

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer

(August 2020)

CORPORATE SOCIAL RESPONSIBILITY
BUSLW 597B - 201
Larry Catá Backer
COURSE INFORMATION AND SYLLABUS

| | |
|----------------------|--|
| MEETING ROOM: | 236 Katz |
| MEETING TIME: | Mondays and Wednesdays 09:45 A.M. - 11:00 A.M. |
| OFFICE: | 239 Katz Building |
| TELEPHONE: | 814.863.3640 (direct) |
| E-MAIL | lcb11@psu.edu |
| WEBSITE | https://backerinlaw.com |
| BLOG | https://lcbackerblog.blogspot.com |
| CONFERENCE | |
| HOURS: | Mondays and Wednesdays 2:00 P.M. TO 4:00 P.M., AND BY APPOINTMENT |
| | e-mail anytime; e-conferencing encouraged |
| QUESTIONS: | CLASS RELATED QUESTIONS VIA EMAIL |
| FINAL GRADE: | PRESENTATIONS PLUS FINAL PAPER |

COURSE SHORT DESCRIPTION:

This course provides students with an introduction to the law and public policy of corporate social responsibility (CSR), now sometimes referred as responsible business conduct (RBC). The focus is on CSR (1) as a subject of legal regulation *within states*, (2) as a matter of international law and compliance beyond the state, and (3) as a tool and methodology for privatizing regulation through the enterprise itself operating in global production chains. The emphasis is on the study of the legal and regulatory frameworks. These frameworks include those existing and emerging within states, in international institutions, and within production chains and the apex corporations that manage them. The course begins with issues of definitions and of variations in approaches to legal and other governance mechanisms in the U.S. and among major commercial jurisdictions. It then turns to the existing law of CSR, focusing specifically on charitable giving and disclosure regimes. It then considers the rise of CSR regulatory regimes as privatized law making that uses the mechanisms of contract to regulate conduct throughout a production chain. It then considers the emergence of international standards as they inform regulatory efforts in states and enterprises and as normative standards in their own right. It ends with a consideration of key trends and developments going forward.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

STATEMENT OF LEARNING OUTCOMES AND ASSESSMENT

Learning Outcomes:

The “Course Concept Statement” is included below at the beginning of the Syllabus. Students are expected to acquire a working knowledge of the following.

1. Identify the range of definitions of corporate social responsibility (CSR) or responsible business conduct (RBC).
2. Become familiar with the discursive changes in the understanding of CSR from one grounded in philanthropy, to a focus on labor and labor rights, to a discourse focused on development and colonization, to a discourse that centers on human rights, and now appears to refocus to a discourse that is framed around a broad concept of sustainability including climate change.
3. Understand the way economic activity is organized. That requires first a fundamental understanding of the legally recognized forms of economic organization, the forms of legally recognized economic relationships among people and institutions, and the sources of such rules. Second students will become familiar with the differences between the legal building blocks around which economic activity is organized within institutions and the way that economic activity is viewed through other analytic lenses, including from the perspective of economics, political theory, and theories of social organization.
4. Understand the concept of governance gap, and the difference between the concept of a nationally organized economic enterprise and a multinational enterprise.
5. Understand the concept of risk mapping and be able to apply risk mapping to a representative enterprise. Students will be expected to understand the distinctions between economic, social, environmental, political, and legal risk and the connection between CSR as a set of risk parameters and business operations.
6. Acquire a basic knowledge of the system of regulation of CSR, and the variations among them, from market to control oriented public systems.
7. Acquire a working knowledge of the concept of enterprise self-regulation and its importance to CSR regulatory regimes.
8. Acquire a basic knowledge of philanthropy as a core principle of CSR; they will understand the basis of the legal regulation of charitable giving by enterprises, and the way enterprises create systems for giving.
9. Acquire a basic knowledge of the human rights, including labor rights, structures of CSR. They will develop a working knowledge of the United Nations Guiding Principles for Business and Human Rights and

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

the enforcement mechanisms in the OECD's Guidelines for Multinational Enterprises.

10. Develop familiarity with the discourse and substance of sustainability as a core value of CSR; students will develop a working knowledge of the UN Sustainable Development Goals (SDGs), and the ways that the SDGs have been embedded incorporate operations.

11. Acquire a working knowledge of the forms and challenges of developing remedial structures for breaches of CSR responsibilities. To that end, students will (1) develop a working knowledge of recent cases seeking to extend liability within a production chain; (2) become familiar with the UN Accountability and Remedy Project (ARP) and its framework for understanding the availability of judicial, state-based non-judicial, and private non-judicial remedies for breaches of CSR obligations.

12. Acquire a working knowledge of legislative efforts to mandate CSR compliance by reference to Modern Slavery law; supply Chain due diligence laws; and mandatory human rights due diligence laws at the state and international levels.

13. Learn how to manage and present information in groups. The object is to provide students with more practical experience in translating theory into practical knowledge that can serve as the basis for policy analysis and recommendations in context.

Learning Outcomes Assessment:

Students will be divided into groups (teams). Each Group will be assigned a specific economic entity that will be the focus of all assigned group work. In addition, each group will be responsible for the preparation of a summary of assigned class readings as set out in the syllabus (generally no more than 3 pages). Student achievement in all learning outcomes will be measured by (2) two substantial *group presentations*; (3) three substantive *group sector reports* (philanthropy, human rights, and sustainability); and (4) an individual *final paper*. Learning Outcomes will be monitored through student participation in the weekly discussion of readings and the mandatory group readings summaries. All group work will be shared with the class via CANVAS so that students can profit from the more specific and applied exercises of each group.

COURSE MATERIALS

The course materials consist of cases, primary source materials and secondary sources of relevance to the subject of instruction for each class session. Because the field is changing rapidly, readings change from year to year. The readings will be made available through CANVAS or otherwise links will be provided. Additional materials will be made available on occasion as appropriate. Please bring assigned reading to class.

COURSE INFORMATION AND RULES

CORPORATE SOCIAL RESPONSIBILITY
Larry Catá Backer
Course Information and Syllabus
Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Course meetings time are set out above. I am generally available to talk with you during office hours on Mondays and Wednesdays, or, otherwise, by appointment. I am also available via e-conferencing (e.g., Skype and Zoom).

ATTENDANCE, SEATING, AND CLASS PARTICIPATION

Administrative practice requires me to notify students of my attendance policy. **Class attendance is required.** I take attendance seriously. The Law School also has an Honor System in place. I will take advantage of the Honor System for purposes of recording attendance. **All students will be assumed to be present unless they send me an email indicating that they are absent. Students are honor bound to report all absences, and failure to report absences will be treated as an honor code violation.**

You are responsible for letting me know when you not attend class; Notice via e-mail to lcb11@psu.edu.

THERE WILL BE SEVERAL GROUP PROJECTS. EACH OF YOU WILL BE ASSIGNED TO A GROUP AND EACH GROUP WILL BE REQUIRED TO MAKE CLASS PRESENTATIONS OR DELIVER REPORTS (WITH POWERPOINT) AND PREPARE SUMMARIES TO BE SHARED WITH THE CLASS OF ASSIGNED READINGS. THE GROUP PROJECT WILL NOT BE GRADED BUT FAILURE TO PARTICIPATE IN THE GROUP PROJECT WILL REDUCE YOUR GRADE IN CLASS BY ONE LETTER GRADE.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). All of you will find yourselves participating in at least some of the discussion. At the end of each class I may designate one or more students as class participation leaders for the next class. I reserve the right to call on students at random. Outstanding participation may result in an increase in your grade, again at my discretion.

Seating is assigned. You will be asked to fill out a seating chart during the second day of class.

My approach to class: The principal object of the class is to develop knowledge through discussion in class. That discussion will be framed by the problems and informed by the readings. There is no expectation that one has the correct answer. The expectation is that students will contribute to a discussion that I will guide as necessary to achieve our learning outcome objectives. That means that sometimes you will have an opinion or produce an insight with respect to which there may be objection or disagreement. Disagreement is not disrespect, but a gateway to discussion and clarification. I expect that through lively discourse the class will be able to learn better. Please let me know if you have questions.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

CLASS NOTES AND RECORDING OF CLASS

Please take notes as you like. Please feel free to get together with your classmates for studying and sharing notes. Please remember that the purpose of the course is NOT to provide experience in stenographic techniques. Participation rather than the taking of dictation is encouraged. To that end, *all of my classes are recorded. You are encouraged to review those recordings at your convenience throughout the semester.* Recordings are made available to you without restriction through the end of the semester.

No personal recording of class.

[Policy Regarding Creation of, and Access to, Recordings by the Law School of Class Sessions](#)

All law school courses occur in classrooms equipped with audiovisual telecommunications equipment that is capable of making an audiovisual recording of each class session as it occurs. In order to provide the potential educational benefits of recorded classes to our students, the law school has decided to automatically record, and to archive for a limited period of time, all class sessions occurring in law school classrooms. The purpose of the recordings is to permit students enrolled in each recorded course to access the recordings outside of the regularly scheduled class period, according to rules established by the professor.

Access to recorded classes will be controlled via a secure course management platform, such as CANVAS, and will be restricted to students enrolled in the recorded course, the professor, and those University IIT personnel necessary to maintain the system. All recordings will be deleted following the conclusion of the semester in which the recorded course occurs (unless all identifying student images are edited out of the recording, in which case the professor and law school jointly may decide to retain the edited recording for other purposes).

By registering for or attending law school courses, a student consents to the law school's making and display of class recordings within the scope of this policy.

The office of the Associate Dean for Academic Affairs has provided you with this statement; please familiarize yourself with all of its terms. In case of doubt about its meaning, please contact the Office of the Associate Dean:

A. Student Access to Class Recordings; Open Access:

All Class/Open Access. All class recordings will be posted on the course ANGEL site for

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

access by any student enrolled in this course. Access will end the last day of the final exam period. Your Professor may not consent to or authorize access to or distribution of class recordings beyond the students enrolled in that course.

B. Student Use of Recordings and Materials:

A student may not record any part of a class by any means without prior express authorization of the faculty member. If a student receives faculty authorization to record a class, the student may not copy or download such recording to a computer or other device, distribute it to any other person, or use the recording for any purpose other than personal education and study except with the prior express authorization of the faculty member. Unauthorized recording, distribution, or use of a class recording is a violation of the Honor Code.

A student may not use course materials such as slides or other documents posted on ANGEL for any purpose other than personal education and study and may not disseminate, publish, or alter course materials without prior express authorization of the faculty member. Unauthorized use of course materials is a violation of the Honor Code.

Penn State Law Honor Code, Violation 2.1(1) covers unauthorized recording and unauthorized use of class recordings or course materials. It prohibits "Taking, using . . . or otherwise abusing the property of another, including, without limitation, books, briefs, class notes, outlines, or any other academic items, without authorization."

C. Questions, Special Requests. You should direct any questions, concerns or requests regarding classroom recordings or any classroom technology to the AV Team at av@law.psu.edu.

GRADING

Grading is based on (A) two substantial *group presentations* (15% each of final grade) (3) three substantive *group sector reports* (philanthropy, human rights and sustainability) (15% each of final grade); and (4) an individual *final paper* (25% of final grade). EXTRA CREDIT may be earned by preparing summaries of optional readings.

Group Work: Each student will be assigned to a group and each group will be assigned an enterprise that will be the subject of the group work throughout the semester. Group presentation and Group Report instructions follow. In addition, each group will be responsible for the preparation of a summary of assigned class readings as set out in the syllabus (generally no more than 3 pages). All group work will be shared with the class via CANVAS so that students can profit from the more specific and applied exercises of each group.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Presentations:

Group Presentation 1 (Risk Mapping in the Responsible Enterprise) Class 6 (week 3)

Group Presentation 2 (Remedy Mechanisms) Class 28 (week 14)

Reports:

Group Report 1 (Enterprise Philanthropy) Class 16 (week 8)

Group Report 2 (Enterprise Human Rights Initiatives) Class 20 (week 10)

Group Report 3 (Enterprise Sustainability Measures) Class 24 (week 12)

Final Paper. Each student will submit a paper that shall be no less than thirty (30) pages, double-spaced 11-point Times Roman Font, excluding footnotes. There is no maximum page length for papers. Each paper will consist of a detailed analysis of the CSR, human rights and sustainability practices of a selected company, with reference to the materials covered in class. It is expected that each paper will weave together the results of the presentations and reports produced by students throughout the course of the semester.

The paper may reflect the organization based on those presentations and reports: (1) mapping the terrain of CSR responsibilities of the enterprise and its production chain, considering the extent to which CSR obligations might or ought to align with enterprise organization); (2) detailed analysis of the enterprise's CSR operations with respect to (a) philanthropy, (b) human rights, and (c) sustainability; (3) the remedial architecture and compliance mitigation systems developed by the enterprise and its alignment with its CSR obligations and practices across its production chain; and (4) overall analysis of the relationship between the actual practices of the enterprise and national/international soft and hard law frameworks. It is expected that in addition to the materials considered in class, the student will access written primary and secondary sources primarily on line or through our library. Papers must adhere to the [Regulations Governing Papers Submitted for Course Credit](#). **The paper must be delivered no later than 3 P.M. December 22, 2022.**

The awarding of grades is based on the curve system adopted by the faculty of the Law School and is subject to the limitations of those curve rules. The Grading Norms may be accessed [HERE](#). I will adhere to this system. Students interested in discussing the curve system itself, its wisdom, or making proposals with respect to the system, are advised to consult their academic dean.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

ACADEMIC HONESTY AND INTEGRITY

ACADEMIC HONESTY AND INTEGRITY

Both Penn State Law (PSL) and the School of International Affairs (SIA) safeguard and promote the ideals of honor and integrity by prohibiting lying, cheating, stealing, and other dishonorable conduct. Accordingly, all students should act with personal integrity, respect other students' dignity, rights and property, and help create and maintain an environment in which all can succeed through the fruits of their efforts.

Dishonesty of any kind will not be tolerated in this course. Dishonesty includes, but is not limited to, cheating, plagiarizing, fabricating information or citations, facilitating acts of academic dishonesty by others, having unauthorized possession of examinations, submitting work of another person or work previously used without informing the instructor, or tampering with the academic work of other students. Students who are found to be dishonest will receive academic sanctions and will be reported to the relevant authorities for possible further disciplinary sanction. For further details on Academic Integrity please visit: <http://studentaffairs.psu.edu/conduct/AcademicIntegrity.shtml>

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, SIA and Graduate School policies.

See <http://istudy.psu.edu/FirstYearModule/CopyrightPlagiarism/StudentGuide.html> also *and* <http://its.psu.edu/turnitin/TurnitinHandout.rtf>.

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, Penn State Law, SIA and Graduate School policies, as applicable.

CONFERENCES

I try to maintain an open door policy. I encourage you to see if me if you have any questions or concerns. While face time is important, students should not consider it necessarily the best or exclusive means for communicating with me. There is little excuse for the complaint – ‘he is not available’ – when communication is possible by telephonic and electronic means.

Technology has made it easy to communicate.
please take advantage of it.

You are encouraged to contact me by e-mail. I will respond promptly.

<lc11@psu.edu>

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

CANVAS

This year I will be relying on PSU's CANVAS system for communication with you. Please bear with me as we work through the inevitable glitches that are the price we pay for the convenience of technology. I will post questions to the CANVAS class site and send e-mails via that site. Please check in regularly for information about the course. It will be your responsibility to keep apprised of the information posted there.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Additional University Policies and Statements

UNIVERSITY DISABILITIES POLICY STATEMENT

To comply with University policy regarding persons with disabilities, this statement is included in this course syllabus:

University Statement on Students with Disabilities. Penn State welcomes students with disabilities into the University's educational programs. In order to receive consideration for reasonable accommodations, you must contact [Student Disability Resources](#) to [participate in an intake interview, and provide documentation](#). If the documentation supports your request for reasonable accommodations, Student Disability Resources will provide you with an accommodation letter. Please share this letter with Dean Ferguson and discuss the accommodations with her as early in your courses as possible. You must follow this process for every semester that you request accommodations.

COUNSELING & PSYCHOLOGICAL SERVICES (CAPS)

<http://studentaffairs.psu.edu/counseling/>

CAPS staff work with thousands of Penn State students per year in group therapy, individual counseling, crisis intervention, and psychiatric services as well as providing prevention, outreach, and consultation services for the University community. Services at CAPS are designed to enhance students' ability to fully benefit from the University environment and academic experience.

As specialists in working with undergraduate and graduate students, staff at CAPS can help you address your concerns in a caring and supportive environment. CAPS can help students resolve personal concerns that may interfere with their academic progress, social development, and satisfaction at Penn State. Some of the more common concerns include anxiety, depression, difficulties in relationships (friends, roommates, or family); sexual identity; lack of motivation or difficulty relaxing, concentrating or studying; eating disorders; sexual assault and sexual abuse recovery; and uncertainties about personal values and beliefs.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

PROTOCOL FOR RESPONDING TO BIAS MOTIVATED INCIDENTS

Penn State University has adopted a “Protocol for Responding to Bias Motivated Incidents.” It may be accessed [HERE](#). It is grounded in the policy that the “University is committed to creating an educational environment which is free from intolerance directed toward individuals or groups and strives to create and maintain an environment that fosters respect for others.” That policy is embedded within an institution traditionally committed to academic freedom (the policy may be accessed [here](#)) and free and open discussion. Bias motivated incidents include conduct that is defined in University Policy AD 91 (accessed [here](#)). Students who experience a possible bias motivated incident, as well as students, faculty or staff who are witnesses of the same, are urged to report the incident immediately by doing one of the following:

* Contact your County Emergency Dispatch by dialing 911 in cases where physical injury has occurred or is imminent;

* File a report on the Report Bias website: <http://equity.psu.edu/reportbias/statement>;

* Contact one of the following offices:

| | |
|---|--------------|
| University Police Services, University Park | 814-863-1111 |
| MRC Counselor/Diversity Advocate for Students | 814-865-1773 |
| Office of the Vice Provost for Educational Equity | 814-865-5906 |
| Office of the Vice President for Student Affairs | 814-865-0909 |
| Affirmative Action Office | 814-863-0471 |

SEXUAL AND GENDER DIVERSITY

“The Pennsylvania State University recognizes the need or preference for members of the University community to refer to themselves by a first name other than their legal first name as well as self-assert a gender other than their legal gender or their gender at the time of birth ([AD 84](#)).” Visit [LINK Trans and Non-Binary Penn State](#) to learn more.

