend to produce end-consumer

products with brands that are widely known. Deitlhoff et al. argue that “Operating in a market segment where customers possess awareness or being ranked as the market leader function as enabling conditions for corporate engagement” in CSR leadership initiatives (2010, 208). These are likely to be found in the food and beverage sector, such as Nestles, or high recognition apparel brand names like Gap and Nike, or globally recognizable oil concerns, as Shell, Texaco/Chevron, and BP have shown. Thus, the logic follows that vulnerable and thus compliant companies are those that may be held to a higher standard because of their visibility, expectation of integrity, or degree of responsibility.

\[ H1: \text{Those companies with greater visibility and thus, greater reputational concerns, will be less likely to violate human rights.} \]

**Competitive Utility Maximization**

We have discussed the issue of corporate image above. Firms, however, operate in a competitive environment. Deitlhoff et al. suggest that corporations operating in markets with many providers are less visible and therefore incentives for CSR are lower (see Wolf et al. 2007: 309; Deitlhoff et al. 2010, 217). High levels of competitiveness, in other words, may actually decrease incentives to behave responsibly since it would be difficult to differentiate between companies. Thus, we hypothesize that:

\[ H2: \text{In a more competitive a market, firms will be less likely to respect human rights.} \]

On the other hand, the rational logic of other firms may lead them to “do well by doing good.” A body of scholarship sidesteps the normative debate about the role of
business and suggests, instead, that CSR and profitability need not be discrete spheres. Instead, both social and profit motives improve the economic competitiveness of the firm (Porter and Kramer 2006; 2011).

Deitelhoff et al. claim that there is some market-level threshold at which an individual firm is more likely to comply with human rights norms once its competitors also do so. “To reduce competitive losses, compliance with human rights is more likely the more competitors comply as well. This amounts to strong incentives for the more vulnerable companies to engage in norm-entrepreneurship” (234). This firm-level socialization effect, in other words, would lead us to expect firms to learn from their competitors and behave according to the industry norm.

\textit{H2a: Firms learn from their competition; if a majority of firms respect human rights in a given market segment, individual firms will also be less likely to commit human rights violations.}

\textbf{Corporate Culture}

The reputation and visibility hypothesis suggests that corporations are motivated by their consumers; the competitive utility maximization hypothesis suggests that corporations are motivated by their competitors; this approach—the corporate

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5 Margolis and Walsh (2003) review this scholarship, finding that of 127 articles published between 1972 and 2002 most report synergies between social responsibility and profitability. See Blowfield and Frynas (2005) for an important discussion regarding the lack of serious scholarship on the causality of corporate profits and socially responsible behavior.

6 The researchers further state, “the market environment also plays a role in company engagement. As initial findings from the tourism sector suggest, a highly competitive market with intensive price competition, a high number of company take-overs and horizontal and vertical integration seems to have a restricting influence on corporate engagement. It can be assumed that most participants decide to concentrate on economic performance and only the market leaders and corporations that operate in specific sub-segments of the market will engage” (Deitelhoff et al. 2010, 213; see also Haufler 2001: 662).
In contradiction to Friedman, scholarship from the business ethics literature suggests that private enterprise has a purpose and obligation beyond its economic and legal responsibilities (Abrams 1951; Carroll 1981). Businesses become ‘good’ corporate citizens by contributing resources to the community and improving individuals’ life quality (Buchholz 1998).

Firm leadership might play a strong role in determining corporate behavior. Some firms begin with a philanthropic mission. The business model of TOMS shoes, for example, dictates that one pair of shoes will be given to someone in need for each pair of TOMS shoes sold. The founder of Patagonia, Yvon Chouinard, sought to make exceptional products that were not harmful to the environment. Other leaders recognize the firm’s impact and require a substantial shift in company culture. Interface’s, Ray Anderson, realized late in his career that his company’s products were very harmful to the environment and extremely wasteful. Anderson revolutionized the industry by creating carpet tiles, so that only the worn portions would be replaced, thereby reducing overall waste. His company also began creating carpet with environmentally responsible materials. Of course, if corporate culture does not emphasize corporate citizenship, a company could also have a negative performance. Thus, we hypothesize that:

H3: Firm leadership is likely to influence corporate human rights performance.

