



**Corporate Social Responsibility
and Ethical Business Practices:
The Shifting Consensus on
Private Companies' Duty to the
Public Good**

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I. Introduction

The 1999 World Trade Organization (WTO) demonstrations, infamously dubbed the “Battle in Seattle,” ushered in a new era of scrutiny regarding transnational corporations and institutions that govern them, including the WTO, the International Monetary Fund and the World Bank. On the morning of November 30, 1999, NGOs and active citizens sought to make their voices heard to the Davos elitesⁱ who headed the aforementioned organizations by flooding the streets in protest of the WTO Ministerial Conference which was scheduled to take place at the Washington State Convention and Trade Center. Roughly 40,000 protesters comprised of disparate political factions and philosophies crowded the surrounding area. Members from the American Federation of Labor–Congress of Industrial Organizations (AFL-CIO), student and labor unions, environmental NGOs, and even anarchists were all in attendance.ⁱⁱ The event led to the vandalizing of storefronts of Nike, Starbucks, and others businesses seen as benefitting from lax labor and environmental standards established in the two previous negotiations, the Singapore Round and Geneva Round. Citizens mobilized, wielding their bodies in a “Gramscian War of Maneuver,”ⁱⁱⁱ to call media attention to secretive trade deals. Although the movement failed in its uniting umbrella mission to curb globalization, the event gave rise to an ill-defined concept: corporate social responsibility (CSR).^{iv}

The Battle in Seattle proved to be a critical moment in the evolution of corporate social responsibility. Corporations^v found themselves in a battle of their own—one concerned with public image, private logistics, and bottom-line profits. Nonetheless, the moment demanded a pragmatic shift in the private sphere, but where this shift would lead remained obscure at the time. Today the expectations and boundaries surrounding CSR continue to be challenged. Among the numerous questions surrounding CSR, this paper will address the following: Why did corporations begin to engage in charitable acts that would later come to be known as corporate social responsibility, and how has its definition and connotation evolved over time? Which apparatus served as critical consensus-building and promotion instruments of CSR? What is the leading criticism of CSR norms today, and in what direction are these norms headed? And how does CSR figure into matters of global governance and national sovereignty?

Beginning with a summary of advocacy groups’ early efforts to align their vision of CSR with that of corporate decision-makers, the paper will next examine the role that the United Nations served in the process of delineating goals and crafting guidelines. Notably, Special Representative John Ruggie’s tireless endeavor to draft the United Nations’ Guiding Principles on Business and Human Rights (commonly referred to simply as the GPs) serves as a crucial stepping stone for the codification of comprehensive CSR as standard business practice. However, the GPs also gave rise to a new dimension of lofty debate on the feasibility and desirability of assigning human rights obligations to corporations. United Nations Working Group Representative Surya Deva offers a perspective on the legal shortcomings of the GPs, and academics Nien-hê Hsieh and Denis Arnold dispute one another’s assertions about the ethical complexities of distinguishing between the respective duties and obligations of the private sector and the state—all of which will be summarized later in this paper. Finally, the essay concludes with an examination of current events and asks how these developments reflect the shifting balance of power among corporations, sovereign governments, and the general public.

II. Origins and Evolution

In his 1961 book *Capitalism and Freedom*,^[1] Nobel Prize-winning economist Milton Friedman argued that “there is one and only one social responsibility of business — to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.”^{vi} That he felt compelled to explicitly state this point demonstrates the growing demand for better business practices long before the Battle. While seemingly callous, one should note that Friedman’s views were not exactly antithetical to the notion of a corporation behaving responsibly. Rather, he believed that a corporation’s principle function was to yield a profit, and that social demands should be filtered through the political system where laws that reflected those demands could be established, and to which corporations would have to adhere or at least factor negative activities into their cost of doing business.^{vii} Friedman witnessed the culmination of this demand at the historic WTO protest, where outspoken activists drove the CSR movement into a new phase through continuous civic organization that captured media attention nationwide.

Significant efforts to establish greater accountability in the way of business and human rights began several years before the protests. In 1991 a small group of Amnesty International members formed the Amnesty UK Business Group with the intention of engaging Britain’s most prominent corporate executives. Sir Geoffrey Chandler recalls, “We needed to expand companies’ perceptions of their legitimate responsibilities; to reconcile conflicting views: ours that human rights were the business of business; theirs that they were not.”^{viii} As a result of Amnesty International’s reputation for being antagonistic to business, private actors met the Group’s outreach with either suspicion or apathy. The product of the Group’s first few years in operation were met with a slew of rejections from the executives with whom they attempted to establish a working relationship. Following the Battle in Seattle, corporations became the subject of unprecedented high-profile scrutiny, and the Group got its break. Major international cases exemplifying the grave costs associated with globalization and the growing impact of transnational corporations (TNCs) helped garner the consumer outrage that Amnesty International needed in order to persuade corporate executives to finally hear out the Group’s suggestions.