* * * *

COVID-19 Syllabus Statement:

[From the Penn State Website](#) [].

Penn State has paused its required COVID-19 testing for students, faculty, and staff.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Although required COVID-19 testing is paused, testing will continue to be available to students who are experiencing COVID-19 symptoms.

Faculty and staff should seek testing through their health care provider or other local COVID-19 testing options. Symptomatic employees should stay home from work and are advised to schedule an appointment with their health care provider for testing.

Free at-home rapid tests provided by the U.S. government are available to be ordered online at covidtests.gov. Additionally, [individuals with private health insurance coverage or who are covered by a group health plan](#) are eligible to have up to eight at-home COVID-19 tests covered by their insurance provider per month.

The University strongly recommends face masks be worn indoors on campuses in counties designated by the CDC to have high [COVID-19 Community Levels](#).

Even on campuses in counties with low or medium COVID-19 Community Levels, the University encourages anyone who wishes to wear mask indoors on these campuses to continue to do so.

Face masks are required in facilities providing health care and in other locations where required by law, including indoors at the College of Medicine, Penn State Health locations, University Health Services and other campus health care centers.

Employees at Penn State who work in their own individual offices may request that visitors wear masks while in their private offices, and faculty may request that their students wear masks during classes. The University asks that community members cooperate respectfully with these requests.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

SYLLABUS

This Syllabus consists of a (1) *Course Concept Statement*, (2) *Statement of Course Content and Structure*, (3) *Summary Syllabus (With Weekly Discussion Themes)*, and (4) *Detailed Syllabus With Problems and Assigned Readings*.

Course Concept Statement:

“The past few decades have seen an increasing scrutiny of the impacts – both positive and negative – that companies have on the societies in which they operate. A broad debate is ongoing, in which a wide variety of societal actors, . . . are arguing that both states and corporate actors have a role to play when it comes to fostering environmentally and socially sustainable business strategies and operations around the globe. The search for adequate responses to such scrutiny is reflected in developments in the societal, political and academic debate on three separate but interrelated concepts: corporate social responsibility (CSR), business and human rights (BHR) and responsible business conduct (RBC).” (Liesbeth Enneking & Jeroen Veldma, ‘Towards Responsible Business Conduct in Global Value Chains: Relevant Legal Developments in the Netherlands,’ *Erasmus Law Review* 4:1-5, 1-2 (2019))

Corporate social responsibility (CSR), sometimes referenced as responsible business conduct (RBC), and increasingly viewed through the lens of human rights and sustainability, has become one of the most important drivers of business culture, public policy, and therefore, of economic regulation all over the world. corporate regulation. Though it manifests quite differently in states and international organizations, and though its normative principles are producing quite different models of the ideal forms of CSR and RBC within a human rights and sustainability context, the conversation of economic policy, especially around the best practices for economic production, is unavoidable. Liberal democratic states tend to see the discussion (as well as public and regulatory policy) through the lens of the market and of the primacy of market integrity, based on principles of individual autonomy and choice. Marxist-Leninist and the ideologies of development especially for states that emerged from colonialism tend to see the discussion through a human (or economic) development, anti-colonialist, and collectivist lens which puts the state at the center of an ordered regulatory universe, with markets as an instrument of directed social and economic policies.

Within both systems the scope and application of normative principles—human rights and sustainability—are also subject to great interpretive variation. For some actors, the fundamental principles of economic, social and cultural rights (either of individuals or of social collectives, like states) must be privileged in any CSR/RCB project. For others, the fundamental principles of civil and political rights are the starting point for any conceptualization or realization of CSR/RBC projects. In addition, there remain

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

substantial groups of people who remain skeptical of the premises of the CSR/RBC project as a whole, or of the need for the state to interpose itself in that conversation. Likewise, there are groups who see in the CSR/RBC project the near perfect vessel for the realization of more transformative projects. At their extreme these transformations might include projects that (a) reject the autonomy of markets, (b) reject the privileged position of those who aggregate capital to engage in economic activity, (c) characterize private law in economic organizations as a privatized form of public administrative regulation subject to state direction, (d) understand the primacy of politics over economics and collectives over individuals, (e) view the legalization and judicialization of economic activity as a necessary step to the reconception of economic activity as an expression of public policy objectives, and (f) value international law making as the ultimate approach to the global rationalization of a new normative economic order driven by public law and collective politics.

These are the larger themes that frame this course. Though it is titled “Corporate Social Responsibility,” the course uses CSR as an analytic platform through which one students can be introduced to the historical development and conceptual origins of the societal expectations around economic activity, its current and its current manifestation as law and policy, and its likely future course.

Economic actors (and that can be anyone or any collective that engages in economic activity), can be understood as operating at the center of a number of “responsibilities.” These actors are understood to have *economic responsibilities*; these include creating enough value to justify the activity and to offer returns (in the form of dividends, salaries, or other things of value) to all of its stakeholders. These actors also have *legal responsibilities*; they are understood to be an overarching duty to comply with law. By the 21st century, this had blossomed into what is now understood as compliance and accountability cultures that serve as a core ordering set of premises for business enterprises. These actors also have *political responsibilities*; these involve concepts of good citizenship and avoidance of the corruption of the political model (democratic, development, or Marxist-Leninist) by assuming or supplanting the role of the political apparatus (government or government managed societal organizations). These actors also have *normative responsibilities*. Normative responsibilities include not just those embedded in the “rules” that define economic, legal, and political obligations, but also those expected within the networks (or communities) in which economic activity is undertaken. All of these together may be taken to define the scope of the *societal responsibilities* of economic actors.

Nonetheless, as the opening quote emphasized, the language and vocabulary of the field has been changing even as its scope has expanded. Students should expect to develop some sensitivity to the way that the language and vocabulary of the field have not only changed, but also the effect of those changes on the political and ideological undertones of word choices. Thus, for example, the problem in contemporary usage of the term “Corporate Social Responsibility.” That phrase has become problematic for some. The problem is the way that some users of the term situate it in a historical and ideological context in which CSR represented the embrace of a particular form of the expression of societal responsibility (primarily through charity) and the application of the principle that separation between the public (political and collective) and private (individual and economic) spheres. Whether or not this is accurate is less relevant than the reality that some influential commentators and policymakers

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

act as if it were so. For example, by the third decade of the 21st century the term CSR had appeared to become somewhat old fashioned; “CSR is dead. It’s over!” declared Peter Bakker, president of the World Business Council for Sustainable Development. Bakker argues that leading companies are already going way beyond traditional CSR by integrating sustainability into all aspects of their business operations in recognition that business cannot succeed if society fails.” ([Roel Nieuwenkamp, “2016: CSR is dead! What’s next?” OECD Insights](#) (22 January 2016)).

And yet it is possible to suggest that any announcement of the “death” of CSR as a critical concept in the management of economic activity is premature.

The term “corporate social responsibility” is still widely used even though related concepts, such as sustainability, corporate citizenship, business ethics, stakeholder management, corporate responsibility, and corporate social performance, are vying to replace it. In different ways, these expressions refer to the ensemble of policies, practices, investments, and concrete results deployed and achieved by a business corporation in the pursuit of its stakeholders’ interests. (Matteo Tonello, “[The Business Case for Corporate Social Responsibility](#),” *Conference Board* 26 June 2011).

CSR, as both a concept and the term used to describe those concepts, is part of a vigorous global debate about the language, concepts, and methodologies used by states and other actors to develop a system of values, expectations, and accountability mechanisms touching on the way in which economic activity is undertaken anywhere on earth. *As a consequence, CSR is as useful a term as any of its competitors to describe a complex interplay of economics, politics, law, and value systems that together constitute the way in which economic activity is judged, valued, and ultimately regulated.*

More importantly, CSR provides students (or at least those students in this class) with a unifying framework within which it is possible to begin to understand the shifting *language* (and its accompanying narrative) around which CSR is itself created, understood, and valued. These languages (and the way they value economic activities and shift the focus of regulation) can be reduced to three distinct clusters. The first is the language of philanthropy; it is the traditional language of CSR and one that detached economic activity from social duty except with respect to constraints on relationship with labor. The second is the language of human rights; this centers on principles of harm measured against individual human rights, resulting from economic activity. The third is the language of sustainability; this centers the interaction of economic activity with issues of environmental management (reservation) and its effects on human rights. In this class, the CSR is understood as the umbrella term to describe the way that these distinct narratives of responsibility (of people, societal collectives, states, and international public and private organizations) affect the way in which society approaches the regulation of economic activity. Around that term the class will examine the emerging common language used to rationalize (in public and private law, through markets, and within international legal and normative projects) the conceptual lenses through which economic activity is given meaning and embedded into world views (normative ideologies) within which such meanings can be valued, assessed, and managed.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Like the subject itself, a course built around CSR (as an organizing concept) is inherently hybrid in its nature, character, and as manifested as both law and policy. Its *governance* trajectories touch on the essence of law and the lawyer's craft in a changing world in which the authority and character of law are themselves changing. Its *normative* trajectories speak to politics, ethics and morals, as well as to the fundamental organization of cultures of human interactions in the economic sphere in a changing world in which the desire to institutionalize social and moral systems across borders is growing. Its *accountability trajectories* touch on the fundamental issues of the identification of those actors (states, economic, social, religious or other collectives, or individuals) are assigned the normative duties (understood as CSR values and expectations) and the extent to which others are assigned roles in managing systems of accountability.

Teaching CSR, then, involves more than the traditional three part approach. Those three parts focused on management and included: (1) identification of formal (and sometimes informal) legal structures, (2) applying these structures to economic activity (for the purpose of managing social or political values and objectives), and then (3) chronicling their development through formal (and sometimes informal) structures of dispute resolution (courts) or political-administrative apparatus of states (and sometimes of enterprises within their production chains). Contemporary CSR teaching ought to also involve the broader policy, structural and normative issues within which a traditionalist analysis is undertaken. These may include understanding of the way that one speaks about the issues (its language) shapes its governance and normative trajectories. This assignment is more somewhat more complicated in an era of globalization. That complication is particularly strong where the old and straightforward authority relations within and between states have given way to a more diffuse exercise of authority by state and private actors. Today states may engage in economic activity globally while private enterprises may be delegated substantial regulatory authority.

To begin framing CSR, it might be useful to start by considering two questions that dominated a century-long debate about the economic, social, and political role of economic actors operating in corporate form: (1) *Whom must economic activity serve? And (2) to what extent should the regulation of the entities through which economic activity is undertaken be left to the market, to private ordering (contract law) among corporate stakeholders, or to public regulation by the state or international bodies?* Both of these questions reflect an even more fundamental question, the answer to which remains unresolved: What is the essential nature of economic collectives organized for the efficient undertaking of economic activity, especially when operating in corporate form? Are these autonomous communities, like a nation-state? Might they be understood as the sum of contractual or mandatory societal relations among some of the people with stakes in the joint enterprise? Or are these organizations merely vessels, and in the corporate context a complex commodity, property in the hands of their shareholders? And to these questions must be added the fundamentally transforming questions necessary in the wake of the establishment and dominance of the structures of globalization on economic, political, and social activities: (1) *do entities (again and especially those operating in corporate form) stand at the center of the regulatory structures of economic activity or are there better objects through which regulatory objectives can be met?* (2) *to what extent does law (and the nation-state) serve effectively to manage the behaviors that in the aggregate*

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

comprise organized economic activity, or even behaviors of or in markets; and if not what role for private ordering?

The first set of questions remained highly contested through the end of the twentieth century (Larry Catá Backer, 'Multinational corporations, transnational law : the United Nations' norms on the responsibilities of transnational corporations as a harbinger of corporate social responsibilities in international law,' 37(2) *Columbia Human Rights Law Review* 287-389 (2006)). These formed the kernel around which the conceptualization of CSR, and regulatory initiatives, were developed. The issue of the focus of regulation remains controversial but is critical to the study of the regulatory reality (and potential) for CSR. With respect to these, and early on, Western states seemed to reach an uneasy stalemate about the contours of the debate regarding corporate social responsibility. First it assigned the corporation (a legal person) with the duty of socially responsible action. Second, it limited the legal regulation of that responsibility to what in retrospect is understood as a mandatory obligation to comply with law and as a discretionary responsibility to engage in philanthropic activity. That stalemate was famously memorialized in the great academic debates of mid-century and the grudging legalization of a small element of the field. That small space for legalization then, ironically, dominated and displaced the rest. During that time, it was fashionable (and for academics expected among their peers) to argue, mostly among themselves, about the nature, character, and purpose of the corporation beyond those limits of discourse enforced by the practice community. But influence leaders among the academic intelligentsia (within the law schools at least) knew enough not to stray too far if they wanted to retain their academic reputations.

But these accommodations and the premises underlying them, gave way quickly to the second set of questions after 2000. It was about at that time that the realities of globalization, with its effectively free movement of goods, investment and capital, appeared to explode onto the consciousness of influential people inside the academy, government, civil society, and enterprises. With globalization (however understood, and there was little consensus on an orthodox understanding of globalization) as the perceived dominant driver of global economic, and then political and societal, forces, the concept of CSR changed as well. The original stalemate, and its accommodation of corporate charity, no longer seemed to serve the interests of powerful regulatory forces. These forces now worried about the inability of any state or group of states to effectively manage economic activity, or the activities of enterprises operating or domiciled in states, in a context in which the scope of the appetite for regulation had grown to include the effects of economic activity on the social, political and environmental spheres. Yet, these expanding ambitions, targeting a regulatory territory that spilled over national borders, created substantial governance gaps that implicated the value of traditional state-based law systems.

This was the context in which the traditional approach of CSR, and its relation to public power evolved from 1945 through the beginning of the 21st century. The essence of that approach was centered on the relationship of the corporation to either its investors (with shareholders at the top), and with the wider community. As such, one started discussion with the great debates about corporate social purpose as a function of either shareholder primacy (eg that shareholder investor interests are the most highly valued the protection of which was at the core of the responsibilities of directors) or of shareholder exclusivity

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

(the later sloganized in Milton Friedman’s famous ‘the social responsibility of business is to increase its profits’). From there one considered the long arc of debate, and practice, over the development and application of principles that sought to integrate stakeholders (individuals and collectives affected by economic activity) in the calculus of shareholder *primacy* regimes (Business Roundtable, ‘[Statement on the Purpose of a Corporation](#)’ (19 August 2019)). Nonetheless, throughout the course of this ‘conversation’, the principles on which the old stalemate was crafted continued to serve as the foundation of the new more expansive recognition of social responsibility—one based on the core notion that social responsibility was inherently an issue of enterprise profitability, and that profitability (whether for the enterprise or its shareholders) was still the central objective of economic activity. Martin Lipton, one of the most influential US corporate lawyers and thinkers of the issue offered his own interpretation of the refinement of this approach:

The purpose of a corporation is to conduct a lawful, ethical, profitable and sustainable business in order to ensure its success and grow its value over the long term. This requires consideration of all the stakeholders that are critical to its success (shareholders, employees, customers, suppliers and communities), as determined by the corporation and its board of directors using their business judgment and with regular engagement with shareholders, who are essential partners in supporting the corporation’s pursuit of its purpose. Fulfilling this purpose in such manner is fully consistent with the fiduciary duties of the board of directors and the stewardship obligations of shareholders. (Martin Lipton, ‘[The Friedman Essay and the True Purpose of the Business Corporation](#),’ Harvard Law School Forum on Corporate Governance (17 September 2020)).

But what to use in place of law? And with respect to what were these additional or supplemental regulatory systems to apply? With respect to the first question there were already a number of answers. National movements towards cultures of assessment and accountability suggested the possibility of privatization of governance within enterprises or systems around which economic activity was coordinated. A movement toward the internationalization of norms appeared to drive the creation of regulatory standards from states to public international organizations. At the same time, states resisted the creation of international law. Instead, international standards were viewed as a complement to the growing importance of regulatory governance and the reliance on markets to manage the behaviors of economic actors. Regulatory governance and the move toward markets as behavior regulators complemented the growing cultures of accountability and self-governance, adding to it cultures of good governance and risk avoidance. These then intertwined with developments in states that saw in enterprise self-governance a means, not just of deputizing the enterprise, but of holding the enterprise to account for violations of rules the responsibility for the enforcement of which had devolved to the enterprise. In corporate law, for example, the interpretation of the duty of care to include a duty of self-monitoring, the conduct of which might be made available to state prosecutors seeking to enforce law. The relationship could as easily be used to manage the economic behaviors of enterprises as it might be used to devolve the enforcement of other statutory provisions. All of these movements occurred as globalization, and the changing demand for regulation, broadened the scope of the expectations for conduct by actors in the

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

course of their economic activities beyond charity. But how far?