State & Society Approach
State and society tolerance of human rights abuses is likely to create a permissive atmosphere in which the cost to businesses in committing human rights is low. Where states are permissive, for example, corporations will be less likely to respect human rights. Such permissive environments may result from a range of different factors, however. Where rule of law systems, for example, prevail and states are able to enforce human rights standards, they are likely to increase the costs of businesses to commit violations. The willingness of states to adjudicate these cases depends in part on their dependence, or relative autonomy, on businesses. We thus consider rule of law and political economy considerations in states and societies to understand when and where abuses would be most likely.

*Rule of Law Considerations*

With regard to business and human rights, the rule of law explanation focuses on the role that human rights trials play in strengthening rule of law that, in turn, contributes to stronger democratic (particularly legal) institutions and protections for human rights. When courts put firms on trial, they signal a shift in legal culture away from impunity for human rights violations and toward equal protection under the law, judicial independence, and effective enforcement of law (Huneeus forthcoming; Hilbink 2003). Human rights trials thus contribute to building stronger rule of law in transitional countries, which, in turn, leads to an improvement in human rights and democracy (Acuña and Smulovitz 1997). Firms that previously counted on compliant judges and judicial institutions recognize that shift, and change their behavior accordingly. Scholars have claimed that human rights trials can lead to the “discovery of law” (Smulovitz 2002) and to “rights-enhancing
judicialization” (Epp 1998). By upholding international human rights standards and enforcing them domestically, moreover, the rule of law guarantees certain legal rights and remedies unavailable to citizens in weak rule-of-law systems (Hutchinson and Monahan 1987; Waldron 1999). Some scholars have claimed that even without convictions, courts can strengthen rule of law (Roht Arriaza 2005). We would thus suggest that where courts have investigated or prosecuted businesses for human rights violations, we would see lower levels of violations.

H4: More democratic countries in general, and those with stronger rule of law in particular, will have fewer corporate human rights violations.

There are several types of states, however, that would be less likely to have the sorts of independent judiciaries that could prosecute human rights violations committed by businesses. In particular, authoritarian regimes or countries engaged in civil conflict would be less likely to threaten businesses with prosecution and more likely to turn a blind eye toward such violations or even, in some cases, encouraging them as the cost of doing business or the advantage of eliminating certain subversive groups. We would expect violations to be higher thus in these contexts than in peaceful democracies.

The argument regarding civil conflict is not only about state capacity to enforce. It also considers the business opportunities civil conflicts engender, e.g., investment and financing parties at war, trading in products that are central to the conflict (such as blood diamonds), selling or trading in the tools of war, and providing security services (such as private security and military companies or PSMCs). Yet civil conflict also lowers the cost of businesses engaging in such
activities which Deitlhoff and Wolf (2013, 3) refer to as “exploiting the regulatory gaps left by weak or failing state authorities” (Deitlhoff and Wolf 2010, 3).

\[ H4a: \text{Corporations working in countries with civil conflict will be more likely to commit human rights violations.} \]

Political Economy of Corporate Behavior

The development context in which businesses operate may also affect their tendency to respect human rights. If a particular business or industry is integral to the overall economic health and growth of a country, we would expect that the reliance on those businesses could create a more permissive attitude toward their violations. Likewise, particularly strategic business sectors might find a more permissive attitude toward their violations than less strategic ones. A state that relies heavily upon business in general, or a given investment sector, may look the other way.