One such example occurred in 1995, when after years of growing civil unrest in Nigeria, the oppressive regime executed political activist Ken Saro-Wiwa, along with eight other Ogoni people. Controversy surrounding his trial exacerbated wounds still open from a series of violent, deadly protests in the Ogoni region. This controversy took place before a backdrop of environmental devastation wrought by the Shell Petroleum Development Company, which oversaw operations in a joint venture with the state-owned Nigerian National Petroleum Corporation. Throughout the turmoil Shell downplayed local resistance to the company’s destructive presence and alleged complicity with an illegitimate and repressive government, maintaining that the idea of Shell responding to Ogoni demands was “outside the business scope of oil operating companies and within the government’s sphere of responsibility.”^{ix} The international community met this effort to rationalize Shell’s behavior with widespread condemnation, and the Amnesty UK Business Group seized its opportunity to leverage this pressure in order to bring about a more receptive attitude from the private sphere. After sustaining a deluge of ire from multiple international NGOs, Shell “admitted it had not kept pace with the views of society”^x and asked the Amnesty UK Business Group for assistance in examining its core values and revising its Statement of General Business Principles.

The 1998 class-action lawsuit against Nike regarding its use of sweatshops serves as a second example of unprecedented consumer action against major corporations. Marc Klaskey began the suit by claiming Nike engaged in unfair business practices when it issued press statements regarding its overseas working conditions that were, allegedly, false. In particular, Klaskey disputed the company's claims that:

workers who make Nike products are protected from physical and sexual abuse, they are paid in accordance with applicable local laws and regulations governing wages and hours, they are paid on average double the applicable local minimum wage, they receive a "living wage", they receive free meals and health care, and their working conditions are in accordance with applicable local laws and regulations regarding occupational health and safety.^{xi}

Nike defended its assertions under the First Amendment protecting free speech, and both the California trial court and the Court of Appeals upheld this defense. Klaskey then appealed to the California Supreme Court, which reversed the lower courts' rulings on the grounds that Nike's remarks fell under commercial speech and, therefore, were not entitled to the same constitutional protection as non-commercial speech. Nike appealed this ruling and sought trial at the US Supreme Court. However, the US Supreme Court dismissed the claim and let the California Supreme Court's ruling stand. In 2003 Nike finally settled for \$1.5 million and was ordered to invest in strengthening its monitoring and factory worker programs.^{xii} Notorious cases such as these contributed to a dramatic shift in the atmosphere of CSR. Private actors began to understand the futility of trying to uphold the business sector as a discreet entity from the public sphere and, therefore, sought to correct the reckless behavior of transnational corporations.

Borrowing Christian Scheper's terminology, one might summarize the surge of the CSR agenda during this period as the shift from naming-and-shaming to knowing-and-showing. Initially civil society led the charge against TNCs by publicly shaming them for harmful corporate practices, then business organizations responded by joining the formative process of CSR and establishing monitoring and reporting mechanisms to demonstrate progress. Although critical advocacy groups led the initial push for CSR as a bottom-up approach to tackling issues of poverty and development in the early stages of economic globalization, Peter Uttings provides a comprehensive overview of the level of involvement the private sphere took on during the late-1990s through the mid-2000s, thereby manipulating the overall objectives and beneficiaries of the movement.

Big business has proved very capable of organising, networking, and mobilising around CSR issues...First, a group of high-profile TNCs and large companies have placed themselves at the forefront of the CSR agenda through sponsorship, PR, advertising, dialogues, networking and participation in partnerships, as well as concrete changes in business policies, management systems, and performance...Second, the CSR agenda they promote has been supported by traditional business and industry associations such as the International Chamber of Commerce (ICC), the International Employers' Organization (IEO), [and] the World Economic Forum...A relatively new set of business-interest NGOs and foundations with close ties to TNCs and corporate philanthropists also actively promotes CSR. They include, for example, the Bill and Melinda Gates Foundation, Business for Social Responsibility...^{xiii}

Despite the growing list of organizations committed to the principles of CSR, Uttings questions the integrity and efficacy of the emerging reforms by calling attention to business' involvement in shaping CSR with the support of the very institutions that dictated the existing and flawed rules of the game. Later, he asserts that the contemporary CSR model, consisting of cherry-picking certain aspects of labor and environmental initiatives, engaging in arbitrary community projects, and/or doling out petty corporate charity does not constitute a meaningful approach to the developmental challenges posed by TNCs. Instead, it must address macro-policy issues including,

...perverse patterns of labor market flexibilisation and sub-contracting; corporate taxation and pricing practices that have negative developmental impacts; corporate power, size, and competitive advantage over SMEs and infant industries; and the political influence of TNCs and business lobbies...^{xiv}

Scheper expands on the reflexive nature of CSR and private influence. In addition to private business' collaboration with international organizations deeply-embedded in global labor and finance, Scheper notes how the creation of new auditing bodies suggests a conflict of interest. For example, the Fair Labor Association's board, a "collaborative effort of universities, civil society organizations and socially responsible companies dedicated to protecting workers' rights around the world,"^{xv} consisted of numerous CEOs, including Philip Knight of Nike[,] Inc. Furthermore, by engineering novel compliance standards and measuring tools, corporations increasingly determined what it meant to effectively engage in CSR. They then communicated that in a language based in managerial discourse—one which obscures the tangible impact of a given company's CSR efforts to much of its audience. Scheper critiques this "corporatization" of human rights discourse, noting that,

The problem of the human rights violation and the various sources of indignation have turned into a problem of defining the right tools of measurement and verifying the numbers. By actively seeking cooperation with civil society groups, the necessary trust and expertise is provided and serves as a resource for the company. Knowing and showing human rights responsibility becomes a commodity...^{xvi}

Despite the growing interest in CSR from the private business community—an achievement that the Amnesty UK Business Group pursued for years—Uttings and Scheper both raise concerns regarding the subversive quality of this policy reversal. By their conclusions, the leading CSR strategies failed to tackle the problems inherent in the fundamental structure of transnational corporations.