These are the questions that are currently the subject of wide-ranging debate among law and policy makers, lawyers, civil society and enterprises. The way these questions are being answered are finding their way into national lawmaking and regulatory systems, into the self-regulatory systems of enterprises, and into the efforts of non-governmental organizations to hold others (and ultimately perhaps themselves at least) to account. This is the context within which influential actors have sought to provide a definition for CSR. In the dynamic context within which CSR is now considered, efforts at definition have appeared to become much more *prescriptive* (normative) than *descriptive* (in the sense of seeking to explain). It also follows that there is little consensus around definition. Where the essence of the definition is vested with a political character, and where the political objectives of major actors are quite diverse and contradictory, it is unlikely that any orthodoxy of meaning is possible. The same applies where growing ideological differences in the ordering of political-economic systems serves as the basis for infusing terms with contextually relevant meaning. Among the definitions with some influence are those that speak to CSR as a commitment to contribute to economic development (World Business Council for Sustainable Development); a comprehensive set of values and principles grounded in legal compliance (International Chamber of Commerce); a framework for protecting enterprise long term profitability (British Standards Institute); a commitment to take into account social, economic and environmental impacts of business operation along with financial implications (Australian Government); management practices that minimize negative impacts and maximize positive impacts of company management practices (Canadian Center for Philanthropy); a process of managing the costs and benefits of business activity to all stakeholder (World Bank); responsibility for impacts of business decisions on society and the environment through transparent and ethical behavior (ISO 26000:2010); the responsibility of enterprises for their impacts on society (European Commission, 2011); and a commitment to international public human rights principles enforceable through law (Amnesty International).

Emerging theorists, like Birgit Spiesshofer (*Responsible Enterprise* (CH Beck, 2018, p. 6-11) has characterized the contemporary search for infusing the term CSR with meaning amounts to its reconstruction as a set of guiding principles or *leitmotif*, which produces normative-cultural expectations for enterprises, that in turn are implemented through law (broadly understood as regulatory expression with varying degrees of 'bindingness'). The object of CSR, thus framed, is to guide thinking rather than to a set of ideologically specific principles and conduct rules. That leitmotif, though, might perhaps have three distinct strands.

The first and most well-known is that of enterprise philanthropy. Much of what passes for CSR is sourced in the concepts of charity. Charity remains a strong driver of CSR related activity in many states to which all peoples are entitled. That approach is especially powerful in parts of East Asia. Indeed, in some places, charity is itself the language of the implementation of other CSR-related normative objectives, or the means by which CSR breaches might be remediated. But charity is no longer visualized in 19th century terms. Charity has become part of the business model of many enterprises. In some cases and organized in the form that mimics foundations, these operate as an integral part of the business of the enterprise. Charity, then, serves as a means of social engagement to the benefit of the enterprise. By the 21st century,

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

that business model could then be used to pivot the form of charity to grants and other projects of assistance aligned with human rights, development, and more recently sustainability, including climate change mitigating programs. More importantly, compliance and assessment cultures created an environment in which charity itself could be restructured within its own markets. By the beginning of the 21st century, then, charity had turned to a business. And it could be organized either as a stand alone foundation, or as a division of enterprise operations. To some extent enterprise charitable giving now competes with the great non-profit foundations in markets for control of societally positive measures, and as well, for the narratives against which these are measured and assessed.

The second are human rights related obligations. The shift toward globalization, and the internationalization of trade produced governance gaps, and the need for accountability. But accountability to what standards? Increasingly the central standards, at the international level, were seen as grounded in the human rights systems and norms that had been developed with increasing sophistication within international institutions. Human rights normative structures increasingly were understood as providing the baseline behavior norms to which enterprises ought to conform, whether they operated. Thus, if human rights provided the norms, philanthropy provided a means. Subsumed here are currents of societal expression around the principle of national or collective development—especially for states that have for almost the last century sought to transform themselves after liberation from a long period of territorial colonialism from which contemporary states emerged in many parts of the world (UN General Assembly, ‘Declaration on the Right to Development,’ GA/41/128 (4 December 1986 (“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.” Art. 1”)).

Lastly are the emerging principles of sustainability, environmental harm (including issues of biodiversity), and climate change. Once understood as largely apart from the business of enterprise conduct, the last decade has seen the growing consensus of the responsibility of enterprises for their actions with environmental effects. More important, as the challenges of global warming and climate change have accelerated, and in the face of the growing privatization of governmental responsibilities, sustainability objectives have come to be seen as important societal objectives of economic activity. By 2018, international institutions began to view the right to a clean, and safe, environment, along with sustainability practices for the protection of the planet for the enjoyment of future generations as much a duty of states as a responsibility of economic actors. By 2022, the UN General Assembly has declared the right to sustainability as a human right—a turn that seemed to align CSR as an expression of human rights, development, and sustainability, but which was, in turn subject to some criticism (Larry Catá Backer, [Self-Centered Human Rights: UN General Assembly Adopts Resolution Declaring Access to a Clean, Healthy, and Sustainable Environment is a Universal Human Right](#), Law at the End of the Day (29 July 2022)).

Through the lenses of the ways in which CSR is manifested, then, CSR/RBC begins on appearance of an aggregation of behavior frameworks grounded in enterprise responsibility for philanthropy, for national

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

development, for the respect of human rights, and for sustainability. And these manifestations beyond the core principle that economic activity must conform to law. For states and international organizations, these clusters of objectives increasingly represented both a systematization of behavior norms as well as a framework for structuring compliance. For enterprises, on the other hand, philanthropy, human rights and sustainability could be understood as obligation (responsibility grounded in legally mandatory and markets driven measures), as well as in the methodologies of compliance. That is, these strands of CSR began to take on the characteristics of compliance, of risk management, and of methods of remediation. Accountability, compliance, risk management and objectives-based decision-making are concepts that enterprises understand. Nonetheless, the conceptual framing of these principles affected not just valuation (the cost of compliance) and its mechanics (the forms of compliance and the nature of accountability); it also (re) shaped risk. In the form of principles of prevention-mitigation-and remedy embedded in CSR related compliance systems implemented through disclosure based accountability systems giving rise to liability, the downside consequences of risk in economic activity, especially where the risk might also produce actionable or markets based punitive responses, might begin to reduce incentives toward risk taking. That produced a move toward a governmentalization of economic activity that some feared might change its character to one more closely resembling a public bureaucracy (Larry Catá Backer, 'The Emerging Normative Structures of Transnational Law: Non-State Enterprises in Polycentric Asymmetric Global Orders,' 31(1) [BYU J. Pub. Law](#) 1 (2016)). More fundamentally and especially where accountability incorporating principles of [strict liability](#) (e.g., no valuing the cost of human rights harm against benefit, pricing harm for compensation but imposing penalty even for compensated harm) appear also to contribute to changes in the way in which collectives approach the feasibility and engagement in economic activity.

Nonetheless, the three strand understanding of CSR can serve as a useful analytical baseline for the study of CSR's methodological core. That core can be expressed in law, in social norms, and in the private arrangements of parties disciplined by markets. For our purposes, then, it is important to understand this wide spectrum of meaning, without the necessity of choosing among them. It is also important to consider that while there may be a general consensus about the broadening of the scope of the societal embedding of economic activity, its manifestation, as well as its governing ideology, remains highly contested. It therefore becomes as important to understand points of divergence as it does to examine specific manifestations of CSR on the ground in any one place and at any one time. Within very wide parameters of law, social norms and the operational constraints of risk and compliance in business behaviors, the normative character of CSR can be understood within three quite broad conceptual categories.

To aid in that analysis, it may be useful for the student to organize the categories through which the three key areas of CSR—charity, human rights, and sustainability—may be expressed in the following way:

First, it focuses on *enterprises (economic collectives)*—that is on institutions organized for the purpose, principally, of economic activity. In a sense, CSR has outgrown its traditional starting point—the aggregation of capital within Western style corporations. That form of organization had become ubiquitous by the beginning of the First World War in Europe and in the Western Hemisphere. That

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

form, like seeds in the wind, was carried everywhere these states projected power, and then, eventually, was naturalized in locally appropriate context virtually everywhere.

Nonetheless, it is no longer possible to assume an identity between a collective of investors aggregating capital within a specifically institution with legal characteristics (rights and responsibilities). It is no longer possible to speak to the social responsibilities of economic activity as solely confined to the very peculiar form of corporations, or rather as arising from and inherent in specific forms of collective organizations engaging in economic activity. Instead, the “corporate” in CSR is understood to refer either to enterprises (collectives engaged in economic activity) or to the organization of economic activity itself (within which all sorts of collectives play a role). More importantly, contemporary approaches to societal obligations appears to have flipped the relationship so that one now focuses on the societal obligations inherent in economic activity rather of the enterprises participating in that activity. The shift, in other words has moved the discussion from the institutions of production to production itself, only a part of which is inherent in autonomous operation of individualized organizations within connected chains of production.

Indeed, globalization provides a transparent space within which this transformation becomes more clearly visible. The challenges of globalization has to some extent transformed the “corporate” part of CSR, shifting the analytical and policy focus from the corporation to three distinct but related objects. The first is the *enterprise* (in whatever form organized). Enterprises refer both to constituted legal entities and to the networks of enterprises (including corporations) that create coordinated economic activity (usually understood as the transnational or multinational enterprise). The second is the *process of production*, especially production across borders. The process of production can be understood as a chain of connected activity (the production, value, or supply chain, for example), or it can be understood as the system within which production occurs, with respect to which enterprises contribute. The third is the *relationship between economic production and its regulation*. If production chains reference the aggregation of activities necessary to systems of producing and exchanging goods and services, then regulatory chains reference the way in which the authority to regulate production is distributed among producers and the state. In this sense the “corporate” part of CSR has merged with the compliance and governance part of production.

To some extent (along with the state and other actors) these economic collectives manage; they are units of functionally differentiated governance the scope of which is now contested through the language and expectations of CSR/RBC. This moves the project of business from one that is purely centered on shareholders and profit maximization, to one in which value maximization in which costs are more widely conceived and action taboos more clearly expressed. Collectives and collective activities, then, are at the center of the “corporate” field. The focus is realigned toward the individual within a collective that is not the state. As such, also embedded within it are those organizations and institutions that operate within or in relation to that sphere. At its limit, it touches on all organizations other than the state. The third is the expansion of the concept of *risk and risk management* to include the costs of failures to prevent, mitigate or remedy harms resulting from CSR related expectations of business conduct. The enterprise, in this sense, can be understood both as a generator of wealth and as a producer of costs. The risks of

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

incurring those costs have now been expanded to include not just the direct costs of production of goods and services, but also the harm it may produce to rights holders involved in or affected by economic activity. From the perspective of CSR, then, the enterprise can be usefully understood as a generator of economic activity, and also of the acceptability of risk and risk taking (especially where risk carries human rights or environmental impacts).

Second, CSR focuses on the *societal role* of enterprises and economic collectives more generally—that is on the structures and frameworks within which non-state organizations (and specifically enterprises) order themselves in and of themselves that are found outside the formal structures of state and government. That has been one of the greatest points of difficulty for the study of CSR by lawyers (at least). It is hard enough to conceptualize the application of a legal system to aggregations, processes and systems that are themselves not precisely recognized in law. Traditionally that meant that lawyers (and the educational sectors designed to train/socialize them) effectively ignored CSR, except to the extent that law was involved. CSR was relegated to the social sciences and the business schools. To some extent that is still true. In most jurisdictions CSR was of interest to traditional jurists only to the extent of the law’s interest in the regulation of corporate charity; in many jurisdictions it still does mean only that.

Again, globalization has helped transform the “societal” part of CSR. In this case, an increased focus on societal roles also suggested a legal basis for such conduct. Thus, from early in the 2000s one saw a movement, especially at the international level, to transform the societal sphere into legal obligation—at the national or international level. Yet simultaneously, the drive toward markets based regulation also suggested that the societal be institutionalized and made obligatory, but outside the traditional mechanism of the public sector. That tension in approach is compounded where the structures of regulation are themselves not centered in law either. One speaks here of those direct relations between the enterprise/system and its communities; those relations are sometimes within and sometimes beyond the state and sometimes in a space ceded by the state. But these societal relations can have regulatory effect; and the state may well seek to legalize some to all of those societal relations.

Third, CSR focuses on *responsibility, and especially on responsibility related to conduct*. Here one speaks to the responsibility of enterprises or of the systems or processes of production, within the societal sphere. In this context, CSR is identified with the elaboration of a set of obligations, autonomous of legal systems, but legalized within the enterprise (or systems of production in which many enterprises take part—eg multinational systems) through private law mechanisms (contracts, policies, and the like). These sometimes are connected with international normative frameworks, and sometimes with emerging consensus within an industry. It is driven not by law and the state, but by the market and market stakeholders (of which states may be one). Responsibility is to be differentiated from obligation. Here one also touches on forms of responsibility that may be mandatory and imposed through law or by states otherwise, and conduct that is responsive to markets driven incentives. Responsibility touches on an obligation for which one is accountable—accountable to oneself or to others. These are acts which one is expected to do; that expectation arising from others or from oneself, the accountability for which is embedded in the relationships between the parties. These are responsibilities that oblige action and create consequences. These interactions are neither dependent on nor necessarily connected with the

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

impositions of law. That is, these are responsibilities that exist autonomously of law, even if they are incorporated into law. They have a life of their own—in the way that natural law or religious obligation might be understood to exist in relation to law but not as something that proceeds from law. It follows that the societal responsibilities of enterprises are not to be confused with the mandatory obligations to obey the command of law of a government with the authority to subject its object to its authority. And yet the societal responsibilities of enterprises share with law the notion of authority and leadership, of accountability and of autonomy embedded within the strictures of the norms that frame responsibility.

That cluster of expectations one continues to label CSR, then, occupies a conceptual space between the social and the legal, between the moral and legal order, between economic and political activity, between the public and private, and between the national and inter(trans)national. Such conceptual spaces complicate responses; make convergence more difficult, and produces a near constant state of instability that appears inherent in the character of the field. This instability is especially pronounced in the context of globalization. That context at once appears to shift public regulatory power to state collectives (energizing a robust sphere of public international law), even as it also appears to shift regulatory power to the private sphere. This instability thus manifests itself in contests for control of regulatory space—through robust projects of legalization and judicialization of the societal sphere in general, and the obligations of enterprises specifically—or through the privatization of the legal sphere as enterprises themselves are deputized to undertake the role once reserved to states. It is at this point that corporate social responsibility becomes interesting to the law—the lawyer, to the legislator, to the administrator, and to the judge.

Yet that convergence also reveals the vibrancy of governance beyond the control of law, and of the state. It is to these issues that the course is directed. This course provides an introduction to the law and policy issues that touch on the responsibility of enterprises for their business activities. It provides an overview of corporate social responsibility (CSR), as a subject of legal regulation within states, as a matter of international law and compliance beyond the state, and as a tool and methodology of corporate governance and finance with governance effect through contract. It focuses on the contemporary interplay between large corporations and governments, intergovernmental institutions, investors and non-governmental organizations (NGOs).

Over the past several decades, economic actors, and especially those operating as enterprises, have seen the development of efforts to impose on them certain responsibilities for the consequences of their decisions and to change the way that corporations view the scope and character of their obligations to inside and outside stakeholders. These efforts have produced both law at the domestic level and norms and structuring principles at the international level. During its evolution, CSR has progressed from legally tolerated traditional philanthropy and a consignment of the issues to the “social sphere” of moral and ethics, to encompass a much broader palette of actions and objectives. CSR now encompasses not only what companies do with their profits, but also how they make them in virtually every respect of their operations. Through their stakeholder relations and business models, companies can develop policies and practices to respect human rights and help address environmental and social concerns. These developments have occurred

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

at the local and national level through law and the adoption of principles and expectations of conduct; they have also seen a strong growth in international soft law standards touching on corporate responsibilities to respect human rights, for sustainable business practices and for the protection of the environment.

There are many factors that have contributed to increased expectations for corporations to adopt CSR programs as governments have changed the scope and thrust of their regulatory and ownership roles, and as regulatory governance principles that favor of market-based approaches have become more compelling for many states. Companies have been encouraged through law and governance mechanisms to identify opportunities for innovative products, technologies and business models aimed at proactively solving social or environmental challenges. Many enterprises have developed internal governance structures that embed a governance framework for CSR within their international corporate governance.

As global production chains become more important, these internal enterprise governance systems begin to have profound effects throughout the entire production process, affecting workers and other partner enterprises in many states. CSR has also become a tool for investors, to mitigate emerging social, environmental and governance risks and to identify opportunities for aligning financial performance with social, environmental and governance (ESG) performance. In addition, CSR has become a lever for civil society organizations to influence corporate practice and public policy. The rise of global production produced a growing interest in the development of internal production chain-wide systems of governance within enterprises.

This development has resulted, in part, in the acceleration of advances in projects of creating guidance at the international level, especially with respect to systems of monitoring, assessment, and accountability (e.g., OECD [*Due Diligence Guidance for Responsible Business Conduct*](#) (Paris: OECD, 2018), and OECD's [sector based due diligence guidance](#)). Since the second decade of the 21st century, internal enterprise governance systems also have become an irresistible object of national legislative programs, each designed to rationalize and governmentalize the system of compliance, accountability and assessment grounded in prevention-mitigation-and remediation principles. By the start of the 3rd decade of the 21st century, mandatory disclosure and administrative-regulatory measures were becoming both more common and more accepted: disclosure systems around specific breaches of human rights (human trafficking and labor exploitation), or around the control of global production through the national home state regulation of mandatory human rights due diligence systems delegated to the apex enterprise managing a production chain based on the regulating state (e.g., French *Loi de Vigilance*, German Supply Chain Due Diligence law; EU Human Rights Due Diligence requirements).