This process may be exacerbated when states within the same region find themselves competing for foreign investment in a given industry. Host states, in other words, may not challenge businesses’ operations for fear of establishing a reputation as unwelcoming to business and outside investment. In such instances,

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\(^7\) These scholars suggest that a static notion about civil conflict and business engagement in it fails to explain the full extent of business involvement in human rights violations. Deitelhoff et al. (2010) find that businesses are likely to be engaged in abusive behavior during the conflict itself but are more likely to contribute to peace-building in the aftermath, even where levels of violence are high. Both phases reflect the attitude of businesses about current and future political impact on business. In the conflict phase they hedge their bets on who will be in power at the end of the conflict; in the post-conflict period they are working toward stability. These scholars thus find that the phase of the conflict is important. They also suggest that proximity of the conflict and its intensity shape corporate human rights practices. They claim, however, that these factors interact with other explanations, such as production characteristics and sunk costs (211).
industry leaders may take their operations elsewhere. Thus, countries dependent on business for their development objectives—especially when regional neighbors have a similarly structured economy—would likely keep the costs of violations low. Alternatively, countries that have a more diverse economy may be more likely to encourage respect for human rights, even if doing so increases the cost to businesses. In this scenario, countries are not as reliant on particular businesses and/or industries and may be able to guide business operations.

*H5: Firms operating in countries that rely heavily upon that industry are more likely to commit human rights violations.*

**THE CORPORATIONS AND HUMAN RIGHTS DATABASE (CHRD)**

While scholarship has proliferated, corresponding to the increased attention to the problem and possible remedies, scholars and policy makers still lament the lack of systematic data and analysis on corporate human rights abuses. Some see this absence as impeding the process of tracking such abuses and developing policy initiatives and models to reduce them (Ruggie 2010). Others consider the absence of “systematic knowledge” as an obstacle to hypotheses testing and theory-building (Zimmer 2010, 59). As a result of the absence, data tends to be partial and conclusions are thus tentative.

The existing research has tended to focus on single firms in a particular country or region of a country or small-N comparison of firms or of business sectors. This research tends to consider not only abusive behavior but also often entails a normative approach to how firms or sectors might or should contribute to positive
change: peace, security, environmental protections, improved working conditions, or community development.

There are some recent large-$N$ studies that attempt to explain corporate human rights violations. These too are limited in various ways that our project attempts to overcome. The study conducted by Bernhagen and Mitchell (2010), for example, focuses on 2000 of the largest firms on the Forbes Global 2000 list. This list tends to concentrate analysis of firms in strong democracies (94 percent of the sample), particularly Europe and the US (as well as Japan and India). The researchers, moreover, were mostly interested in the effectiveness of the UN Global Compact in changing firms' behavior. They used Innovest's Global 100 list of countries that complied with environmental, social and political standards for the firms' sector. Lim and Tsutsui (2012) analyzed 99 developing and developed countries in their study to examine the degree to which CSR is ceremonially or substantively enforced by governments. Scholars at Darmstadt University of Technology and the Peace Research Institute Frankfurt, including Deitelhoff and Wolf, studied business behavior in conflict zones between 2005 and 2009 to determine when firms are likely to engage positively in Corporate Security Responsibility (CSecR). Mwangi et al. (2013) focus primarily on the impact of international voluntary principles on corporate behavior. John Ruggie analyzed 320 allegations of corporate abuses between February 2005 and December 2007.8

We attempt to improve on these large-$N$ studies with our own by expanding both the scope and the time horizon of this new dataset. To create the CHRD, we

8 The cases were found in the Business and Human Rights Resource Centre archive (http://www.business-humanrights.org).
have begun with a pilot project focused on Latin America. Our unit of analysis is a corporate abuse allegation (CAA). A team of graduate students code each CAA documented in the Business and Human Rights Resource Centre (BHRRC, www.business-humanrights.org), an archive of allegations of corporations’ human rights violations in all countries of the world from 2000 to the present. This archive has been used in scholarly, legal, and policy-oriented projects due to its strength in documenting the alleged abuse and the response. It thus provides a good starting point for tracking changes in violations over time.

With these data, we are able to study our dependent variable of interest, business human rights violations. Each CAA is determined to have a primary human rights violation, which falls into four categories: Development and Poverty (e.g., access to basic needs, development of local economy; exploitation of land; license to operate; freedom of association/expression); Environment (water, air, land contamination; deforestation; destruction of natural resources); Health (health concerns generally related to corporate activity and/or pollution); and Labor (forced labor, child labor, right to unionize, substandard working conditions). We also capture whether the allegation relates to a particular type of abuse (e.g., arbitrary detention, deaths, disappearances, violence).