III. John Ruggie's *Guiding Principles*

Given the array of reputation-boosting efforts available to companies at the time, from eco-conscious to education-focused to simple charity, the voluntary element of CSR proved to be one of the primary impediments to substantial change in the way TNCs operated. Without clearly-defined expectations, companies were free to interpret the disparate values critical voices hurled at them from all directions in a manner that would pose the least disruption to their day-to-day activities. Sensing this lack of consensus on issues of CSR, in 2005 UN Secretary-General Kofi Annan appointed Harvard Professor John Ruggie as Special Representative of the Secretary-General (SRSG) on matters of business and human rights, and tasked him with designing the UN Guiding Principles on Business and Human Rights. The UN's previous efforts to manage the global impact of TNCs (namely, the Commission on Transnational Corporations and the Global Compact) served as foundational building blocks toward the eventual drafting of the GPs.

As early as 1973, the UN had already flagged TNCs as entities that needed regulation in some capacity, as their activities were particularly harmful in the developing nations where they operated. Under the Economic and Social Council (ECOSOC) leaders formed the Commission on Transnational Corporations, and tasked members with producing a universal code of conduct for TNCs. Already, the dividing line on approach made itself apparent. Intellectuals from and representing developing nations felt a legally-binding instrument was the only way to curtail the exploitive behavior of TNC executives, and found the voluntary element of the UN's position to be business-friendly and, ultimately, self-defeating. For decades, proponents from both sides squabbled over the ground rules for such a code of conduct until the project was finally taken off the UN agenda in 1994.^{xvii}

This setback, however, did not halt the UN's efforts to enact positive change in the realm of international business. In 1999, Secretary-General Kofi Annan announced the UN Global Compact at the World Economic Forum in Davos.^{xviii} This instrument served as the first official set of UN recommendations on the types of global goals companies should strive to meet as they carry out profit-seeking endeavors. The Global Compact outlines these goals in its Ten Principles, which span human rights, labor, the environment, and anti-corruption.^{xix} In publishing the Global Compact, the United Nations signaled that although the previous debates regarding legally-binding codes versus voluntary initiatives may not have been settled, a set of voluntary initiatives would, at least, help encourage more responsible behavior from businesses than remaining paralyzed in an internal stalemate could.

Having designed the UN Global Compact, Ruggie possessed a talent for introducing thoughtful and credible recommendations on how businesses could reconcile globalization and responsibility. The recently introduced Responsibility to Protect provided an institutionally-recognized basis for the notion that all states have a responsibility to protect citizens in other countries from the worst forms of violence, such as human rights violations.^{xx} Under this doctrine, Ruggie set out to draft the UN's Guiding Principles on Business and Human Rights. Susan Ariel Aaronson and Ian Higham chronicle the challenges Ruggie faced in this mission. After extensive surveys and studies, several obstacles to the drafting of comprehensive guidelines emerged. Aaronson and Higham first cite the variety of grievances within the violations matrix as a confounding factor; in short, different industries impact different aspects of human rights on various scales. Whereas textile manufacturers were more likely to engage in possible labor violations

throughout their scattered clothing factories, corporations in the extractive industries disproportionately impact the environment. Assessing the unique impacts of prominent TNCs and their industries would be no easy feat. Additionally, executive ambivalence coupled with the fact that “international law delineates that the advancement of human rights is the exclusive domain of states,”^{xxxi} engenders problems of ownership among private actors. Finally, the complex network of subsidiaries and indirect suppliers in a TNC’s global supply chain obfuscates the necessary accountability and enforcement components of CSR reform.

Cognizant of the many challenges to his mission, Ruggie endeavored to assess the current landscape of business and human rights by crafting a detailed account of both the practices that international businesses were implementing regarding their overseas activities with respect to human rights and of the kinds of parameters the host governments were setting on regulating those activities. Ruggie launched four massive surveys. Broadly, his team asked: How do executives of the Fortune Global 500 perceive their respective company’s impact and obligations regarding human rights? Which human rights issues are addressed in a general sample of 300 businesses’ Codes of Conduct? How do regional attitudes regarding the acceptance and upholding of human rights vary? And, who are the perpetrators of existing abuse patterns?^{xxii} Ruggie and his team also engaged in a series of consultations with both civil society and business executives.