Advocates have seen CSR as a cluster of premises, which when institutionalized within the governance structures of economic actors can serve as a means of addressing governance gaps where government is weak. In contrast, critics have seen CSR as an intrusion of corporate interests in the public sphere where

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

government is strong. More recently critics have seen in the internationalism of CSR a profound and direct attack on state sovereignty in the service of the objectives of autonomous multilateral institutions that do not reflect local wishes. At the same time, the limits of voluntary CSR measures as a transformative agent are also becoming clearer, and are raising questions about the need for a recalibration between the public and private domains.

Lastly, just as the scope of CSR has changed, and changed dramatically over the course of the last century, so has its discourse, and the concepts around which CSR is centered. At the beginning of the 20th century one spoke about CSR through the discourse of charity. And one battled over the value of CSR as charity by reference to the purpose and focus of corporate economic activity. By the middle of the century, charity became the means through which economic enterprises could contribute to society and the stability of the social and political order. This was the *external* discursive forms of CSR. But CSR early on also developed an *internal* discursive form. This internal discursive form is centered on labor and labor relations. Unlike its external discourse, labor and labor policy were not considered CSR, but rather formed part of the issues of production. And yet, labor became a matter substantially more entwined with public values and obligations after the success of the Bolshevik Revolution in Russia and the formation of the Soviet Union. In the wake of that victory and the development of a Communist International bent on global worker revolution, the issue of labor became critically important to the discourse of the stability of the social order. And thus, an acceptable approach to labor by enterprises began to be understood as a part of the social responsibility of business. This acquired an international organizational form, and the development of a language of labor rights and state-business duty, with the formation of the International Labor Organization (ILO) in 1919.

This initial external and internal discourse of CSR—one focusing on charity and labor, began to give way to a different way of understanding the scope of CSR and the obligations of economic enterprises after 1945. In the aftermath of the Second World War, a substantial political transformation of the consensus narrative of the global order began to occur. It was a transformation first marked by ideologies of de-colonization-development. In the place of labor and charity, the public obligation of development, and more specifically, the development of former colonial states, began to play a more prominent role. This was a discourse grounded in technology and wealth transfer, of the New International Economic Order, of unequal trade, and of the obligations of enterprises (and their home states) to contribute to the development of former colonial spaces. CSR's discursive tropes changed with the times. Its *internal* discursive forms now became centered on ethics—a discursive trope that is still the dominant form of CSR study in many business schools. But its *external* trope became far more important for purposes of CSR as a system of behavior management and governance. This development sensitive approach to CSR was manifested most decisively by the creation of the Organization for Economic Cooperation and Development (OECD) and its decisive turn toward the development of informal standards of behavior applicable to the worldwide operations of enterprises. The principal focus of these standards, the most important of which was the OECD [*Guidelines for Multinational Enterprises*](#) (first distributed in 1976), was on the behavior of economic enterprises within its supply chain, much of which was located in former colonial territories. This proved to be the channel through which CSR was able to expand eventually into an RBC project (e.g., OECD, [*Due Diligence Guidance for Responsible Business Conduct*](#) (Paris: OECD, 2018)). Charity and labor policy now becomes subsumed with a larger set of

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

core CSR issues—governance, taxation, corruption, non-interference in local affairs, technology transfer and the like.

By the 1990s, the focus of CSR again began to shift. This shift was meant to align CSR discourse with the accelerating move of international organizations, and an increasingly powerful global civil society, to the language and principles of human rights. Human rights, as a central element of international law had been developing at an increasingly rapid rate from its modern institutional origins in the Universal Declaration of Human Rights, and a generation long and quite contentious international process of transforming the principles of the UDHR origins into two treaties, each representing a quite different view of the principal expressions of human rights—the International Covenant on Civil and Political Rights (favored by the US and liberal democratic states) and the International Covenant on Economic, Social, and Cultural Rights (favored by Marxist-Leninist and developing states). The language of rights, and the obligations they created not just in states, but in enterprises, especially those engaged in activities across borders, became increasingly important as the “new” basis of CSR. Over the course of a number of years initially unsuccessful efforts to develop an international treaty on corporate conduct and thereafter a set of Norms for Transnational Enterprises, eventually led to the adoption of the UN Guiding Principles for Business and Human Rights (UNGP). With that, internal and external discursive CSR tropes merged into the discursive language of human rights. Human rights absorbed within its legal and normative structures the older notions of charity, of labor (now labor rights), of development, and of ethics. Human rights becomes the operative language of CSR both within and outside the enterprise. For those committed to human rights as a core rationalizing principle, and the measure, of all economic conduct, the merger of CSR and human rights appeared inevitable. All that was left then was the old divide between those who viewed civil and political rights as human rights first principles, and those who viewed economic, social, and cultural rights in the same way.

But human rights discourse, and its merger with and into the larger CSR/RBC narrative pioneered by the OECD Guidelines and cemented in 2011 with the endorsement of the UNGP, appears now to be giving way to a new rationalizing discourse—the discourse of sustainability. Sustainability is only now developing its rationalizing principles and structures. Its most ambitious expression, like that of human rights, has emerged from an initiative of the United Nations. The Sustainability Development Goals consist of 18 principles that effectively embrace the entirety of the old approaches to CSR—charity, labor rights, development, ethics, governance, and human rights, and added to them environmental, climate change, bio-diversity, and related rights based principles—and fused them all together. But sustainability as CSR appears to be more than the sum of its parts. It is the discourse of a way of understanding responsibility that attempts to de-center individuals. That is a radical transformation from the baseline approach of human rights, labor, development and the like, all of which placed the individual at the center of the discourse. Sustainability is meant to embed the individual with rights, along with the enterprise (and the state) with duties and responsibilities, within a broader framework, where the principal obligation is to the planet, to stewardship, and to the protection of the collective within a complex global ecology. Ironically, CSR sustainability discourse appears to have revived the older division between internal and external CSR forms. Internally, sustainability CSR focused on the way in which the enterprise consumes its productive factors (labor, materials, natural resources) and the extent to which that use is sustainable and fair. Externally, sustainability CSR speaks the language of engagement in local context, of capacity building, and of the impact of economic activity on human and non-human

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

populations. At its limit, sustainability CSR becomes the measure by which even the legal regulation of economic activity (and thus the duty of states) must be judged. Thus, by the third decade of the 21st century, CSR would have become virtually unrecognizable, and its discourse incomprehensible, to people living in the third decade of the 20th century. This is the framework within which it is necessary to study CSR in its theoretical and applied dimensions.

What comes next? That is an open question. Much has changed in the CSR landscape over the last several decades. One no longer focuses on corporations, but rather on economic enterprises, or more generally on the processes of production. One does not view the issues as national but transnational. One does not necessarily center shareholders and investors, or even legal compliance, in the operation of CSR systems. One no longer thinks of CSR as expressed primarily through charity; instead charitable giving has been transformed into the business of corporate foundations; and its objects are now evaluated through the ordering frameworks of human rights, and more recently sustainability. CSR has seen the transformation of principled exhortations of aspirational objectives into the construction of a governmentalized administrative bureaucracy responsible for the operation of compliance, accountability, assessment and reporting systems. Even as CSR has seen the governmentalization of the enterprise, it has been changed through a process of legalization. That legalization has occurred on multiple levels. Rule systems have become a large part of corporate operations and along its production chains; it has become connected to national legal orders through the introduction of mandatory CSR measures. And it has been connected to international norms through the development of systems of human rights (and now sustainability including climate change) and framework soft law tool systems which are meant to develop both state duties and enterprise responsibility. In the process CSR has also become a site for the ongoing great debates about the normative foundations of economic activity: liberal democratic and markets driven, or Marxist Leninist or development oriented directed toward larger political objectives.

As of 2022, for some the answer is an international instrument that effectively rewrites the law of economic activity at a global level around conceptions of human rights. For others it is the decisive triumph of CSR as the mechanisms through which sustainable economic development may be accelerated through ideologically convergent privileging of collective objectives of stability and prosperity. For still others, the future lies in generalizing modalities of compliance and accountability that merge the public and private and that, increasingly, may be quantified and curated in real time through artificial intelligence based models. What has become clear, though, is that the consequences of CSR/RBC as law and regulation can no longer be ignored. It has come closer to center stage whether directly—through measures hardening international soft law, or indirectly, through the delegation of governmental oversight responsibility to enterprises under compliance based administrative structures.

This course, then, seeks to focus the study of CSR on the core institutional space within which CSR is commonly understood to be manifested and managed—the large multinational enterprises and on global systems of production. The MNE are complex organizations are composed of one or more organizations woven together through ownership or contract and creating a set of business relationships that span production chains—the integration of the process of economic activity overseen usually by a corporate

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

enterprise that serves as the apex of global production chains, but has application to enterprises throughout supply chains. The enterprise, embedded in global production within and outside the state serves, in turn, as the object of regulation, including (but not limited to) conventional systems of law. At its limit, of course, the relationship between the MNE and the production chain can be inverted. That is, production chains are complex organizations of economic activity that aggregate all of the steps necessary to draw together material and technological processes to produce objects for sale in markets that exist at every stage in the production process, the management and operationalization of which requires the organization of capital and labor. The emphasis of this course, then, is on the study of the legal and regulatory frameworks, both existing and emerging within states, in international institutions, and within production chains and the apex corporations that manage them. The course surveys the literature and examines topical examples drawn from today's US and global experiences. The object will be to begin to develop a conceptual and "as applied" basis for approaching key questions in CSR law in context: What has worked, what hasn't, and why? What are CSR's limits? What is the future of CSR?

Statement of Course Content and Structure

A comprehensive approach to the study of what has been called CSR, now sometimes responsible business conduct (RBC), and often better known by its functionally differentiated subparts (business and human rights, business and environment, climate change, etc.) remains uncommon. This even as—whatever one names it—has become more important as an element of corporate governance, even as its legitimacy has broadened and even as the issues inherent in CSR have become lodged in the larger issues of the regulation of economic activity, and more broadly still, in the long unresolved debate between those who would centralize collective governance in a political apparatus and those who would decentralize such governance through markets.

The aim of these materials, then, is to provide a more comprehensive approach to the study of the emerging and quite intimately related strands of a complex network of normative, methodological, and regulatory approaches to the rationalization (by both mandatory and discretionary methods and by qualitative and quantitative measures) that is sometimes still called CSR, sometimes referenced as responsible business conduct (RBC), and increasingly viewed through the lens of human rights and sustainability, has become one of the most important drivers of business culture, public policy and therefore, of economic regulation all over the world. corporate regulation. Though it manifests quite differently in states and international organizations, and though its normative principles are producing quite different models of the ideal forms of CSR and RBC within a human rights and sustainability context, the conversation of economic policy, especially around the best practices for economic production, is unavoidable. Liberal democratic states tend to see the discussion through the lens of the

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

market and market integrity, based on principles of individual autonomy and choice. Marxist Leninist and some developing states tend to see the discussion through a development, anti-colonialist, and collectivist lens which puts the state at the center of an ordered regulatory universe.

This course, then, examines these emerging field of societally informed regulation of economic activity and related developments with a view to informing students, who may become lawyers or policy makers or who may work at enterprises (public and private), of their responsibilities to their clients and employers (or to their enterprises) in relation to CSR duties, obligations and responsibilities in ways that matter to clients and to institutions with authority to affect business behavior. For lawyers, policymakers, and advocates that means examining the field of CSR for its regulatory or managerial potential, including mechanisms for business accountability respecting important substantive norms. For future government lawyers that means studying CSR for its relationship with and to legal regulatory tools. For future leaders of public and private enterprises that means understanding the impact of CSR in the cultures of their enterprises and in the role of CSR in economic decision-making. The course provides case studies, conceptual frameworks and tools to help students understand and assess different components of corporate social responsibility and different models of interaction between corporations, governments, intergovernmental organizations, investors and non-governmental organizations. It combines lectures, case studies, class discussions and practical assignments.

The course will be taught in a modified seminar style. **Each week's discussion will be built around a group of materials that suggest the central themes to be discussed. That discussion, in turn, is built around the application of emerging approaches to hypothetical problems.** Each of the problems serves to center discussion of the materials assigned. Students will spend the bulk of the class discussing approaches to the issues suggested by the problems for which the readings may offer insight. Each student will be assigned an enterprise (For the most part an apex corporation heading up a global production chain). The student will learn CSR through its application by the assigned enterprise. The object is to teach "law and policy in action" at the operational level, and to avoid, to the extent possible, too great an emphasis on abstract concepts detached from the real world in which they are being applied, and through this application, changed.

The course is divided in five Parts.

Part I serves as introduction. Students will consider a core hypothetical around which most of the issues encountered in CSR can be applied. That will set the tone for the course, one in which the student will be asked to apply abstract knowledge to the concrete problems of enterprises. To that end, students will be broken up into small groups. Each will be assigned an enterprise. This enterprise will serve as the focus of the CSR work for the semester. During the term, students will produce four reports in which the issues studied will be applied. Students will be asked to compare the way in which these different enterprises respond to the challenges of CSR. Lastly, the introductory materials will deal with issues of definition.

Part II unpacks the corporate in corporate social responsibility. The object is to understand where CSR risk may arise within an economic organization, and where such risk within the organization risk should be prevented, mitigated or remedied. That requires a focus on two distinct objectives. *The first is to understand the way in which economic activity is organized.* Here the student is introduced to the basic building blocks

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

through which responsibility is assigned: entities (corporations, partnerships, joint ventures, contractual and informal relationships). Students are also introduced to baseline concepts in law and policy respecting the alignment of legal and economic organization of economic activity. In this context the difficulties of creating coherence between legal forms and operational realities are explored through the consideration of the concept of the “multinational enterprise.” *The second is to understand risk mapping.* Students will be introduced to the concept of risk and risk assessment. Students will first consider the way that CSR can be understood as risk generating concepts for business operations. The distinctions between economic, social, environmental, political, and legal risk will be considered. The connection between CSR as a set of risk parameters and business operations will also be introduced. The object here is to align the operations of the institutions through which economic activity is undertaken with the risk that these produce. The student Also considered will be the range of enterprises and systems of production that are covered by CSR regimes—either as legal or societal matters. Part II ends with student presentations, “Risk Mapping and the Responsible Enterprise,” in which students attempt to align business and legal risk within the enterprise production chain. This provides the baseline knowledge necessary for deeper CSR study.

Part III draws students to a study of the alignment between corporate form and CSR responsibility. This part focuses examination on regulatory structures in national, international and private governance systems. The object is to introduce the students to the idea of polycentricity—the existence of plural legal and social systems whose rules are simultaneously applicable to economic actors. Governance gaps are considered, as are the fundamental issue of the source of regulation. These range from one extreme where the state is responsible for all regulation through law, to the other extreme where states are the protectors of the integrity of markets through which behavior is regulated through a constant interaction among actors based on consumption choices. of Students next consider enterprise self-regulation and third-party certification, along with its legal effects. The trend toward data driven compliance systems is also introduced. Students will then make their third presentation—an examination of how enterprises incorporate CSR into their management and decision making.

Part IV considers the “societal” in CSR. These materials serve as the conceptual heart of the course. Philanthropy and the legal regulation of social responsibility is first considered. Students will consider the legal framework in the U.S. and other states focusing on philanthropy and the notions of corporate waste. Next, students will examine CSR and human rights regimes. Special attention will be drawn to the development of human rights based normative systems for the regulation or management of economic activity. Lastly, students will consider the evolving systems of sustainability-based CSR responsibilities. Students deepen their exploration of the development of philanthropic, human rights, and sustainability based CSR initiatives through close study of the practices and systems of the enterprises they have been assigned. Each group will present reports on their enterprise’s philanthropic, human rights, and sustainability CSR initiatives. Students will be introduced first to responsibility as transparency. These include emerging national law-based disclosure regimes. But it also includes the use of markets driven management of behavior, the use of transparency and compliance systems by government to monitor and hold enterprises accountable.

Part V ends our examination of principal trends in CSR. It examines the “Responsibility” part of CSR with a focus on remedy. Students are first introduced to international and soft law approaches—with a focus on the

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

mechanisms in the OECD Guidelines for Multinational Enterprises and its NCP system. The scope of non-judicial grievance mechanisms are considered through the work of the UN High Commissioner for Human Rights. Students then consider the legal effects of CSR Codes. Lastly students consider the emerging international regulatory initiatives, focusing on the UN Human Rights Council's Accountability and Remedy Project (ARP) which was created to formulate credible and workable recommendations to enable more consistent implementation of the UNGPs but which also has substantial application to issues of sustainability. The ARP Program consisted of three phases: (1) ARP I, enhancing effectiveness of *judicial mechanisms* in cases of business-related human rights abuse; (2) ARP II, enhancing effectiveness of *State-based non-judicial mechanisms* in cases of business-related human rights abuse; and (3) ARP III, enhancing effectiveness of *non-State-based grievance mechanisms* in cases of business-related human rights abuse. Time permitting, discussion will also focus on the contemporary efforts to draft a comprehensive treaty for business and human rights. issues of home state remedies and extraterritorial application of law.

The course ends with the second student presentation, examining enterprise grievance mechanisms, anti-corruption efforts and assessments of reporting. The presentations will then be used as the basis for student final papers.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Summary Syllabus (With Weekly Discussion Themes)

NOTE: THESE MAY BE SUBJECT TO CHANGE DUE TO CONSTANTLY EVOLVING NATURE OF THE FIELD and STUDENTS ARE ADVISED TO CHECK THE ASSIGNMENTS PAGE FREQUENTLY.

Part I Course Introduction

Week 1: *Course Introduction—Concepts, Law and Policy Baselines:* Introduction to the course; CSR definitions and approaches, and the evolution of the field.

Part II Unpacking the “Corporate” in Social Responsibility

Week 2: *The Corporate in CSR—Risk Mapping,* where does business and legal risk arise within enterprise operations; introduction to the organization of economic enterprises (corporations, enterprises, and systems; baseline concepts in law and policy). The object is to (1) *understand the way in which economic activity is organized* and (2) *to understand risk mapping*.