In addition to information about the allegation, our custom coding tool also allows our team to capture information about the affected parties and how both the state and the company respond to the allegation, if at all. While we are interested in the initial allegation, our coding tool also asks a series of questions about any judicial and non-judicial remedies for the allegation. Though descriptive data are
presented below for each of these broad areas, they are not analyzed in depth in this paper.

To test the hypotheses outlined above, we also use two additional established data sources. First, we make use of KLD ratings, a well-established evaluation tool for firm corporate social responsibility that is relied upon by investors, social groups as well as academic researchers. The KLD ratings provide fine-grained time-series metrics for firm performance in seven categories of corporate social responsibility. In each category firms receive two evaluations – one for their strengths and one for their weaknesses. These data have been found to effectively measure past social performance in areas including human rights, the environment, and corporate governance and offer some prediction of future performance.

To measure the role of the state on corporate behavior, we also use a number of widely accepted measures for both democracy and human rights. The first measure, “Polity” from the data set Polity IV (Marshall and Jaggers 2013), is a weighted score derived from coding the competitiveness of political participation, the regulation of participation, the openness and competiveness of executive recruitment, and constraints on the executive. This measure is especially useful owing to its comprehensive temporal and geographical coverage.

We also employ two measures of human rights. The Physical Integrity Rights Index (PHYSINT) generated by Cingranelli and Richards (2008; 2010) and the Political Terror Scale (PTS) (Gibney et al. 2006) use the same sources for their data: Amnesty International (AI) Reports and the U.S. State Department (USSD) Country
Reports on Human Rights Practices. Despite these similarities, the two databases measure human rights in different ways. Cingranelli and Richards’ PHYSINT provides a scale to measure government protection against specific human rights violations, including torture, extrajudicial killing, political imprisonment, and disappearance. PTS provides a “terror scale” indicating where a country falls in terms of whether terror has expanded to the entire population or citizens are relatively safe and protected from wrongful imprisonment and torture.

The Oil and Gas Sector
Our study has begun with a focus on the oil and gas industry in Latin America for a number of specific reasons. First, oil and gas is a highly relevant sector. Despite increased awareness and concern about oil-dependence and the environmental impacts of its use, demand for oil continues to rise. Second, the oil industry has a long history in Latin America, as the region is rich with natural resources. After a period of nationalization, the 1990s were marked with increased investment in oil due to the re-entry of private business into the industry in most countries (notable exceptions are Venezuela and, more recently, Bolivia). This history allows us to assess how businesses’ behavior might change over time. Third, Latin America is home to a few emblematic oil and gas cases. The *Aguinda v. Chevron/Texaco* was originally filed in 1993 on behalf of 30,000 inhabitants of Ecuador's Amazon region where oil extraction took place. In 2011, the Ecuadorian Supreme Court ruled that Chevron must pay $18 billion in damages relating to a pollution lawsuit; Chevron is contesting the ruling. Not only are these cases interesting in and of themselves, but
they also facilitate our understanding of any spillover effects that might be observed in competitors’ respect for human rights.

Finally, because of this long history of contestation in Latin America and elsewhere, oil companies have also been somewhat proactive in signing on to voluntary initiatives (Voluntary Principles on Security and Human Rights; the Global Compact) and even creating their own (the Extractive Industry Transparency Initiative or EITI). Given the long history of the sector in Latin America, these initiatives allow us to understand their effects, if any, on business behavior. We refer in this paper to the CHRD-LAOG or the Corporate Human Rights Database-Latin American Oil and Gas sector database from which we draw our initial findings.

Data Limitations
Although it provides the single-most systematic source of information on business and human rights abuses, the BHRRC data—and thus, the CHRD—have some important limitations. The BHRRC relies on information gathered from international and country-specific news outlets, NGO reports, and industry reports. In addition, due to staffing changes over time, the BHRRC has focused on some countries more than others. Because of these limitations, we take particular care in terms of the types of conclusions we draw from these data. Because of the media bias in reporting or staffing limitations of the BHRRC, we know that the error terms are not evenly distributed across countries.