With this information, by 2008 Ruggie **had** drafted the “Protect, Respect, and Remedy” Framework, which served as the foundational base of the Guiding Principles. This model parsed out different roles to states and businesses. Chiefly, the Framework: reiterated that the duty to protect citizens from human rights violations falls under the domain of nation-states; asserted that corporations have a responsibility to respect human rights, and called for both parties to establish judicial and non-judicial access to remedies to address the infringement of human rights perpetrated by corporate activity when they occur.^{xxiii} Following UN approval of Ruggie’s Framework, the SRSG sought feedback from a host of actors across fields and geographical locations in order to refine his framework. His mandate lasted through 2011 when, at last, the Human Rights Council endorsed publication of the Guiding Principles in resolution 17/4.^{xxiv} Following the end of Ruggie’s mandate, the HRC established the UN Working Group for an initial three-year term to, among other ancillary measures, promote the dissemination and implementation of the GPs.

IV. A New Era of Debate

Though they were a landmark breakthrough in the evolving CSR deliberation, the Guiding Principles were met with mixed reactions by prominent intellectuals and activists close to the matter. It is important to note that throughout the Ruggie era a linguistic shift occurred. The term “corporate social responsibility,” which encapsulated earlier efforts to enact positive engagement relevant to business practices, no longer seemed adequate as a means of understanding the social obligations of business. Civil society advocates came to view this approach as insufficient. Instead, the language of *business and human rights* took precedence, attempting to highlight the broader expectation that businesses halt activities that contribute to the violation of human rights such as unsafe working conditions, use of forced labor, exposure to sexual assault, and displacement of local communities.

As stated previously, the voluntary aspect of CSR undermined the discourse of human rights. The Guiding Principles failed to resolve this crux of the argument. Associate Professor and the Asia-Pacific Representative to the UN Working Group on the issue of human rights and transnational corporations, Surya Deva sharply criticizes the GPs in his book [J] *Human Rights Obligations: Beyond the Corporate Responsibility to Respect?*. Deva makes two primary assertions regarding the inadequacy of Ruggie’s process and the result of the GPs. He argues that by seeking consensus, Ruggie granted the business community too prominent a voice and “moved the goalpost” by institutionalizing a framework that was “acceptable to the Norms’ antagonists.”^{xxv} Second, the GPs dilute the human rights responsibilities of business through language that restricts corporate actors to merely respecting human rights rather than to promoting and fulfilling them.^{xxvi}

Arriving at a consensus on CSR may have been achieved at the expense of making CSR more progressive and aspirational. Deva maintains that Ruggie dismissed dissenting views in order to reach consensus on the GPs, which was a necessary component in providing the UN with a document that would be well-received by the business community and, thus, worthy of adoption. In a bid to acquire legitimacy, Ruggie applied “principled pragmatism”—effectively ignoring concrete questions of corporate liability under various circumstances and failing to provide guidance on what conditions would call for a corporation to withdraw or divest from certain markets. By Deva’s account, Ruggie eschewed robust recommendations in favor of a more palatable set of responsibilities which shift the focus away from the debate’s most controversial issues.^{xxvii} Deva points out that “since human rights treaties generally seek to set ideal or aspirational goals, they may not be an ideal candidate for compromises reached through consensus.”^{xxviii}

Furthermore, Deva frets that Ruggie’s deliberate linguistic choices produce two negative consequences: 1) they weaken the future potential of more scrupulous legal instruments pertaining to business and human rights, and 2) they devalue the direct relationship between corporations and human rights. Deva points to Ruggie’s rhetorical use of “impact” or “risk” instead of violation as one such example. He states,

Unlike “violation,” “impact” is a neutral term and even qualifying it with the word “adverse” cannot adequately reflect perspectives of victims whose rights are violated by companies... whereas states can violate human rights, companies can only cause adverse impacts. This perpetuates a state-centric human rights ideology under which non-state actors such as companies cannot ordinarily have human rights obligations. Against this backdrop, it makes

sense for the GPs to propose that companies only have a responsibility (not a duty) to respect human rights. However...it is critical to bring various non-state actors within the loop of human rights obligations to ensure that the goal of human rights realisation is not undermined in a free-market economy.^{xxix}

Deva raises valid criticism that marks the pivot of the business and human rights debate from one concerned primarily with acknowledgement and definition to issues of scope and accountability (granted that developments in the latter pose implications on the former.) In a response to Deva's harsh critique, Ruggie referred to previous writings of his in which he did, in fact, state that international legal instruments will serve a critical purpose in the business and human rights matrix as "carefully constructed precision tools" intended to close governance gaps, while stressing that the "enforcement of the GPs would not bring business and human rights challenges to an end, but it would mark the end of the beginning: by at long last providing an authoritative global normative platform and policy guidance for all stakeholder groups to build on."^{xxx}

The subsequent academic exchange between Nien-hê Hsieh and Denis Arnold attempts to do just that. Hsieh and Arnold take up debate on one of Deva's primary contentions, that of the distinction between state duties and corporate responsibilities, and the appropriateness of legally-binding tools.

V. Obligations, Responsibilities, and Other Confounding Terminology

While much of Hsieh and Arnold's bickering comes down to a matter of word choice, at its core their near-obsessive attention to the word 'obligation' really addresses the much more significant issue of state authority. Hsieh and Arnold lead readers to first consult the OHCHR's current guidelines on states' human rights obligations.

The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.^{xxxix}

The first stipulation on not interfering with the enjoyment of human rights aligns with the "Respect" pillar of Ruggie's Framework. According to the GPs, this is where corporations' chief function with respect to human rights lies. Hsieh's article, "Should Businesses Have Human Rights Obligations?" initiates the spirited exchange between him and Arnold by challenging Deva's call to push corporations beyond the parameters of the "Respect" pillar.