Week 3: *Risk Mapping and Group Presentation 1:* Social responsibility issues arise all along the chain of production, and they can arise as business or legal risk. This exercise requires the student to examine the assigned enterprise to try to map out where business or legal risk related to CSR issues may arise. Last class of the week will be devoted to *Group Presentation 1 (Risk Mapping in the Responsible Enterprise)*.

Part III: The Nature of Responsibility in CSR—Focusing on Regulatory Structures: National, International and Private

Week 4 *Sourcing Responsibilities: Entities, Risk, and Compliance:* At the end of the risk mapping exercise, the student is left with the challenge of sourcing risk and determining its character. Part III begins an exploration of the sources of risk (as law, regulation, management, and norms). The student first considers the sources of risk for private entities with a focus on the great public international soft law instruments. The student then considers the challenges for public enterprises. These include operating companies with a direct obligation and financial institutions with an indirect obligation relating to their financing operations. The week ends with a consideration of the challenges for state owned enterprises and financial entities (state banks and sovereign wealth funds) of sourcing risk and applying otherwise generally applicable norms.

Week 5: *National Regulation and the Focus on Disclosure/Transparency as Responsibility.* This week introduces students to the current approaches to national regulation of RBC/CSR in the form of mandating human rights due diligence, in mandating others forms of CSR, and in other disclosure mandates. The

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

character of this sort of law making, its potential and challenges are explored. Also explored are the consequences that follow from adopting the current approach. These include the intermeshing of public regulatory with markets based behavior management, as well as issues of coherence across regulatory jurisdictions, the issue of regulatory silos and resulting litigation.

Week 6: *Self-Regulation; Third Party Certification, and its Legal Effects:* Corporate Social Responsibility Codes; what are they and how do they operate; third party certification, legal and social effects; CSR/RBC and social credit (in liberal democratic and Chinese Marxist Leninist political-economic systems). Self-regulation by enterprises is examined for its effects on the creation of cross border private regulatory structures above national legislation; third party certification is considered for its function as an alternative source of norm making and accountability. Social Credit is examined as a means of introducing students to data driven governance and its effects on CSR/RBC.

Part IV: The Societal in Corporate Social Responsibility

Week 7: *Philanthropy and the legal regulation of social responsibility:* Considering the legal framework in the U.S. and other states focusing on philanthropy, notions of corporate waste, and compliance. Students will also examine the way that philanthropy is organized in the modern MNE, with a special focus on the role of foundations. A particular focus will be on the rise and role of corporate foundations as a vehicle for CSR/RBC that both serves as a means of implementing CSR and as a source of CSR norms and the capacity building of CSR stakeholders.

Week 8: *Philanthropy as state policy.* Consideration of the Chinese Belt and Road Initiative and Indian corporate legislation, and the Canadian “CSR “enhanced strategy.” The last day of the week will be devoted to **presentation of group reports on enterprise philanthropy.**

Week 9: CSR and Human Rights. the development of human rights based normative systems for the regulation of corporate economic activity. The focus is on the development and emergence of the UNGPs as the framework around which a language of human rights has become centered within the CSR/RBC project, its potential and challenges. Also discussed are efforts to legalize, at an international level, the soft law principles of the UNGP.

Week 10: *Human Rights Soft Law and its Discontents.* Discussed are efforts to legalize, at an international level, the soft law principles of the UNGP. The students are introduced to the decades long efforts to create a binding instrument in international law on the human rights responsibilities of business. **Last class of the week will be devoted to presentation of group reports on enterprise human rights initiatives.**

Week 11: *CSR and Sustainability:* the broadening of corporate responsibility from philanthropy and human rights to sustainability, understood both as respect for environment and resource management for the long term.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Week 12. From Sustainability to Climate Change. The first class of the week ends the introduction to sustainability and CSR/RBC by considering the SDGs and climate change. In this context the sustainability approaches of financial institutions and SOES will also be considered. Student will take the opportunity to consider the way that the discourse of CSR has now shifted from labor and philanthropy (from the early 1900s) through that of development and human rights (through the 2010s), to sustainability and climate change (currently). Students will consider the ramifications of that change in the centering of discourse for the way in which enterprises now approach their CSR/RBC responsibilities through corporate structures, policies, and programs. **The last day of the week will be devoted to the final Group report on Corporate approaches to Sustainability and Climate Change.**

Part V: The Nature of Responsibility in CSR—Remedy

Week 13: *National and International Approaches.* Students examine emerging remedial mechanisms connected to CSR responsibilities under national and international institutions. The framework around which the examination will be developed in the OHCHR Accountability and Remedy Project (ARP) (2016-2020), which considered state based judicial remedies, state based non judicial remedies and non-state based non judicial remedies. In addition students will be introduced to remedial mechanisms under the U.N. Guiding Principles for Business and Human Rights; OECD Guidelines for Multinational Enterprises. Lastly students will consider the legal *effects of CSR Codes*: Recent litigation and future strategies with a focus on veil piercing, mutuality of contract, and 3rd party beneficiary defenses. **The course ends with the last student presentation on CSR/RBC and Enterprise Approaches to Remedy.**

Week 14: *Summing up and review; putting the course together.* The first class of the week will be devoted to **Group Presentation 2 (Enterprise CSR Remedy and Grievance Mechanisms)**. The last class of the week will be devoted to summing up and preparation of the final paper.

CORPORATE SOCIAL RESPONSIBILITY
 Larry Catá Backer
 Course Information and Syllabus
 Fall Semester 2022

Copyright ©Larry Catá Backer
 (August 2022)

Detailed Syllabus With Problems and Assigned Readings:

Part I Course Introduction

Week 1

Course Introduction—Concepts, Law and Policy Baselines: Introduction to the course; CSR definitions and approaches, and the evolution of the field.



Readings:

Class 1: Orientation and Introduction

- (1) Course Concept Statement
- (2) Course Content and Structure
- (3) Orienting Problem 1 (Megamart)
- (4) Background Quick Reads:

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

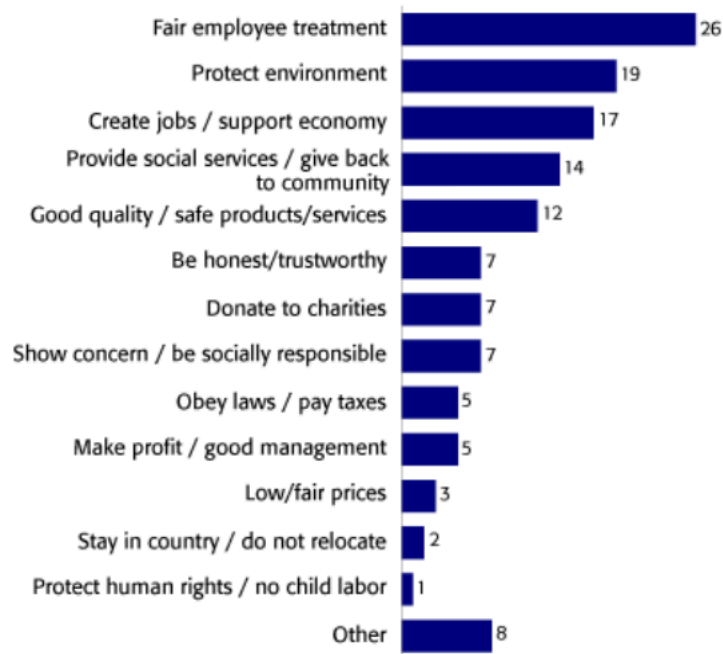
Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

- (a) Roel Nieuenkamp, “2016: CSR is dead! What’s next?,” *OECD Insights* (22 January 2016) available <http://oecdinsights.org/2016/01/22/2016-csr-is-dead-whats-next/>
- (b) Matteo Tonello, “The Business Case for Corporate Social Responsibility,” Harvard Law School Forum on Corporate Governance (26 June 2011), available <https://corpgov.law.harvard.edu/2011/06/26/the-business-case-for-corporate-social-responsibility/>

Most Important Thing a Company Can Do to Be Seen as Socially Responsible

Open-Ended, Total Mentions, Average of 20 Countries,*
General Public (n=2,274), 2005



*Asked in Argentina, Australia, Brazil, Canada, Chile, China, France, Germany, Great Britain, India, Indonesia, Italy, Mexico, Philippines, Russia, South Africa, South Korea, Switzerland, Turkey, USA
Subsample: Asked of 100 respondents in each country

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Class 2: In Search of Consensus in Definitions; a First Cut.

(1) Background: (Summaries to be prepared by Groups as assigned)

Sheehy, "Defining CSR: Problems and Solutions," *Journal of Business Ethics*, 131 (2015): 625-648. READ 625-636.

Alexander Dahlsrud, "How Corporate Social Responsibility is Defined: An Analysis of 37 Definitions," *Corp. Soc. Responsib. Environ. Mgmt* 15 (2008):1-13

Shafiqur Rahman, "Evaluation of Definitions: Ten Dimensions of Corporate Social Responsibility," *World Rev. of Bus. Research* 1(1) (2011) 166-176.

Jeehye You, *Legal Perspectives on Corporate Social Responsibility: Lessons From the United States and Korea* (Dordrecht: Springer, 2015) 26-41.

(2) Public Sector Definitions:

--Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: [A renewed EU strategy 2011-14 for Corporate Social Responsibility](#) (Brussels, 25.10.2011 COM(2011) 681 final)

-- China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters, "Guidelines for Social Responsibility in Outbound Mining Investments," available at <https://www.emm-network.org/wp-content/uploads/2015/03/CSR-Guidelines-2nd-revision.pdf> (Links to an external site.)Links to an external site..

-- Embassy of Sweden, "A Study on Corporate Social Responsibility Development and Trends in China" (2015), <http://www.csr-asia.com/report/CSR-development-and-trends-in-China-FINAL-hires.pdf>

--U.N. Industrial Development Organization , "What is CSR? Available <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr>

(3) Towards definition in the private sector:

International Chamber of Commerce: <https://iccwbo.org/global-issues-trends/responsible-business/>.

Amnesty International: <https://www.amnesty.org/en/what-we-do/corporate-accountability/>

International Corporate Accountability Roundtable: <https://www.scribd.com/document/98329238/ICAR-Statement-to-EU>.

McKinsey & Company: <https://www.mckinsey.com/featured-insights/leadership/making-the-most-of-corporate-social-responsibility>.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Part II: Unpacking the “Corporate” in Social Responsibility

Week 2:

The Enterprise (the ‘Corporate’) in CSR–Risk Mapping; introduction to the organization of economic enterprises (corporations, enterprises, and systems; baseline concepts in law and policy). The object is to understand where within an economic enterprise risk for CSR related activities may arise, and where they may be prevented, mitigated or remedied. The student examines *the way in which economic activity is organized*. Here the student is introduced to the basic building blocks through which responsibility is assigned: entities (corporations, partnerships, joint ventures, contractual and informal relationships). The student then examines the alignment between corporate form, the organization of production, and the distribution of control (legal, economic, or political). In this context the difficulties of creating coherence between legal forms and operational realities is explored through the consideration of the concept of the “multinational enterprise.”

Readings:

Class 3: Introduction to the core norms and forms of economic organizations with a focus on corporations, and the legal personality of collective economic organizations.

(1) Corporations

(A) *Dodge v. Ford Motor Co.*, 204 Mich. 459, 170 N.W. 668 (1919);

(Summaries to be prepared by Groups as assigned)

(B) Friedman, “The Social Responsibility of Business Is to Increase Its Profits,” *New York Times Sunday Magazine*, September 13, 1970;

(C) Robé, “Being Done with Milton Friedman,” *Accounting, Economics, and Law*, 2 (No. 2, 2012);

(D) Business Roundtable Statement on Corporate Purpose 2019; Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution (2 December 2019) (https://www.wlrk.com/docs/WEF-Davos_Manifesto_2020.pdf)

(E) Martin Lipton, “The Friedman Essay and the True Purpose of the Business Corporation,” Harvard Law School Forum on Corporate Governance (17 September 2020) (<https://corpgov.law.harvard.edu/2020/09/17/the-friedman-essay-and-the-true-purpose-of-the-business-corporation/>)

(F) Hester Peirce, “Markets, Morality, and Mobsters: Remarks at the 18th Annual Corporate Governance Conference (27 August 2020). Available <https://www.sec.gov/news/speech/peirce-markets-morality-mobsters-2020-08-27>.

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Optional:

(A) Salomon V. Salomon & Co [U.K. 1897] available

<http://corporations.ca/assets/Salomon%20v%20Salomon.pdf>.

(B) Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd [1916]

2 AC 307 available <http://unisetca.ipower.com/other/cs2/19162AC307.html>.

(2) The rest

(A) US Small Business Administration, Choose a Business Structure”

| Business structure | Ownership | Liability | Taxes |
|--|---|---|---|
| Sole proprietorship | One person | Unlimited personal liability | Personal tax only |
| Partnerships | Two or more people | Unlimited personal liability unless structured as a limited partnership | Self-employment tax (except for limited partners) Personal tax |
| Limited liability company (LLC) | One or more people | Owners are not personally liable | Self-employment tax Personal tax or corporate tax |
| Corporation - C corp | One or more people | Owners are not personally liable | Corporate tax |
| Corporation - S corp | One or more people, but no more than 100, and all must be U.S. citizens | Owners are not personally liable | Personal tax |
| Corporation - B corp | One or more people | Owners are not personally liable | Corporate tax |
| Corporation - Nonprofit | One or more people | Owners are not personally liable | Tax-exempt, but corporate profits can't be distributed |

(Pix Credit: <https://www.sba.gov/business-guide/launch-your-business/choose-business-structure#section-header-1>)

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Class 4: From corporation to enterprise—tension between legal, economic, and policy definitions; the role of contractual relationships and private international legal ordering.

(Summaries to be prepared by Groups as assigned)

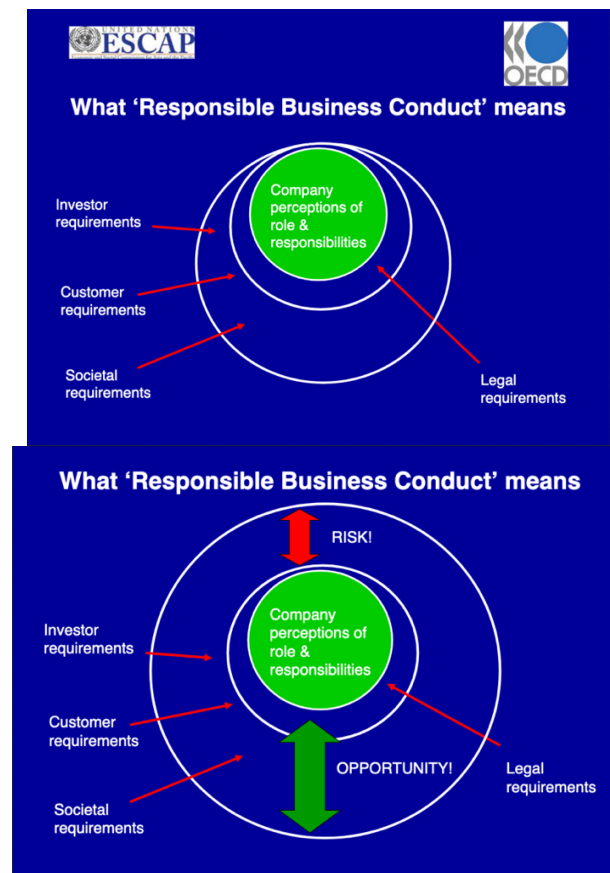
(1) Peter Muchlinski, *Multinational Enterprises and the Law* (3rd Ed.; Oxford University Press, 2021). PP. 5-8; 42-78.

(2) Backer, Larry Catá, Regulating the Multinational Enterprise as Entity, as a Network of Links and as a Process of Production (February 20, 2018). Available at SSRN: <https://ssrn.com/abstract=3126866> or <http://dx.doi.org/10.2139/ssrn.3126866>

Optional:

(A) [U.S. v. Best Foods](#), 524 U.S. 51 (1998); or [here](#) <https://www.law.cornell.edu/supct/pdf/97-454P.ZO>

(B) [Daimler AG v. Bauman](#), 571 U.S. ____ (2014).



From UN ESCAP [HERE](#)

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Week 3

Risk Mapping and Group Presentation 1 (Risk Mapping the Responsible Enterprise). Where does reputational, political, social, economic, and legal risk arise within enterprise operations? Students are introduced to the issues of aligning enterprise form with the economics of production—supply chains and economic organization and the role of private international legal ordering. In this context the difficulties of creating coherence between legal forms and operational realities is explored through the consideration of the concept of the “multinational enterprise.” Students then consider the alignment between enterprise form corporate form, the organization of production, and the distribution of control (legal, economic, or political). Students are then introduced to the issues of aligning enterprise form with the economics of production—supply chains and economic organization, and the role of private international legal ordering.

Readings:

Class 5: Risk and Risk Mapping

(Summaries to be prepared by Groups as assigned)

- (1) Sergio Scandizzo, “Risk Mapping and Key Indicators in Operational Risk Management,” *Economic Notes* 34(2):231-256 (2005) **GROUP 1**
- (2) (A) Norman, Wayne, and Chris MacDonald. “Getting to the Bottom of “Triple Bottom Line”.” *Business Ethics Quarterly* 14, no. 2 (2004); (B) Timothy F. Slapper, “The Triple Bottom Line: What is it and How Does it Work?,” Indiana U, 2011) **GROUP 2**
- (3) Bjorn Fasterling, Demuijnck, G. Human Rights in the Void? Due Diligence in the UN Guiding Principles on Business and Human Rights. *J Bus Ethics* 116, 799–814 (2013). **GROUP 3**
- (4) Lucy Pérez, Vivian Hunt, Hamid Samandari, Robin Nuttall, and Donatela Bellone, ‘How to Make ESG Real,’ McKinsey (August 2022) **GROUP 4**

Optional:

- (4) Measuring Corruption: Myths and Realities, World Bank Findings (2007)
- (5) Omar E. Hawthorne, Do International Corruption Metrics Matter?