We are unable, therefore, to utilize regression analysis and instead focus on t-tests to determine whether there are statistically significant differences between the firms in our sample and those firms often used as a standard benchmark, the
S&P 500. One additional limitation is that many of the firms in our sample are small and privately owned. Even basic data, such as total assets over time, are difficult to acquire. Thus, any analysis below using KLD or Compustat data only include those firms that are assigned a CUSIP unique ID, a total of 66 firms out of the 177 firms that are currently in the CHRD-LAOG. Before we delve into the data analysis, however, we present some descriptive data to outline patterns and trends of the CHRD-LAOG.

**PATTERNS AND TRENDS**

Utilizing the BHRRC as the primary data source, and supplementing it with additional online sources, we found 225 allegations of corporate human rights abuse in the oil and gas sector in Latin America between 1980 and 2013.\footnote{Eight of the 225 events began before 1980.} Figure 1 illustrates the distribution of these events over time. On one hand, the figure shows that more and more allegations are made today than in previous decades. We recognize that this higher reporting rate does not necessarily mean a higher level of abuse, but rather a more conducive environment for making allegations. For the reasons raised above in terms of data-gathering bias, caution is warranted in terms of the patterns of allegations.
Of the 225 allegations in the CHRD-LAOG, 36 percent of the cases are about environmental concerns while nearly the same percentage of all cases (35 percent) relate to community development and poverty. Only eight percent of cases deal with health issues. One in five (21 percent) cases are related to labor issues. Of all allegations, approximately one in five cases (22 percent) included some type of abuse (e.g., violations of physical integrity). Figure 3 illustrates the breakdown, by category.
Given the high numbers of allegations related to development and poverty and the environment, it is no surprise that almost three in five cases (57 percent) affect the local community (Figure 4). One in five (20 percent) of cases affect workers.

Figure 2. Types of allegations, by category

Figure 3. Portion of allegations with abuse, by category
ANALYSIS AND FINDINGS

In this section, we present our preliminary findings. As discussed above, the data have several limitations that constrain the types of analyses we can conduct. Our concerns about the representativeness of the sample prohibit standard regression analysis. Instead, we conduct basic difference of means tests to assess whether the companies in our sample are statistically different than the standard benchmark. To begin to explore the relationship between state-level variables and corporate behavior, we provide descriptive statistics and correlations.

The first set of hypotheses describes the corporate logic approach to businesses record on human rights. The first hypothesis suggests that those companies with greater visibility and thus, greater reputational concerns, will be less likely to violate human rights. To begin to explore this hypothesis, we simply
assess how many companies in the CHRD-LAOG dataset are also in the S&P500, with the assumption that—absent data on brand recognition—those companies that are larger will be more visible and thus have greater reputational concerns (H1). We would also expect that those companies that are large and visible are also more likely to be included in the BHHRC archive since they will capture the attention of the news media and NGOs. We find, however, that only 15 of the 177 companies in the Latin American oil and gas sector with alleged human rights abuses are included in the S&P500. A few of the companies have an above average number of allegations (e.g., Exxon-Mobile, Chevron) suggesting that allegations might be brought against visible and less visible firms, but there may be a concentration of allegations in those visible firms. It may also be that allegations against a particular company may engender more allegations since NGOs and the news media may seek to show a pattern of systematic abuse. We can, in other words, only partially support H1.

The next hypothesis suggested that the competitive environment might affect corporate behavior. More specifically, we suggested that in a competitive market firms will be less likely to respect human rights because the high level of competition might force firms to cut costs whenever possible. Unfortunately, we do not have a good measure of competitiveness at the country level. Nor can we capture data on the number of companies working in the oil and gas industry by

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10 These companies include: Alpha Natural Resources Inc.; Anadarko Petroleum Corp; Cameron International Corp.; Chevron Corp; ConocoPhillips; Dominion Resources Inc.; ExxonMobil Corp.; Halliburton Co; Marathon Oil Corporation; Peabody Energy Corporation; Range Resources Corp; Southwestern Energy Co.; Sunoco Inc.; Valero Energy Corp; Transocean Ltd.
country-year. As a proxy measure, we use the total oil and gas production in each country-year report and the total number of allegations that occur in that country-year. Our initial inquiry does not support H2. We find that the correlation between allegations per country-year and the total oil and gas production is only 12 percent.