Hsieh maintains that an attempt to elevate the "Respect" pillar to the realm of legal *obligations* would be antithetical to one of the core principles of human rights: status egalitarianism. Status egalitarianism demands that individuals are held in equal standing to their peers, and scholars have noted status egalitarianism as a salient feature that must be upheld when navigating the complexities of international human rights.^{xxxix} Hsieh deduces that assigning human rights obligations to companies would both harm this ideal, given its incompatibility with the tendency of private economic actors to exercise partiality in the pursuit of their interests, and effectively shrink the scope of equality insofar as "no longer are citizens understood to be members in equal standing to one another but rather in equal standing in relation to others within the scope of activity of [multinational enterprises.]"^{xxxix}

Hsieh goes on to reference an earlier text of Arnold's that intended to provide a more definitive basis for corporations' human rights duties than what was outlined in the Framework. In this text Arnold poses the question of why multinational enterprises (MNEs)^{xxxix} "should bear higher costs when local laws do not require them to meet human rights standards or governments themselves do not promote human rights."^{xxxix} Arnold asserts that multinational enterprises have a moral duty to respect basic human rights, which serve as bedrock for the pursuit of other rights associated and without which "it is impossible to lead a decent human life"^{xxxix} Hsieh poses a series of questions regarding the distinction between basic human rights and the rest, the danger of assigning states and corporations the same set of moral duties, and the applicability of Arnold's moral argument for assigning human rights obligations to businesses, dismantling all of Arnold's assertions in the process.

Hsieh concludes by clarifying that Ruggie's "Respect" principle can entail MNEs having a duty to not be *complicit* in the violation of rights by states. Hsieh reconciles calls for legally-binding obligations with the contradictions he cites earlier by concluding that

...there is a sense in which MNEs can be said to be complicit in the state's failure to protect its citizens against the harms of third parties. They are enabling the state to fail in its duty to protect. This is not because depriving citizens of the enjoyment of their rights means they are engaging in a direct violation or infringement of that right but rather by taking advantage of the lack of legal enforcement they are complicit in the state's failure to protect its citizens in the enjoyment of their rights. In this manner, there is a way to interpret the "corporate duty to respect" without any reference to human rights obligations that it may be thought to imply.

In response, Arnold published "Corporations and Human Rights Obligations." In it, he paints Hsieh's argument as a defense of business interests. Arnold claims that by labeling MNEs as exclusively economic agents, Hsieh ignores their duties as moral agents. Arnold sought to dismiss Hsieh's doubts that MNEs have human right obligations "so that attention might be focused on management strategies for implementing human rights standards and political and legal strategies for holding firms accountable for the violation of human rights obligations in their global operations."^{xxxvii} Arnold's pivot toward enforcement and accountability reflects the "legally-binding" camp's view that only an institutional, judicial mechanism can bring about the realization of human rights in the global corporate arena. Hence, he insists that understanding business' responsibilities as obligations is a necessary step towards fair and equitable practices.

Hsieh replies, elaborating on the difference between the "moral approach" to human rights and the "institutional approach."^{xxxviii} He posits that the moral approach is insufficient if the goal is to incorporate the range of contemporary human rights practices, which encompass a more comprehensive list of rights, intervention measures, and enforcement mechanisms developed as a product of the institutional approach. This moral approach includes the discourse derived from documents such as the Universal Declaration of Human Rights and subsequent articles, treaties, and other human rights documents influenced by the Declaration. Under these parameters, states are the primary duty bearers of human rights. Once again, in tackling some of the core dilemmas of business and human rights, one has to consider the major implications for the function of the state that come into play.

On the matter of jurisdiction, Hsieh stresses that, in order to carry out the protection and fulfillment of even the subset of basic human rights, TNCs would need adequate institutions through which they may exercise their authority. Without the means to hold violators accountable TNCs are structurally ill-suited to take on human rights obligations that extend beyond Ruggie's "Respect" principle. On the relationship between jurisdiction and the state, Hsieh remarks, "as economic actors, TNCs should be subject to the jurisdiction of political institutions and not exercise jurisdiction themselves over political matters."^{xxxix}

Most recently, Arnold has provided a short comment on the authors' ongoing dispute. In that comment Arnold notes,

[Hsieh] wants to distinguish between three different moral categories: "basic moral rights that ground duties on the part of TNCs' human rights obligations, and human rights duties..." To be theoretically well motivated, at a minimum, sound, coherent conceptual distinctions between duties, obligations, and responsibilities would need to be articulated and defended in light of existing human rights theory. The content and basis for distinguishing between these concepts, on Hsieh's account, remains obscure.^{xl}

Arnold's dismissal halts a vital discussion. Throughout his polemic Hsieh champions the ideal of status egalitarianism and raises awareness over matters surrounding state and corporate authority. Admittedly, lack of consensus around the conceptual basis of the word 'obligation' lends itself to circular reasoning. However, their lively dispute, at the very least, called attention to potential hazards in equating corporate human rights obligations with those currently belonging exclusively to states. Although the desire for justice may be strong, Hsieh urges critical thinkers not to rush toward the supposed salvation of novel, legally-binding instruments without proper consideration of how such a strategy would fundamentally alter corporations' governing role over the global public body.