Class 6: Group Presentations

GROUP PRESENTATION 1: Social responsibility issues arise all along the chain of production, and they can arise as business or legal risk. This exercise requires the student to examine the assigned enterprise to try to map out where business or legal risk related to CSR issues may arise. The object is to examine how the enterprise assess risk, how does it determine whether a risk is

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

material to its operations, which risks does the enterprise emphasize, and the way in which the enterprise develops processes for identifying and meeting risk in its operations.



CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Part III: The Nature of Responsibility in CSR—Focusing on Regulatory Structures: National, International and Private

Class 7 introduces students to the differences between hard and soft law as sources of the normative content of CSR. It also introduces the principal sources of normative principles around which the regulatory debate is occurring. Lastly it suggests the connection between legal and market mechanisms as regulatory frameworks. *Class 8* then discussed the applicability of these soft law frameworks for the commercial enterprises of states (SOEs) and for indirect actors (lenders). More specifically it suggests the problems that arise when states may either own or subsidize national business enterprises which they then regulate in terms of “level playing fields” for legal regimes, regulatory governance, and markets based accountability. This analysis includes operating companies, and secondary enterprises (lenders and financial institutions (public and private) as well as subsidy schemes. *Class 9* then explores the emerging system of national hard law regulation of responsible business conduct. The focus is on the challenges and opportunities of national legislation. Challenges include the limits of territorial jurisdiction, issues of coherence across regulatory schemes, and regulatory silos (e.g., segmenting regulation by specific forms of wrongful conduct—forced labor, corruption, etc.). This class also considers the interaction between the limits of national duty to protect human rights (for example) and the broader responsibilities of enterprises (including state enterprises) to respect human rights (irrespective of the limits of national law). *Class 10* explores the regulatory effects of disclosure as both a national and international strategy. It is meant to draw together some of the implications and lessons of the prior classes 7-9, and suggest the ways in which they implicate a markets driven legalization environment distinct from the traditional basis for law making grounded in the authority of public power constitutionally exercised. Classes 11-12 then turn from the consideration of public national and international hard and soft law sources of CSR/RBC norms to those generated by private institutions. *Class 11* introduces the student to corporate self-regulation. Here the student considers the challenges and emerging patterns of corporate self-regulation both as a consequence of public law delegation (through compliance and reporting mandates, for example) and as a response to market (consumer and lender preferences exercised through market choice and cost of capital pricing). Lastly *Class 12* examines the emerging private market for CSR/RBC regulation. The focus is on private third party certification. These are explored first as sources of norms (the standards that must be met to be certified), and then as sources of monitoring and accountability (the function of 3rd party certification to review conformity with its standards at the risk of having certification pulled).

Week 4

Sourcing Responsibilities: Entities, Risk, and Compliance: At the end of the risk mapping exercise, the student

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

is left with the challenge of sourcing risk and determining its character. Part III begins an exploration of the sources of risk (as law, regulation, management, and norms). The student first considers the sources of risk for private entities with a focus on the great public international soft law instruments. The student then considers the challenges for public enterprises. These include operating companies with a direct obligation and financial institutions with an indirect obligation relating to their financing operations. The week ends with a consideration of the challenges for state owned enterprises and financial entities (state banks and sovereign wealth funds) of sourcing risk and applying otherwise generally applicable norms.

Readings:

Class 7: Responsibility and Private Entities

- (1) [OECD Guidelines for Multinational Enterprises](#) (2011 Edition)
- (2) [UN Guiding Principles for Business and Human Rights](#) (Geneva and New York: U.N. 2011); Especially Pillar 2; ¶¶ 11-24.
- (3) ISO Standard 26000
- (4) U.N. Global Compact; <https://www.unglobalcompact.org/>. (Prepared document from website); Our Mission Statement: [The Ten Principles of the UN Global Compact](#)
- (5) Sarah Labowitz and Dorothée Baumann-Pauly, [Business as Usual is Not an Option](#) (NYU Stern Center, 2014).

CORPORATE SOCIAL RESPONSIBILITY

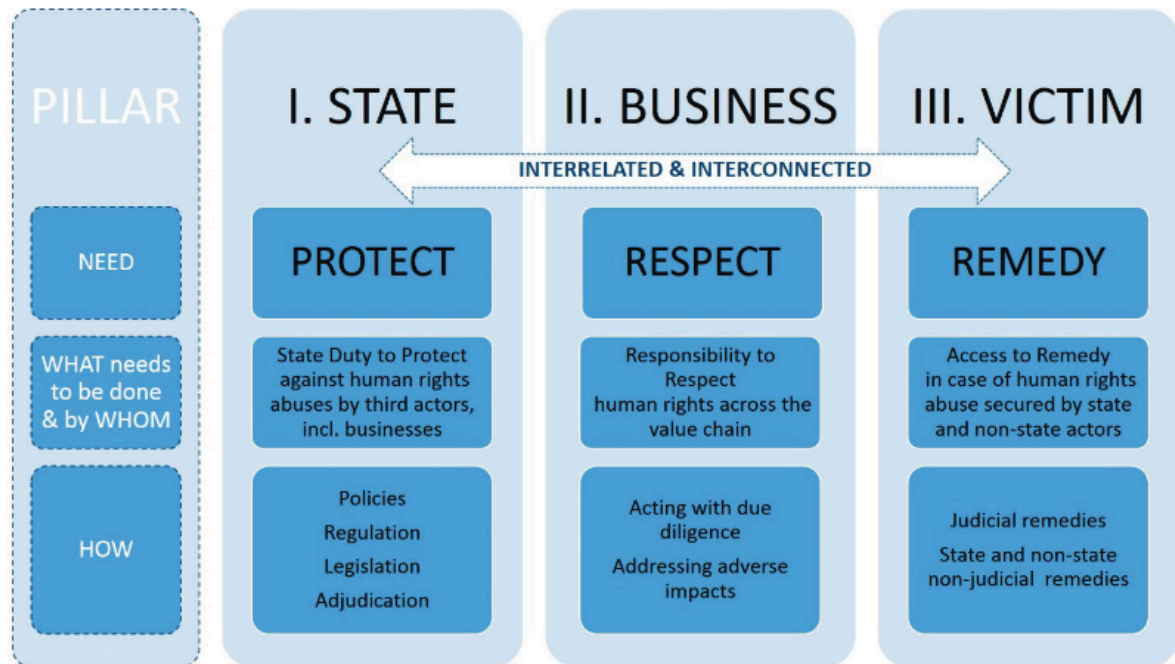
Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

UN Guiding Principles on Business and Human Rights – schematic overview



From EU Directorate General-External Policies, Implementation of the UNGPs (2017), p. 13

Class 8: Responsibilities, Financial Institutions and State Owned Enterprises

(1) OECD *Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition; available [here](#).

(2) OECD *Guidelines for SOEs in Southern Africa* (Nov. 2014).

(3) [Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, “State Owned Enterprises must lead by Example,”](#) A/HRC/32/45 (4 May 2016).

(4) Larry Catá Backer, [Between State, Company, and Market: A Preliminary Engagement with the 2016 Report of the Working Group on Business and Human Rights and the Issue of State Owned Enterprises \(SOEs\)](#) (November 2016).

(5) Backer, Larry Catá, *The Corporate Social Responsibilities of Financial Institutions for*

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

the Conduct of Their Borrowers: The View from International Law and *Lewis & Clark Law Review*, 21, 2017. Available at SSRN: <https://ssrn.com/abstract=2953738>

Week 5

National Regulation and the Focus on Disclosure/Transparency as Responsibility: disclosure regimes in national law and the use of market driven management of behavior; the use of transparency and compliance systems by the government to monitor and hold enterprises accountable for violations of law.

Readings:

Class 9: Statutory Approaches

(1) Mandatory Reporting: The Example of Human Rights Due Diligence Regimes:

(a) OHCHR, “UN Human Rights “Issues Paper” on legislative proposals for mandatory human rights due diligence by companies” (June 2020) available https://www.ohchr.org/Documents/Issues/Business/MandatoryHR_Due_Diligence_Issues_Paper.pdf

(b) OHCHR, “Mandatory Human Rights Due Diligence Regimes Some Key Considerations (June 2020), available https://www.ohchr.org/Documents/Issues/Business/MandatoryHR_Due_Diligence_Key_Considerations.pdf

(2) (A) Uyghur Forced Labor Prevention Act (([Public Law No. 117-78](#); 2021); and (B) Office of Homeland Security, *Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China, Report to Congress* (June 17, 2022) (focus on pp. 34-58)

(3) COM(2022) 453 - Proposal for a regulation on prohibiting products made with forced labour on the Union market; White & Case; [Explainer: European Commission proposes ban on goods made with forced labour](#) (20 September 2022)

(4) (A) Australia Modern Slavery Act 2018; available <https://www.legislation.gov.au/Details/C2018A00153>; (B) (6) (A) TEXT–UK [Modern Slavery Act](#) (2015) U.K. 2015 c. 30; (C) (B) Shift, “Mapping the Provisions of the Modern Slavery Act Against the Expectations of the UN Guiding Principles on Business and Human Rights,” available at http://shiftproject.org/sites/default/files/Shift_Mapping%20Modern%20Slavery%20Act%20Against%20UNGPs%20Note_July2015.pdf;

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

(5) (A) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (); and (B) [EU Commission, Press Release](#) “ Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains” (Brussels, 23 February 2022)

OPTIONAL:

(6) [France](#): Supply Chain Due Diligence Law (2017) (Original French provided)[24 March 2017: [Constitutional Council](#) removed the €10 to €30 million civil penalty attached, liability continues to apply when companies default on their duty of vigilance obligations, including failing to publish a vigilance plan or faults in its implementation.]

READ: (A) European Coalition for Corporate Justice, French Corporate Duty Of Vigilance Law

(B) Vigilance Law English translation

(C) OPTIONAL: Shift, Human Rights Reporting in France

(7) Barber v. Nestlé USA, Inc. No. SACV 15-01364-CJC(AGRx) 9 Dec. 2015
<http://www.csrandthelaw.com/wp-content/uploads/sites/2/2016/01/Nestle-dismissal.pdf>

Class 10: Transparency in a broader Regulatory Context

(1) Comment Letter from Bill Bauer and Ralph Thurm (R30) to Emmanuel Faber and Susanne Lloyd (International Sustainability Standards Board)—29 July 2022

(Summaries to be prepared by Groups as assigned)

(2) Corporate Compliance: Fraud Section of the Criminal Division, U.S. Department of Justice, updated guidelines for the “Evaluation of Corporate Compliance Programs,” in February, 2017 available <https://www.justice.gov/criminal-fraud/page/file/937501/download>.

(3) (A) [Dodd Franck §1502](#) Conflict Minerals (2010); (B) (A) National Ass’n of Mfrs. v. SE.C., 800 F.3d 518, 530 (D.C. Cir. 2014) en banc court of appeals determined that requiring a company to make a statement in an SEC filing posted to its website that its products were “not found to be ‘DRC conflict-free.’ Violated the company’s speech rights under the Constitution’s 1st Amendment).

(4) EU Parliament: Briefing—The Non Financial Reporting Directive (January 2021); (B) [Directive 2014/95/EU](#) lays down the rules on disclosure of non-financial and diversity information by large companies. This directive amends the accounting directive 2013/34/EU. Companies are

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

required to include non-financial statements in their annual reports from 2018 onwards; (C) [EU Commission: Explanation Non-Financial Reporting](#)

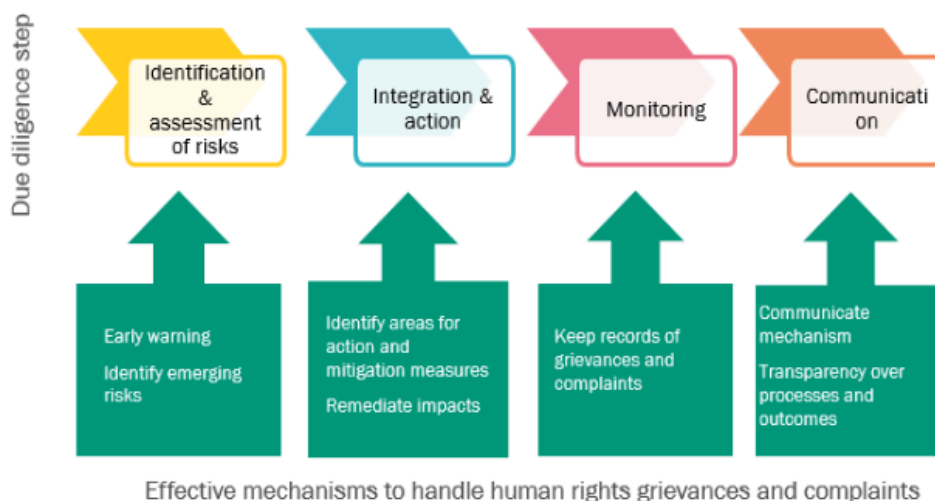
(5) (1) ICAR. ‘Knowing and Showing’: Using US Securities Laws to Compel Human Rights Disclosure and (2) Joanne Bauer, ‘Unlocking the ‘S’ in ESG,’ (2022) 31(3) PIACWEB.org. pp. 10-13; Larry Catá Backer, [Brief Thoughts on Martin Lipton: “ESG, Stakeholder Governance, and the Duty of the Corporation” \(Harvard Law School Forum on Corporate Governance\)](#), Law at the End of the Day 24 September 2022.

OPTIONAL:

(A) L. Backer, “From Moral Obligation to International Law: Disclosure Systems, Markets and the Regulation of Multinational Corporations” *Georgetown Journal of International Law*, Vol. 39, 2008;

(B) L. Backer, “Transparency and Business in International Law: Governance Beyond Norm and Technique,” in *Transparency in International Law* 477-501 (Andrea Bianchi and Anne Peters, eds., Cambridge U. Press, 2013).

Ways in which operational grievance mechanisms relate to and feed into human rights due diligence processes



From Curtze and Gibbons 2017 available [HERE](#)

Week 6

Self-Regulation; Third Party Certification, and its Legal Effects: Corporate Social Responsibility Codes; what are they and how do they operate; third party certification, legal and social effects; CSR/RBC and social credit

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

(in liberal democratic and Chinese Marxist Leninist political-economic systems). Self-regulation by enterprises is examined for its effects on the creation of cross border private regulatory structures above national legislation; third party certification is considered for its function as an alternative source of norm making and accountability. Social Credit is examined as a means of introducing students to data driven governance and its effects on CSR/RBC.

Class 11: Corporate Self-Regulation Within Its Production Chains

ALL GROUPS: Supplier Codes of Conduct. Each group will be required to read the Supplier Code of Conduct or Leadership Standards issued by their assigned enterprise.

(1) L. Backer, Multinational Corporations as Objects and Sources of Transnational Law, *ISLAJ. Int'l & Comp. L.* 14(2) (2008). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1092167

Optional: Backer, Economic Globalization and the Rise of Efficient Systems of Global Private Law Making: Wal-Mart as Global Legislator, *University of Connecticut Law Review* (Vol. 39(4), 2007): 1739-1784.

(2) Teubner, G., Self-Constitutionalizing TNCs? On the Linkage of "Private" and "Public" Corporate Codes of Conduct (*Indiana Journal of Global Legal Studies* 18: 617 (2011)). Available <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1457&context=ijgls>.

(3) Stephen Kim Park, "Social Responsibility Regulation and Its Challenges to Corporate Compliance," *Brooklyn Journal of Corporate, Financial & Commercial Law* 14, no. 1 (Fall 2019): 39-52.

(4) Optional Additional Codes of Conduct:

--Apple, Inc. <https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-January.pdf>

--Wal-Mart, Standards for Suppliers; <https://cdn.corporate.walmart.com/bc/8c/97ac8c9b43229f17480057fd684e/standards-for-suppliers-english-updated-6-30.pdf>.

--Nike, (1) [Code of Conduct](#); (2) [Code Leadership Standards](#)

--Carrefour

http://www.carrefour.com/sites/default/files/CHARTESOCIALE_ENv2.pdf

--Toyota, Supplier CSR Guidelines https://www.toyota-global.com/sustainability/society/partners/supplier_csr_en.pdf

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)



Class 12: Third Party Certification and Social Credit Systems

(1) Each group will be assigned one of the readings below and then be prepared to discuss in class

(A) Etilé, Fabrice and Teyssier, Sabrina, Signaling Corporate Social Responsibility: Third-Party Certification Versus Brands (July 2016). The Scandinavian Journal of Economics, Vol. 118, Issue 3, pp. 397-432, 2016. Available at SSRN: <https://ssrn.com/abstract=2801361> or <http://dx.doi.org/10.1111/sjoe.12150>

(B) Errol Meidinger, “[Forest Certification as a Global Civil Society Regulatory Institution;](#)” and “[Forest Certification as Environmental Law Making by Global Civil Society.](#)”

(C) Fair Labor Association, <http://www.fairlabor.org/>

(D) Fair Trade, <http://fairtradeamerica.org/en-us/for-business/ways-of-working-with-fairtrade?gclid=CMycwMvOi9MCFdSIswodlNkEuQ>.