A related hypothesis recognizes the importance and reality of learning from one's competitors (H2a). The literature suggests that firms will learn from their competition. In other words, if the majority of firms in a given sector respect human rights, firms may follow suit and adopt this norm as well. For this particular hypothesis, we assess whether there are differences between our standard benchmark of S&P 500 firms and those firms in the CHRD-LAOG. We utilize the KLD data, described above, and focus on six measures: human rights strengths, human rights weaknesses, environmental strengths, environmental weaknesses, employee relations strengths, and employee relations weaknesses. According to the KLD measures, it appears there are more strengths, but also more weaknesses, for those firms included in the CHRD-LAOG. Overall, Table 1 illustrates that environmental weaknesses are the greatest concern among all of the indicators listed here. While we cannot say whether learning is occurring within the two groups listed here, it is quite clear that those firms in the CHRD-LAOG are not learning from the large, industry leaders in that the average measure for weaknesses are greater than the S&P500 firms. Alternatively, the S&P500 firms are not learning from the CHRD-LAOG firms in that their measures of strengths are lower. While the CHRD-LAOG firms have worse performance in terms of concerns, they perform better than the
S&P500 firms in terms of strengths—except in the category of human rights strengths. There, we see the S&P500 firms perform better.

Table 1. KLD Averages: Social and Environmental Measures

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<th>S&amp;P 500</th>
<th>CHRD-LAOG</th>
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<td>0.324</td>
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<td>Community relations weaknesses</td>
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</tr>
<tr>
<td>Environmental strengths</td>
<td>0.606</td>
<td>0.707</td>
</tr>
<tr>
<td>Environmental weaknesses</td>
<td>1.055</td>
<td>2.042</td>
</tr>
<tr>
<td>Employee relations strengths</td>
<td>0.652</td>
<td>0.783</td>
</tr>
<tr>
<td>Employee relations weaknesses</td>
<td>0.869</td>
<td>0.984</td>
</tr>
</tbody>
</table>

Our next hypothesis suggests a strong role for corporate culture on the pattern of abuse. Unfortunately, individual-level data on firms’ attitudes or the attitudes of their CEOs are difficult to access. Here, we utilize the KLD data again and use corporate governance as a proxy for firm leadership. We assume that those firms that are transparent, have clear governance structures and generally practice ethical business are also likely to have strong corporate leadership. Again, we compare the differences between the S&P 500 firms and the CHRD-LAOG. The results in Table 2 are similar to those above. The CHRD-LAOG firms have both greater governance strengths—transparency, political accountability, lack of corruption and instability, etc.—and greater weaknesses than the S&P500, including: controversial investments, concerns regarding business ethics, lack of transparency, and accounting concerns. These findings suggest that it is difficult to generalize about corporate culture and its impact on human rights violations.

Table 2. KLD Averages: Corporate Governance

<table>
<thead>
<tr>
<th></th>
<th>S&amp;P 500</th>
<th>CHRD-LAOG</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate governance strengths</td>
<td>0.791</td>
<td>0.911</td>
</tr>
</tbody>
</table>
The next two hypotheses discuss how the state may affect the conduct of
corporate actors. The context in which corporations are working, in other words, is
likely to influence their behavior. We begin by calculating simple correlations
between democracy and human rights measures, explained above, and the number
of allegations in a given country for the duration of the dataset.