VI. A Deteriorating Dichotomy

Hsieh's concerns may seem like semantic shrewdness. However, Florian Wettstein's account of how corporations already have usurped a tremendous deal of power from nation-states and increasingly dictate global policy contextualizes Hsieh's fear of further erosion of the line between states and TNCs with respect to human rights. Among his many insights on growing corporate influence, Wettstein turns the reader's attention to the reconfiguration of state sovereignty in the wake of globalization and, in particular, the advent of the "trans-territorial space." He asserts that "trans-territorial" space functions as an avenue through which TNCs find a convenient route to not only influence and compromise the state's authority over its policy-making, but also to exceed the state's authority by moving critical issues beyond its regulatory reach.^{xli}

As corporations maneuver through territorial boundaries they also take advantage of the liberalized global market which has become a controlling force on the policies of nation-states, instead of the other way around. In the midst of a speculative neoliberal era that has rendered global markets highly-sensitive to investment patterns, nations have the de facto authority to dictate the market, but may not be able to survive the economic penalties for disengaging from or attempting to reshape the existing "rules of the game."^{xlii}

Thomas Friedman describes this dilemma as the 'Golden Straitjacket,' and Wettstein recalls Friedman's deductions on its inevitable outcomes:

[The nation's] economy will grow and its politics will shrink. Participation in the global economic game will increase trade and foreign investment and eventually lead to more growth and higher average incomes, but this will come with decreasing national autonomy and the narrowing of political and economic policy choices to very tight parameters. As a consequence, those countries that wear the straitjacket see their political spectrum erode. Differences between Left and Right turn into mere rhetoric because neither of them can afford to deviate too far from the core rules set by the market.^{xliii}

Wettstein details the ways in which this process has already manifested itself, citing how corporations increasingly dictate citizens' lived experiences while simultaneously depriving billions of dollars from the public sphere through numerous tactics, such as tax evasion, lobbying, and self-governance in an unlegislated sphere, to name a few.^{xliv} He cites the matter of tax evasion as a means through which corporations externalized competitive pressure onto governments and imposed costs onto taxpayers. In this regard, TNCs present themselves as partners with governments rather than as subordinates. Even international governmental bodies like the Bretton Woods organizations have intensified their efforts to collaborate with corporate entities, as illustrated by the emergence of innovative new partnerships with business.

Like his predecessors, Wettstein takes issue with the voluntary aspect of corporate social responsibility, but offers a critique that extends beyond the realm of human rights. He asserts that because the basis for voluntary social and environmental endeavors is rooted in the soft power of public scrutiny, corporations attain "genuine, normative legitimacy for their dominant position in the global political economy."^{xlv} This exposure to public scrutiny lends itself to a vague yet powerful sense of democratic legitimacy which, in turn, elevates corporate self-regulation into a "quasi-legitimate form of governance."^{xlvi}

Wettstein's account illustrates the degree to which the transnational corporate structure itself has already deprived nation-states of their ability to exercise dominance over private interests. In further conflating the respective human rights mandates of states and corporations, hasty advocates run the risk of relinquishing one of the salient distinctions between the two and further mystifying corporations as governing bodies capable of superseding state authority.

VII. Developments and Conclusion

Building on the foundation set by this examination of CSR's evolution, ethical and existential questions pertaining to state sovereignty and democracy emerge. Do foreign corporations, under pressure from foreign citizens, have the right to dictate regulations in an emerging economy? In their bid to attract companies, have industrially-advanced nation-states sacrificed the revenue needed to provide public goods? Have states already foregone their authority to regulate TNCs? Currently, practical developments related to each of these conceptual quandaries unfold throughout the globe.

Nestlé, blacklisted by UNICEF following a gross profit-seeking marketing campaign for its substitute breast milk formula that contributed to the unnecessary death and suffering of infants in developing nations,^{xlvii} partnered with the Fair Labor Association in 2012 to launch the Nestlé Cocoa Plan. The initiative tackles farming practices, community engagement, and labor rights in the Ivory Coast, where majority of the raw cacao plants in the company's supply chain are harvested.^{xlviii} In January, 2018, Apple announced that it would repatriate nearly \$252 billion of its cash held overseas to the United States.^{xlix} The decision took place against the backdrop of two major governmental efforts to address corporate taxes: 1) mounting threats by the European Union to seek compensation for the "illegal tax benefits" Ireland awarded to Apple,¹ and 2) the passing of President Donald Trump's tax reform legislation which offered a one-time massive tax break for companies repatriating cash to the US. Finally, Facebook CEO Mark Zuckerberg's Congressional testimony regarding online privacy in April, 2018 illustrated federal pushback on the self-regulation of multinationals and marked an effort to reclaim governmental authority over corporate behavior.