(E) Larry Catá Backer and Matthew McQuilla, “The Algorithmic Law of Business and Human Rights: Constructing a Private Transnational Law of Ratings, Social Credit, and

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Accountability

Measures”

Available

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3684196.

Part IV: The Societal in Corporate Social Responsibility

Part III is divided into three parts of CSR—philanthropy, human rights, and sustainability. With respect to each the class will proceed as follows: Each section will consist of an initial set of readings, some of which will be divided among groups. Then each group will produce a report on the way in which each group’s assigned enterprise incorporates (1) philanthropy, (2) human rights, and (3) sustainability, in their CSR activities. Each report will consist of two parts: (1) a single slide PowerPoint summary presentation, and (2) a detailed report covering each topic. The PowerPoint and the Report will include a sustained analysis of the following: (1) policy; (2) Operational supervision (how is policy implemented); (3) Spending (breakdown of spending by type and amount); and (4) Impact (how is impact measured; assessment mechanisms, reporting).

Week 7

Philanthropy and the legal regulation of social responsibility: Considering the legal framework in the U.S. and other states focusing on philanthropy, notions of corporate waste, and compliance. Students will also examine the way that philanthropy is organized in the modern MNE, with a special focus on the role of foundations. A particular focus will be on the rise and role of corporate foundations as a vehicle for CSR/RBC that both serves as a means of implementing CSR and as a source of CSR norms and the capacity building of CSR stakeholders.

Readings:

Class 13: Legal frameworks

- (1) AP Smith Mfg. Co. v. Barlow, 26 N.J. Super. 106, 97 A.2d 186 (1953)
- (2) Theodora Holdings Corp v. Henderson, 257 A.2d 398 (Del.Ch. 1969)
- (3) Kahn v. Sullivan , 594 A.2d 48 (Del 1991)
- (4) D) H. Wells, “The Life (and Death?) of Corporate Waste,” Washing and Lee Law Review 74 (2017). Available https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2878091

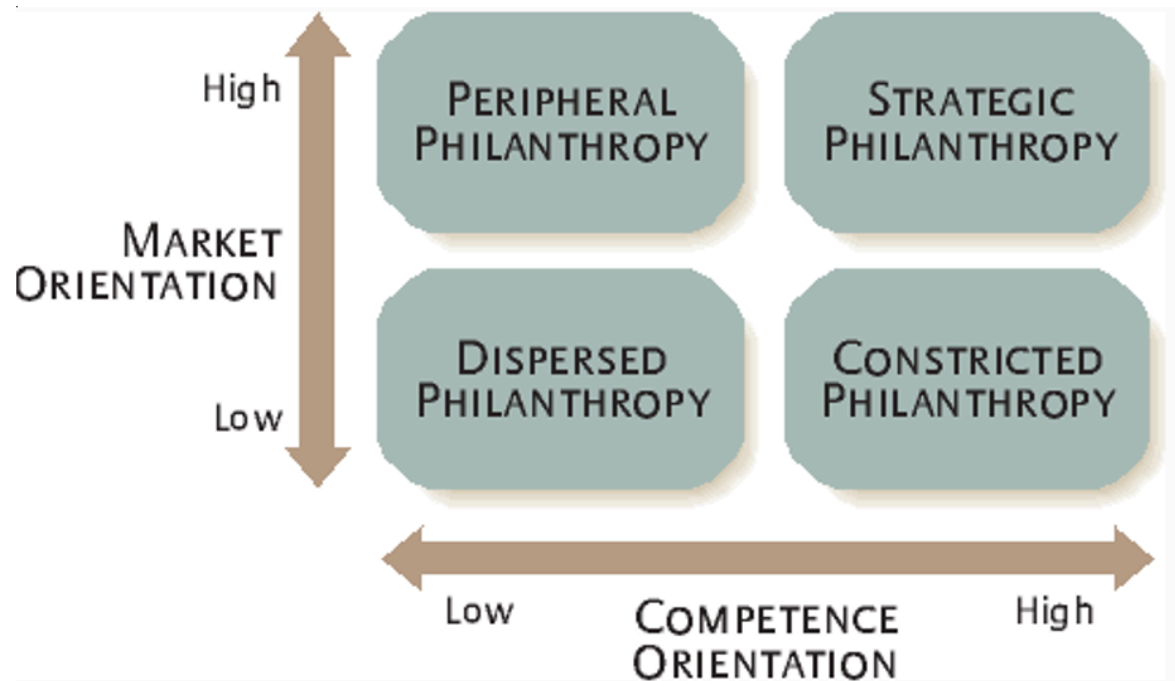
CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)



Class 14: Structural foundations

Readings:

(A) The Benefit Corporation: Hiller, J.S., "The Benefit Corporation and Corporate Social Responsibility," *J Bus Ethics* 118: 287-301 (2013).

(B) Richard Welford, "Corporate Social Responsibility in Europe, North America and Asia: 2004 Survey Results," *The Journal of Corporate Citizenship* 17: 33-52 (2005), available <http://search.proquest.com/openview/2ce2cf3adef4e7341c482facb64333f/1?pq-origsite=gscholar&cbl=43079>.

(C) Amaeshi, Kenneth M. and Adi, A.B. C. and Ogbechie, Chris and Amao, Olufemi O., Corporate Social Responsibility in Nigeria: Western Mimicry Or Indigenous Influences? (2006). Available at SSRN: <https://ssrn.com/abstract=896500> or <http://dx.doi.org/10.2139/ssrn.896500>

(D) Jingchen Zhao, "The Harmonious Society, Corporate Social Responsibility and Legal Responses to Ethical Norms in Chinese Company Law," *Journal of Corporate Law Studies*

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

12(1):163-200 (2012)

(E) Heike Bruch and Frank Walter, “The Keys to Rethinking Corporate Philanthropy,”
MIT Sloan Management Review (Fall 2005)

Week 8

Philanthropy as State Policy: Consideration of the Chinese Belt and Road Initiative and Indian corporate legislation. The last day of the week will be devoted to **presentation of group reports on enterprise philanthropy**.

Readings

Class 15: Philanthropy as State Policy: Examples of China and India
INDIA

(A) Ghuliani, “India Companies Act 2013: Five Key Points about India’s ‘CSR Mandate’,”
available <https://www.bsr.org/en/our-insights/blog-view/india-companies-act-2013-five-key-points-about-indias-csr-mandate>.

(B) India Corporate Code Provisions on CSR

(C) Maqbool and Zamir, ‘Corporate Social Responsibility Reporting in India: A Study of SENSEX Companies,’ *Management and Labour Studies* 44(2):209-223 (2019).

(D) Corporate Social Responsibility in India, *India Briefing* (March 2020).

CHINA GROUPS C & D

(E) *Vision And Actions On Jointly Building Silk Road Economic Belt And 21st-Century Maritime Silk Road* (2015) available <https://eng.yidaiyilu.gov.cn/qwyw/qwfb/1084.htm>.

(F) Larry Catá Backer, Full Text of Remarks delivered at the 8th United Nations Forum for Business and Human Rights, 26 November 2019: “Peaches and Plums do not Speak, but they are so Attractive that a Path is Formed Below the trees” [桃李不言，下自成蹊]: China’s Belt and Road Initiative and the United Nations Guiding Principles for Business and Human Rights. Available <https://lcbackerblog.blogspot.com/2019/11/full-text-of-remarks-delivered-at-8th.html>;
DOWNLOAD HERE: [Peaches and Plums do not Speak](#) .:

(G) [Ministry of Commerce and the Chamber of Commerce of Metals, Minerals and Chemicals](#)

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

[Imports and Exports issued guidelines](#)

CANADA: GROUPE

(H) *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad* (14 Nov. 2014). Available

https://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Enhanced_CS_Strategy_ENG.pdf.

Summary at <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rsc.aspx?lang=eng>

SAUDI ARABIA GROUP 1

The Role of Awqaf in Achieving the SDGs and Vision 2030 in KSA (UN Saudi Arabia and Islamic Corporation for the Development of the Private Sector; 26 September 2021)

<https://saudiarabia.un.org/en/146145-role-awqaf-achieving-sdgs-and-vision-2030-ksa> (في تحقيق أهداف التنمية المستدامة ورؤية المملكة 2030 دور الأوقاف

(https://saudiarabia.un.org/sites/default/files/2021-09/The%20Role%20of%20Awqaf%20in%20Achieving%20the%20SDGs%20and%20Vision%202030%20in%20KSA%20%28ARABIC%29_0.pdf)

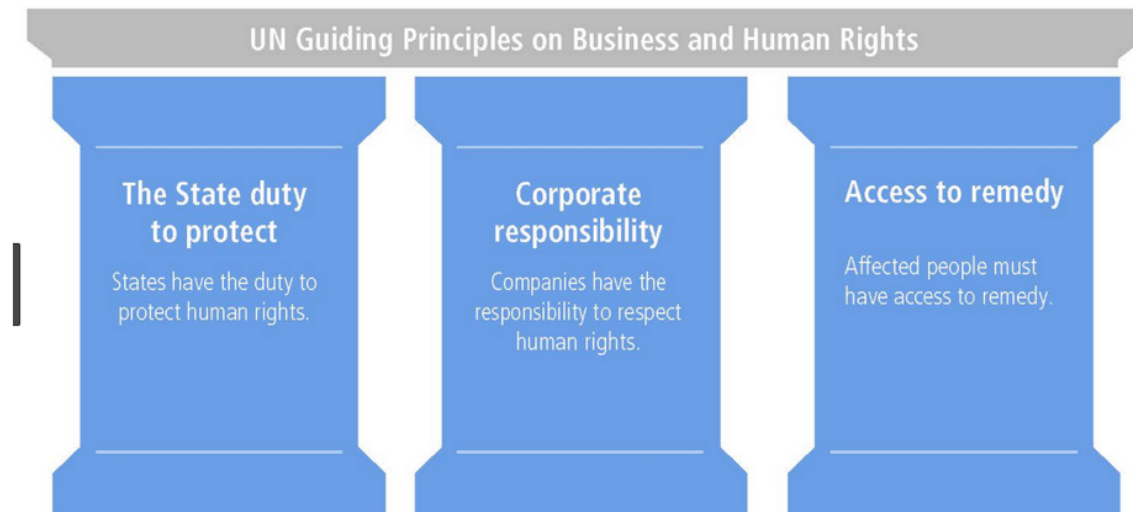
Press Release UN Saudi Arabia: 'Sleeping Giant: In Saudi Arabia, reviving a traditional form of philanthropy' (5 October 2021) [<https://unsdg.un.org/latest/stories/sleeping-giant-saudi-arabia-reviving-traditional-form-philanthropy>].

Class 16: Group Presentations

GROUP PRESENTATION 2—Report on the Philanthropic organization and operation of assigned corporations.

CORPORATE SOCIAL RESPONSIBILITY
 Larry Catá Backer
 Course Information and Syllabus
 Fall Semester 2022

Copyright ©Larry Catá Backer
 (August 2022)



Week 9

CSR and Human Rights: the development of human rights based normative systems for the regulation of corporate economic activity. The focus is on the development and emergence of the UNGPs as the framework around which a language of human rights has become centered within the CSR/RBC project, its potential and challenges.

Readings:

Class 17: The Governance Framework

(1) U.N., The U.N. Guiding Principles on Business and Human Rights, An Introduction (2011) available

http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf.

(2) UNOHCHR, The Corporate Responsibility to Respect Human Rights, An Interpretive Guide (HR/PUB/12/02; 2012) available

<http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf> pp. 1-25.

(3) [Protect, Respect and Remedy: a Framework for Business and Human Rights](#): Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; A/HRC/8/5 (7 April 2008).

(4) Government of Canada: CSR: An Implementation Guide for Canadian Business (2014) available <https://www.ic.gc.ca/eic/site/csr->

CORPORATE SOCIAL RESPONSIBILITY
Larry Catá Backer
Course Information and Syllabus
Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

[rsc.nsf/vwapi/CSRIImplementationGuide.pdf/\\$file/CSRIImplementationGuide.pdf](https://www.rsc.nsf/vwapi/CSRIImplementationGuide.pdf/$file/CSRIImplementationGuide.pdf).

(5) European Union: EU Commission, “A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility,” Brussels 25.10.2011 COM(2011) 681 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0681&from=EN>

Class 18: The Framework and Its Critique

(1) Surya Deva, “Treating Human Rights Lightly: A Critique of the Consensus Rhetoric and the Language Employed by the Guiding Principles,” in (Surya Deva and David Bilchitz, eds., *Human Rights Obligations of Business*; Cambridge University Press, 2013) pp. 78-104)

(2) Florian Wettstein, “CSR and the Debate on Business and Human Rights: Bridging the Great Divide,” *Business Ethics Quarterly* 24(4):730-770 (2012).

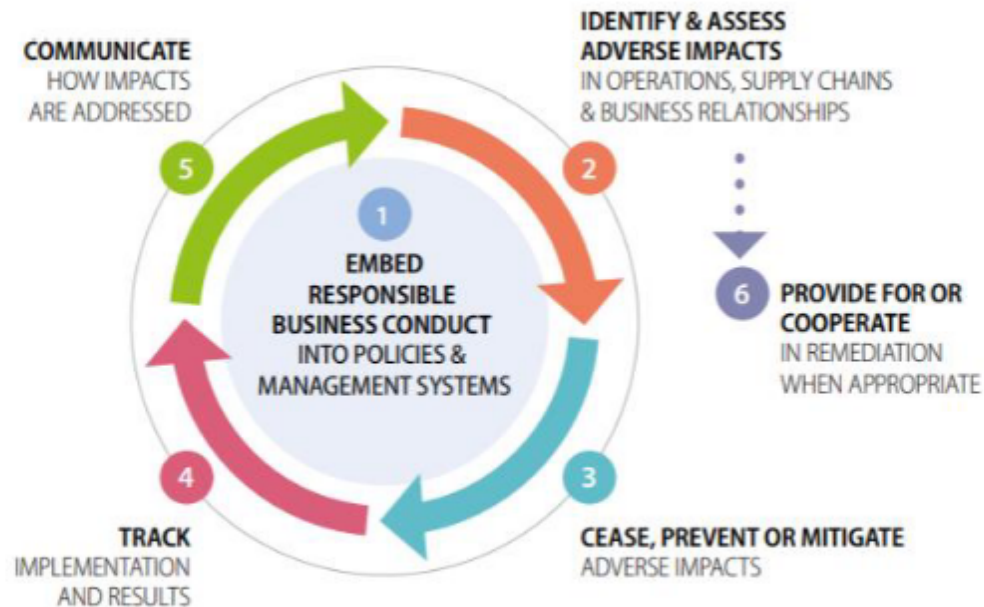
(3) Brigitte Hamm, ‘The Struggle for Legitimacy in Business and Human Rights Regulation—a Consideration of the Processes Leading to the UN Guiding Principles and an International Treaty,’ (2021) 23 *Human Rights Review* 103-125

(4) China State Council White Paper, ‘The Communist Party of China and Human Rights Protection, A Hundred Year Quest (June 2021) [http://www.xinhuanet.com/english/2021-06/24/c_1310024904.htm].

CORPORATE SOCIAL RESPONSIBILITY
 Larry Catá Backer
 Course Information and Syllabus
 Fall Semester 2022

Copyright ©Larry Catá Backer
 (August 2022)

FIGURE 1. DUE DILIGENCE PROCESS & SUPPORTING MEASURES



(Source: OECD Due Diligence Guidance)

Week 10

Human Rights Soft Law and its Discontents. Discussed are efforts to legalize, at an international level, the soft law principles of the UNGP. The students are introduced to the decades long efforts to create a binding instrument in international law on the human rights responsibilities of business. **Last class of the week will be devoted to** presentation of group reports on enterprise human rights initiatives.

Readings

Class 19: Presentation of Reports

(1) Larry Catá Backer, Multinational Corporations, Transnational Law: The United Nation's Norms on the Responsibilities of Transnational Corporations as Harbinger of Corporate Responsibility in International Law, *Columbia Human Rights Law Review* (2006) available https://papers.ssrn.com/sol3/papers.cfm?abstract_id=695641. (I WILL DO THIS ONE).

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

(2) GROUP SUMMARIES OF PORTIONS OF THE [Völkerrechtsblog Online Symposium: "Framing Business & Human Rights?"](#) (June 2022)

- Part I [Introduction](#)
- Part 2 [Giulia Botta](#) (GROUP 1)
- Part 3 [Jonathan Klaaren](#) (GROUP 1)
- Part 4 [Lucas Roorda](#) (GROUP 2)
- Part 5 [Claire Methven O'Brien](#) (GROUP 2)
- Part 6 [Tara van Ho](#) (GROUP 3)
- Part 7 [Nils Grohmann](#) (GROUP 3)
- Part 8 [Flávia do Amaral Vieira](#) (GROUP 4)
- Part 9 [Larry Catá Backer](#) (GROUP 4)
- Part 10 [Interview: Surya Deva and Claire Methven O'Brien](#)

OPTIONAL:

(B) Opinio Juris Symposium: The Business and Human Rights Treaty (September 2020):

- (1) Claire Methven O'Brien, BHR Symposium: The 2020 Draft UN Business and Human Rights Treaty—Steady Progress Towards Historic Failure available <https://opiniojuris.org/2020/09/11/bhr-symposium-the-2020-draft-un-business-and-human-rights-treaty-steady-progress-towards-historic-failure/>;
- (2) Markus Krajewski, BHR Symposium: Aligning Internal and External Policies on Business and Human Rights – Why the EU Should Engage Seriously with the Development of the Legally Binding Instrument; available <https://opiniojuris.org/2020/09/11/bhr-symposium-aligning-internal-and-external-policies-on-business-and-human-rights-why-the-eu-should-engage-seriously-with-the-development-of-the-legally-binding-instrument/>.
- (3) Daniel Uribe, BHR Symposium: Bolstering Human Rights within International Economic Agreements—Reconciling Two ‘Separate Regimes?’ available <https://opiniojuris.org/2020/09/10/bhr-symposium-bolstering-human-rights-within-international-economic-agreements-reconciling-two-separate-regimes/>
- (4) Olivier de Schutter, BHR Symposium: The Requirement to Practice Due Diligence—A Floor Not a Shield; available <https://opiniojuris.org/2020/09/10/bhr-symposium-the-requirement-to-practice-due-diligence-a-floor-not-a-shield/>.
- (5) Elizabeth Mangenje and Timothy Fish Hodgson, BHR Symposium: Corporate Accountability, COVID-19 and the Right to Health; available <https://opiniojuris.org/2020/09/09/bhr-symposium-corporate-accountability-covid-19-and-the-right-to-health/>.
- (6) Sara Joseph, BHR Symposium: The Business and Human Rights Treaty and Private International Law; available <https://opiniojuris.org/2020/09/09/bhr-symposium-the->

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

[business-and-human-rights-treaty-and-private-international-law/](#)

(7) Jelena Aparac, BHR Symposium: Business and Human Rights in Armed Conflicts—Exclusion of Corporate International Criminal Liability from the Second Draft Treaty; available <https://opiniojuris.org/2020/09/08/bhr-symposium-business-and-human-rights-in-armed-conflicts-exclusion-of-corporate-international-criminal-liability-from-the-second-draft-treaty/>.