We find a negative correlation between polity2 scores—a measure of
democracy—and the number of corporate human rights violations (Table 3). This
finding is in line with our hypothesis in that it illustrates that stronger democracies
are correlated with fewer allegations of human rights abuse. We would caution
against suggesting that we have confirmed the hypothesis, however, since we would
expect a higher – and not a lower -- number of allegations in democracies where
victims and their legal representatives feel that they have a chance of winning their
claims against companies. The picture becomes more complicated, moreover, when
we turn to the measures for human rights. The first measure, Physical integrity, has
a negative correlation. That is, when states respect human rights, there are fewer
allegations of corporate human rights abuse. The final two human rights measures,
in contrast, suggest a positive correlation. The finding from the analysis of both PTS
measures suggests that the better a country scores on the PTS measures, the more
likely we are to see allegations of corporate human rights abuse.\textsuperscript{11} These

\textsuperscript{11} Note that the PTS measures were rescaled so that a higher value indicates more
respect for human rights.
contradictory findings complicate our ability to make any convincing findings regarding the democracy and human rights environment and human rights abuses.

Table 3. Correlations between allegations and democracy/HR measures

<table>
<thead>
<tr>
<th></th>
<th>Number of Allegations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Polity2</td>
<td>-0.141</td>
</tr>
<tr>
<td>Physical integrity</td>
<td>-0.623</td>
</tr>
<tr>
<td>PTS, Amnesty</td>
<td>0.321</td>
</tr>
<tr>
<td>PTS, State Dept.</td>
<td>0.218</td>
</tr>
</tbody>
</table>

The final hypothesis takes into account the political economy of corporate behavior. Previous scholarship suggests that where countries are heavily dependent on a particular industry, state actors may be more accepting of poor corporate behavior. Though sector-level data is somewhat limited, the World Development Indicators includes a variable that aims to measure the amount of oil rents, as a percentage of GDP. Though there are substantial missing data points, we calculated the correlation and found that there is a positive correlation of 0.18. In countries where greater percentages of the GDP are comprised of oil rents, we see more allegations of corporate human right abuse. This suggests that human rights abuse allegations are more likely to occur in countries that rely heavily upon oil.

DISCUSSION AND FUTURE RESEARCH

Our primary finding is that allegations of human rights abuses occur in a variety of firms and states. We might call this the “democratization of human rights complaints.” In our examination of the oil and gas sector in Latin America, we find
complaints of human rights abuse in visible (large) and less visible (small) firms and in firms with good and poor corporate social responsibility policies and practices. In terms of the political, economic and social environments, complaints have been made in strong and weak democracies and where human rights are respected and where they are not. They occur where states are dependent on oil and gas revenues and where they appear to be less so. In other words, the explosion of allegation of human rights abuses in recent years appears to challenge most of our assumptions about where these abuses (or at least their allegations) are most likely to occur and where they are least likely to occur. The democratization of human rights complaints that we have found in the oil and gas sector in Latin America suggests that companies everywhere, and with or without CSR policies and practices, are facing increased costs for human rights violations. These costs no longer appear to be attached to a particular type of firm or sector, to a particular model of business behavior, or particular kinds of states.

Allegations, we must be clear, do not measure the actual level of corporate human rights abuse. Our findings so far show, however, that no business seems to be protected from costly claims of abuse. Given the democratization of complaints, best practices demand stopping the abuse rather than pulling out of certain countries to move to more advantageous ones or circumventing obligations with ceremonial forms of CSR. This preliminary analysis suggests that all businesses everywhere are likely to face increased costs, and therefore lower profits, by abusing human rights. The social responsibility of businesses to make profits demands attention to human rights.
It is possible, however, that the oil and gas sector in Latin America is different from other sectors or other regions of the world. Further research on other sectors in the region will allow us to consider the possibility that the oil and gas sector is unique. By expanding our coding of the BHRRC archive to other regions of the world, we will have comparative data to analyze the regional bias in our findings.

Finally, while the BHRRC provides a starting point for examining alleged abuse, we recognize the rather unsystematic nature of the data-gathering exercise that the NGO has used. We thus plan to supplement the archive with additional sources, including Keesing’s World News Archive and The Financial Times. These future directions for the project will allow us to test our own hypothesis regarding the democratization of corporate human rights complaints and the costs all businesses now face in dealing with those higher – human rights – costs of doing business.
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