The evolution of corporate social responsibility cannot be disentangled from the evolution of globalization itself. What started as newfound consciousness regarding the inequalities inherent in the expansion of the free market into the most remote corners of the globe now appears to affect the day-to-day lives of every individual, regardless of their status on Jeffrey Sachs' "development ladder."^{li} As troubling as this fact may be, critical thinkers continue to push for a more equitable and ideal world economic order. In her book, *Business and Human Rights: History, Law and Policy—Bridging the Accountability Gap*, Nadia Bernaz attempts to reach across the legally-binding versus normative-based divide on the approach to business and human rights by exploring the circumstances under which normative solutions are likely to help or hurt the plight for justice, while grounding her assertions in a legal perspective.^{lii} In her openness to both sides, she attempts to show that a single template will not suffice in addressing the complexities of this topic, but that by relying on the methods in both camps' wheelhouses, policymakers may employ a 'smart mix' approach which will necessarily vary given the context of the dilemma.

As this paper has explored, consumer activists ushered in the advancement of the corporate social responsibility agenda when they refused to tolerate the exploitation and deception characteristic of transnational corporations. Their cries prompted private executives to engage in a measured effort to convey a sense of positive contributions to public good, especially in areas pertaining to labor and environmental rights. However, this tactic revealed itself to be superficial in nature by failing to address the core structural problems of economic globalization and development. Sporadic "acts of kindness" would not suffice. As the first institutionally-backed normative framework for corporate social responsibility, SRSG John Ruggie's Guiding Principles marked a monumental achievement in the realm of business and human rights, laying the foundation for further-nuanced debate regarding its terms and implementation. But as Hsieh and Arnold

demonstrate, consensus remains a distant goal. As disagreement over the development of legally-binding instruments shackles proponents of business and human rights, TNC executives continue to capitalize on the increasingly political function of their business operations.

Like the erosion of mountains to sand in the desert, the processes through which transnational business and politicians alike subvert governmental pillars designed to keep TNCs in check is slow, concealing the destruction taking place. The current events touched upon in the closing of this paper testify to the tangible effects of this process and highlight a growing public awareness of the issue at hand. How we choose to meet the challenges posed by TNCs today will affect the lived reality of generations to come.

VIII. Endnotes

ⁱ Davos, Switzerland is the site of the annual World Economic Forum, where industry titans, heads of state, philanthropists, academics, and, in recent years, celebrities gather to attend meetings and conferences regarding global economic and social agendas.

ⁱⁱ Casey-Sawicki, Katherine. "Seattle WTO Protests of 1999." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 21 Apr. 2017, www.britannica.com/event/Seattle-WTO-protests-of-1999.

ⁱⁱⁱ Italian Marxist Antonio Gramsci classified forms of resistance under two broad categories: 'wars of position' and 'wars of maneuver.' Whereas a 'war of position' refers to an intellectual and psychological effort to achieve ideological unity among civil proletariats, a 'war of maneuver' involves a physical occupation or assault against the state.³ In the case of the WTO protests, the presence of protestors coupled with their destructive acts falls under the latter of the two categories.

a. "The Concept of Hegemony." *Hegemony*, by Robert Bocock, E. Horwood, 1987, p. 27.

^{iv} At this juncture 'CSR' has turned into somewhat of a dirty phrase (or acronym,) but for sake of brevity it will be used to describe the spectrum of corporate social responsibility to business and human rights more generally, with clarification on context as the paper progresses.

^v Use of the word 'corporation' throughout the paper will refer, primarily, to transnational corporations. The scope of resources and impact associated with transnational corporations renders TNCs strategic parties through which to develop CSR standards, however this does not preclude national corporations from participating in CSR efforts.

^{vi} Friedman, Milton. "The Social Responsibility of Business Is to Increase Its Profits." *The New York Times*, 13 Sept. 1970.

^{vii} Coleman, Thomas S. "Corporate Social Responsibility: Friedman's View." *Becker Friedman Institute for Research in Economics*, The University of Chicago, 16 Aug. 2013.

^{viii} Chandler, Geoffrey. "The Amnesty International UK Business Group: Putting Human Rights on the Corporate Agenda." *Journal of Corporate Citizenship*, no. 33, Spring2009, p. 30.

^{ix} *Factsheet on the Ogoni Struggle*, ratical.org/corporations/OgoniFactS.html.

^x Chandler, Geoffrey. "The Amnesty International UK Business Group: Putting Human Rights on the Corporate Agenda." *Journal of Corporate Citizenship*, no. 33, Spring2009, p. 32.

^{xi} "Nike Lawsuit (Kasky v Nike, Re Denial of Labour Abuses)." *Business & Human Rights Resource Centre*, 18 Feb. 2014.

^{xii} *Ibid.*

^{xiii} Utting, Peter. "Corporate Responsibility and the Movement of Business." *Development in Practice*, vol. 15, no. 3-4, June 2005, p. 378.

^{xiv} *Ibid.*, 386.

^{xv} "About Us." *Fair Labor Association*, 2012, www.fairlabor.org/about-us-0.

^{xvi} Scheper, Christian. "'From Naming and Shaming to Knowing and Showing': Human Rights and the Power of Corporate Practice." *Taylor and Francis Online*, *The International Journal of Human Rights*, 5 Mar. 2015, pp. 12-13.

^{xvii} Rasche, Andreas. "The United Nations and Transnational Corporations: How the UN Global Compact Has Changed the Debate." *Globally Responsible Leadership: Business According to the UN Global Compact*. Thousand Oaks: Sage, 2012. pp. 33-34.