(8) Surya Deva, BHR Symposium: The Business and Human Rights Treaty in 2020—The Draft is “Negotiation-Ready”, but are States Ready?; available <https://opiniojuris.org/2020/09/08/bhr-symposium-the-business-and-human-rights-treaty-in-2020-the-draft-is-negotiation-ready-but-are-states-ready/>.

(9) Justine Nolan, BHR Symposium: Global Supply Chains—Where Art Thou in the BHR Treaty?; available <https://opiniojuris.org/2020/09/07/bhr-symposium-global-supply-chains-where-art-thou-in-the-bhr-treaty/>.

(10) Carlos López, Symposium: The 2nd Revised Draft of a Treaty on Business and Human Rights—Moving (Slowly) in the Right Direction available <https://opiniojuris.org/2020/09/07/symposium-the-2nd-revised-draft-of-a-treaty-on-business-and-human-rights-moving-slowly-in-the-right-direction/>.

Class 20: Class Presentation of Reports: Human Rights and CSR/RBC

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)



Week 11

CSR and Sustainability: the broadening of corporate responsibility from philanthropy and human rights to sustainability, understood both as respect for environment and resource management for the long term.

Readings:

Class 21: Understanding the SDGs

ALL GROUPS

(1) CS Pederson, “The UN Sustainable Development Goals (SDGs) Are Great for Business,” *Procedia* (2018).

GROUP ASSIGNMENTS FOR SUMMARIES

(3) (A) U.N. Development Programme Press Release: Global CEOs sign on to new UN Goals at United Nations Private Sector Forum (26 Sept. 2015) available <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/09/26/-global-ceos-sign-on-to-new-un-goals-at-united-nations-private-sector-forum.html>; (B) Impact 2030, Global Goals, available <http://impact2030.com/global-goals/>. GROUP 4

(4) Seck, Sara L., *Business Responsibilities for Human Rights and Climate Change - A Contribution to the Work of the Study Group on Business and Human Rights of the International Law Association* (May 25, 2017). Available at SSRN: <https://ssrn.com/abstract=2974768> or

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

<http://dx.doi.org/10.2139/ssrn.2974768>. GROUP 3

(5) Coraline Goron, « Ecological Civilisation and the Political Limits of a Chinese Concept of Sustainability», China Perspectives [Online], 2018-4 | 2018, Online since 31 December 2018, connection on 28 October 2019. URL : <http://journals.openedition.org/chinaperspectives/8463>
GROUP 2

(6) Christophe Gole, “No One Will be Left Behind” Geneva Academy 2018.

Optional:

(7) Sara Seck, Revisiting Transnational Corporations and Extractive Industries. 26 Transnational Law & Contemp. Problems (2017).

(1) U.N General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development A/RES/70/1 (21 Oct. 2015) available http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E; U.N. Sustainability Development Goals (<https://sustainabledevelopment.un.org/?menu=1300>)
SKIM—THIS IS A RESOURCE

Class 22: Measuring Sustainability

EVERYONE

(1) ISO Guide 82, Guidelines for Addressing Sustainability Standards (2014-04-01). Available https://iso26000.info/wp-content/uploads/2016/04/ISO_Guide_82_2014E_new_format.pdf.

GROUP SUMMARIES

(2) UNECE, Measuring and Monitoring Progress Towards the Sustainable Development Goals (Geneva 2020); available [https://unece.org/sites/default/files/2021-04/2012761_E_web.pdf].

GROUP 1 Chapters 1-2

GROUP 2 Chapter 3-4

(3) *Case Studies on Measurability* (Divided among groups)

SDG 6 (Clean Water and Sanitation)—Group 3

SDG 7 (Affordable and clean energy)—Group 3

SDG 11 (Sustainable cities and communities)—Group 4

SDG 13 (Climate action)—Group 4

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

OPTIONAL

Elena De la Poza, Paloma Merello, Antonio Barberá, and Alberto Celani, 'Universities' Reporting on SDGs: Using THE Impact Rankings to Model and Measure Their Contribution to Sustainability, (2020) 13 Sustainability 1-28

Week 12

From Sustainability to Climate Change and Bio-Diversity. The first class of the week ends the introduction to sustainability and CSR/RBC by considering the SDGs and climate change. In this context the sustainability approaches of financial institutions and SOES will also be considered. Student will take the opportunity to consider the way that the discourse of CSR has now shifted from labor and philanthropy (from the early 1900s) through that of development and human rights (through the 2010s), to sustainability and climate change (currently). Students will consider the ramifications of that change in the centering of discourse for the way in which enterprises now approach their CSR/RBC responsibilities through corporate structures, policies, and programs. The class will also consider efforts to link human rights and sustainability drivers of CSR. **The last day of the week will be devoted to the final Group Presentation on Corporate approaches to Sustainability and Climate Change.**

Class 23: SDGs, Climate Change, and Human Rights

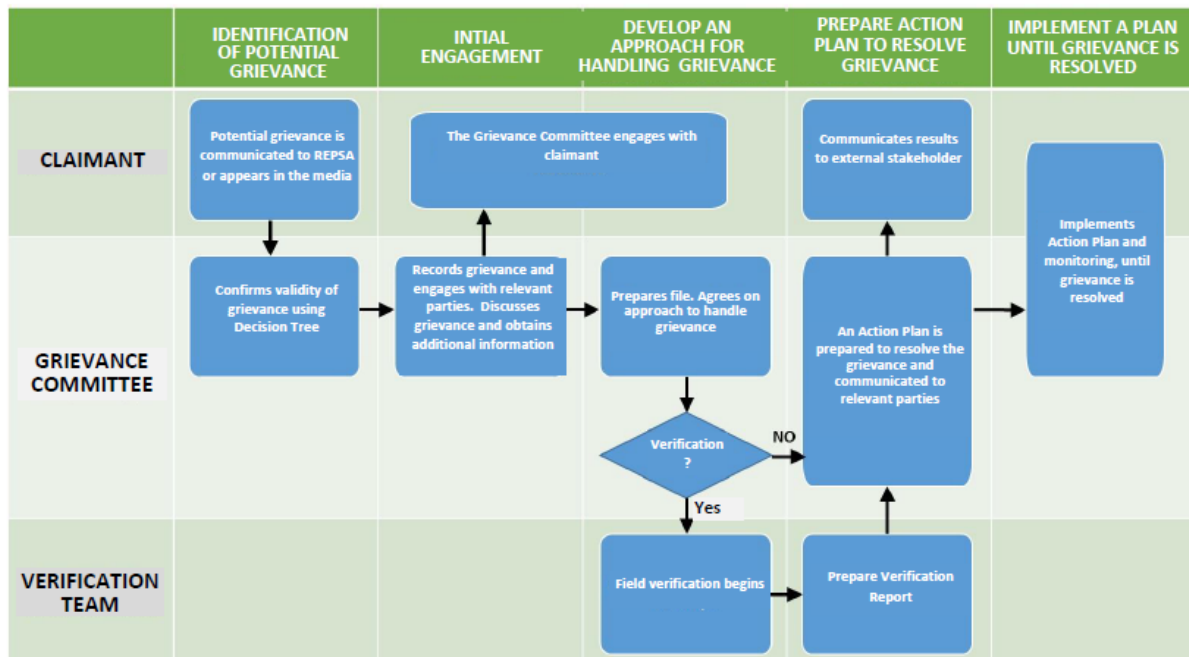
- (1) State Street Global Advisors, "Climate Change Risk Oversight Framework for Directors (June 2019).
- (2) John Knox, [Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#) A/HRC/37/59 (24 Jan. 2018).
- (3) John Knox, [Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Compilation of good practices](#), A/HRC/28/61 (3 Feb. 2015).
- (4) John Knox, [Framework Principles on Human Rights and the Environment](#) (2018).
- (5) Piotr Mazurkiewicz, "Corporate Environmental Responsibility: Is A Common CSR Framework Possible? *World Bank Paper* No. 42183
- (6) UN General Assembly, Resolution: [The human right to a clean, healthy and sustainable environment](#) (A/76/300 (28 July 2022)).

CORPORATE SOCIAL RESPONSIBILITY
 Larry Catá Backer
 Course Information and Syllabus
 Fall Semester 2022

Copyright ©Larry Catá Backer
 (August 2022)

Class 24: Class discussion of Reports

REPSA - GRIEVANCE PROCESS FLOW



From: [3rd Progress Report Sustainability Action Plan 2016-2017](#) (pp. 3).

Part V: The Nature of Responsibility in CSR—Remedy

Students examine emerging remedial mechanisms connected to CSR responsibilities under national and international institutions. The framework around which the examination will be developed in the OHCHR Accountability and Remedy Project (ARP) (2016-2020), which considered state based judicial remedies, state based non judicial remedies and non-state based non judicial remedies. In addition students will be introduced to remedial mechanisms under the U.N. Guiding Principles for Business and Human Rights; OECD Guidelines for Multinational Enterprises. Lastly students will consider the legal *effects of CSR Codes*: Recent litigation and future strategies with a focus on veil piercing, mutuality of contract, and 3rd party beneficiary defenses. **The course ends with the last student presentation on CSR/RBC and Enterprise Approaches to Remedy.**

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

Week 13

National and International Approaches:

Readings:

Class 25: An Introduction to ARP

The Accountability and Remedy Project (ARP). Students will examine the three ARP projects, enhancing the effectiveness of: (1) judicial mechanisms in cases of business-related human rights abuse (ARP I); (2) State-based non-judicial mechanisms in cases of business-related human rights abuse (ARP II); and (3) non-State-based grievance mechanisms in cases of business-related human rights abuse (ARP III).

GROUPS A & B will be responsible for ARP I
GROUPS C & D will be responsible for ARP II
GROUP E will be responsible for ARP III

Readings:

Class 25: An Introduction to ARP

(1) Human Rights Council, Human rights and transnational corporations and other business enterprises, A/HRC/RES/26/22 (15 July 2014) (ARP I authorizing Resolution). GROUPS A & B

(2) ARP I -- Summary and Resources; available https://www.ohchr.org/EN/Issues/Business/Pages/ARP_I.aspx. GROUPS A & B

(3) Office of the High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse (ARP I)*, A/HRC/32/19 (10 May 2016). Available <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/093/78/PDF/G1609378.pdf?OpenElement>
GROUPS A & B

(4) Office of the High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse: explanatory notes for guidance*, A/HRC/32/19/Add.1 (12 May 2016). Available [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/093/78/PDF/G1609378.pdf?OpenElement)

CORPORATE SOCIAL RESPONSIBILITY

Larry Catá Backer

Course Information and Syllabus

Fall Semester 2022

Copyright ©Larry Catá Backer
(August 2022)

ny.un.org/doc/UNDOC/GEN/G16/095/88/PDF/G1609588.pdf?OpenElement
GROUPS A & B

(5) ARP II—Summary and Resources, available
https://www.ohchr.org/EN/Issues/Business/Pages/ARP_II.aspx GROUPS C & D

(6) Human Rights Council Business and Human Rights; Improving Accountability and Access to Remedy A/HRC/RES/32/10 (15 July 2016) (ARP II authorizing Resolution) GROUPS C & D

(7) Office of the High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms* (ARP II), A/HRC/38/20 (14 May 2018) available <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/132/70/PDF/G1813270.pdf?OpenElement>
GROUPS C & D

(8) Office of the High Commissioner, *Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms: explanatory notes to final report* (Explanatory Addendum) A/HRC/38/20/Add.1 (1 June 2018). Available <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/166/37/PDF/G1816637.pdf?OpenElement>.
GROUPS C & D

(9) ARP III—Summary and Resources, available
https://www.ohchr.org/EN/Issues/Business/Pages/ARP_III.aspx. GROUP E

(10) Office of the High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms* A/HRC/44/32 (19 May 2020) (Advance edited version), available https://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII_MainReport_AdvanceEditedVersion.pdf. GROUP E

(11) Office of the High Commissioner for Human Rights, *Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms: explanatory notes* A/HRC/44/32/Add.1 (3 June 2020) (Explanatory Notes), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/125/60/PDF/G2012560.pdf?OpenElement>.
GROUP E

(12) Office of the High Commissioner for Human Rights, *The OHCHR Accountability and*

CORPORATE SOCIAL RESPONSIBILITY
 Larry Catá Backer
 Course Information and Syllabus
 Fall Semester 2022

Copyright ©Larry Catá Backer
 (August 2022)

Remedy *Project* (2016-2020) available
<https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>.

Class 26: CSR Litigation

(1) (1) Gibson, Dunnn, “Corporate Social Responsibility Statements: Recent Litigation and Avoiding Pitfalls” (2017).

(2) U.K:

(A) *Chandler v Cape PLC* [2012] EWCA Civ 525

(B) Lubbe and Others and Cape Plc. and Related Appeals [2000] UKHL 41 (20th July, 2000) available <http://www.bailii.org/uk/cases/UKHL/2000/41.html>;

(C) *Vedanta v. Lungowe* [2019]UKSC 20 on appeal from [2017] EWCA Civ 1528

(D) Nevsun Resources Ltd. v. Araya, 2020 SCC 5
 (<https://www.canlii.org/en/ca/scc/doc/2020/2020scc5/2020scc5.html>)

(3) Shift, “[Remediation, Grievance Mechanisms, and the Corporate Responsibility to Respect Human Rights](#)”. New York, 2014.

OPTIONAL FURTHER READING

(A) Anna Beckers, *Enforcing Corporate Social Responsibility Codes: On Global Self-Regulation and National Private Law* (Hart, 2015).

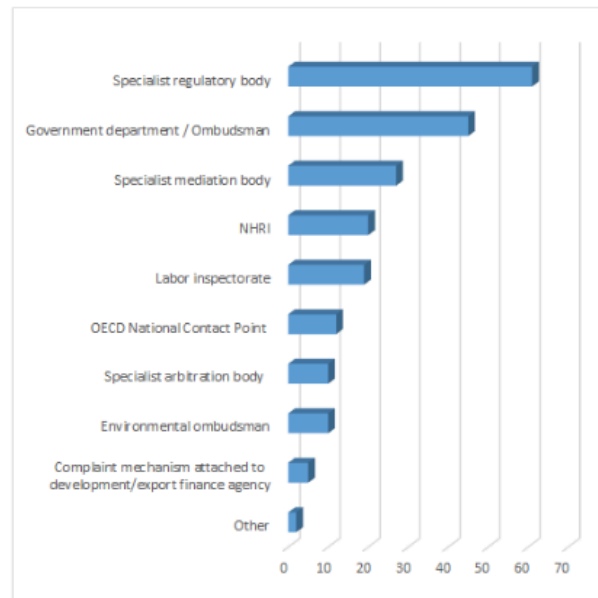
(B) Backer, L., “[A Lex Mercatoria for Corporate Social Responsibility Codes Without the State?: A Critique of Legalization Within the State Under the Premises of Globalization](#),” *Indiana Journal of Global Legal Studies* 24(1):115-146 (2017);

(C) Backer, L., Case Note: “Rights And Accountability In Development (Raid) V Das Air (21 July 2008) And Global Witness V Afrimex (28 August 2008); Small Steps Toward an Autonomous Transnational Legal System for the Regulation of Multinational Corporations,” *Melbourne Journal of International Law* 10(1):258-307 (2009).

CORPORATE SOCIAL RESPONSIBILITY
 Larry Catá Backer
 Course Information and Syllabus
 Fall Semester 2022

Copyright ©Larry Catá Backer
 (August 2022)

Fig. 2. Types of State-based NJMs for which data was collected in the course of directed research exercises, and their frequency



[From ARP II Report](#); p. 9

Week 14

Group Presentation 2 (Enterprise CSR Remedy and Grievance Mechanisms).

GROUP PRESENTATION 2: This presentation requires each group to describe and analyze the assigned enterprise's CSR grievance and remedy mechanisms. The object for each group is to (1) describe the enterprise's CSR implementation structures with special attention to grievance and remedy related due diligence; (2) Describe internal systems for data gathering; (3) describe grievance mechanisms; and (4) assess grievance mechanisms and other systems for mitigating risk or harm, or policies for remediation.

Class 27: Group Presentations

Class 28: Review of Presentations and course summing up