^{xviii} "Secretary-General Proposed Global Compact... | Meetings Coverage and Press Releases." *United Nations*, United Nations, 1 Feb. 1999, www.un.org/press/en/1999/19990201.sgsm6881.html.

^{xix} *The Ten Principles | UN Global Compact*, United Nations, www.unglobalcompact.org/what-is-gc/mission/principles.

^{xx} "United Nations Office on Genocide Prevention and the Responsibility to Protect." *United Nations*, United Nations.

^{xxi} Aaronson, Susan Ariel, and Ian Higham. "'Re-Righting Business': John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms." *Human Rights Quarterly*, vol. 35, no. 2, 2013, pp. 348-49.

^{xxii} *Ibid.*, 341-42.

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- xxiii Ruggie, John. "Protect, Respect and Remedy: a Framework for Business and Human Rights" *Business & Human Rights Resource Centre*, 7 Apr. 2008, pp. 9-25
- xxiv "17th Session of the Human Rights Council (30 May - 17 June 2011)." *OHCHR*, United Nations Human Rights Council.
- xxv Deva, Surya, and David Bilchitz. "Treating Human Rights Lightly: a Critique of the Consensus Rhetoric and the Language Employed by the Guiding Principles." *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* Cambridge University Press, 2015, pp 79-80.
- xxvi *Ibid.*
- xxvii *Ibid.*, 82-88.
- xxviii *Ibid.*, 82.
- xxix *Ibid.*, 97.
- xxx Ruggie, John. *Business and Human Rights Resource Centre*, 17 Dec. 2013.
- xxxi *OHCHR | International Law*, OHCHR, www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx.
- xxxii Buchanan, Allen. "The Egalitarianism of Human Rights." *Ethics*, vol. 120, no. 4, 2010, p. 683.
- xxxiii Hsieh, Nien-hê. "Should Business Have Human Rights Obligations?" *Journal of Human Rights*, vol. 14, no. 2, Mar. 2015, p. 226.
- xxxiv Because the source material being discussed utilizes the term 'multinational enterprise' instead of 'transnational corporation,' I will also employ the term throughout this section. Although technical distinctions exists between the two (primarily having to do with centralization of management and autonomy of subsidiaries) principles of CSR apply to both equally. Thus, 'MNE' and 'TNC' may be used interchangeably in the context of this paper.
- xxxv *Ibid.*, 228.
- xxxvi *Ibid.*
- xxxvii Arnold, Denis G. "Corporations and Human Rights Obligations." *Business and Human Rights Journal*, vol. 1, no. 02, 2016, p. 275., doi:10.1017/bhj.2016.19
- xxxviii Hsieh, Nien-hê. "Business Responsibilities for Human Rights: A Commentary on Arnold." *Business and Human Rights Journal*, vol. 2, no. 02, 2017, pp. 298., doi:10.1017/bhj.2017.6.
- xxxix Hsieh, Nien-hê. "Business Responsibilities for Human Rights: A Commentary on Arnold." *Business and Human Rights Journal*, vol. 2, no. 02, 2017, pp. 307., doi:10.1017/bhj.2017.6.
- xl Arnold, Denis G. "On the Division of Moral Labour for Human Rights Between States and Corporations: A Reply to Hsieh." *Business and Human Rights Journal*, vol. 2, no. 02, 2017, p. 315., doi:10.1017/bhj.2017.9.
- xli Wettstein, Florian. "When Multinational Corporations Act Like Governments." *Multinational Corporations and Global Justice: Human Rights Obligations of a Quasi-Governmental Institution*, Stanford Business Books, 2009, pp. 226-27.
- xlii *Ibid.*, 228.
- xliiii *Ibid.*, 228-29.
- xliv *Ibid.*, 236-54.
- xlvi *Ibid.*, 253.
- xlvii *Ibid.*
- xlviii "Nestlé Boycott." *Baby Milk Action*, www.babymilkaction.org/nestlefree.
- xlviii "Nestlé in Society." Nestlé, 2017, https://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-in-society-summary-report-2017-en.pdf
- lix Wakabayashi, Daisuke, and Brian X. Chen. "Apple, Capitalizing on New Tax Law, Plans to Bring Billions in Cash Back to U.S." *The New York Times*, The New York Times, 17 Jan. 2018.
- ^l Toplensky, Rochelle, et al. "EU Takes Ireland to Court over Apple Taxes." *Financial Times*, The Financial Times Limited, 4 Oct. 2017.
- ^{li} Economist Jeffrey Sachs conceptualized economic development as a ladder. By his account, nations throughout the globe are situated upon various rungs of the ladder, with the least developed nations that experience extreme poverty at the bottom of the ladder and advanced, industrialized nations sitting near the top. He proposes that

along this ladder nations progress from, “subsistence agriculture toward light manufacturing and urbanization, and on to high-tech services.”^a

a. “A Global Family Portrait.” *The End of Poverty: Economic Possibilities for Our Time*, by Jeffrey D. Sachs, Penguin Books, 2015, p. 18.

ⁱⁱⁱ Nadia Bernaz, *Business and Human Rights. History, Law and Policy – Bridging the Accountability Gap* (Routledge, 2017) 296.



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