Corporate Responsibility

Swati Srivastava, Political Science, Purdue University

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Summary

Transnational corporations (TNCs) have assumed a greater share of global power vis-à-vis states. Thus, understanding how to assign corporate responsibility has become more urgent for scholars in international studies. Are corporations fit to be held responsible? If so, what are the existing ways of doing so? There are three research themes on conceptualizing corporate responsibility: (a) corporate criminal liability, in which corporations are assigned responsibility by determining criminal intent and liability in domestic law; (b) corporate social responsibility (CSR), in which corporations are assigned responsibility through praise and blame for adopting voluntary standards that conform with societal values; and (c) corporate international responsibility, a subset of CSR in which corporations are assigned responsibility by hardening international law, especially in human rights and the environment. The three themes feature research on corporate responsibility across a variety of disciplines, including law, criminology, global governance, sociology, business, and critical theory. Each theme prioritizes different debates and questions for research. For corporate criminal liability, the most important questions are about corporate intent in assigning blame for criminal behavior and how to deal with corporate criminal liability in domestic law. For CSR, the most important questions are about determining what obligations corporations take on as part of their social compact, how to track progress, and whether CSR leads to nonsymbolic corporate reforms. For corporate international responsibility, the most important questions are articulating on what grounds corporations should be held responsible for transnational violations of CSR obligations in state-based public international law or contract-based private international law. There are a range of ways to evaluate corporate responsibility in the three research themes. As such, the future of conceptualizing TNCs' responsibility is diverse and open for examination by scholars of international studies.

Keywords: corporations, responsibility, corporate social responsibility, human rights, global governance, law, ethics, agency, environment

Introduction

The enduring puzzle of corporate responsibility is that corporations are legal fictions with "no soul to damn, no body to kick" (Erskine, 2011, p. 261). Yet transnational corporations (TNCs) have assumed a greater share of global power vis-à-vis states, even becoming for some "the most important political actors in the global society" (Boddewyn, 1995; Detomasi, 2007; Matten & Crane, 2005; Scherer & Palazzo, 2011, p. 901).[1] Scholars in transnational private

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governance have long recognized that TNCs' "role in international politics is no longer restricted to indirect participation through lobbying governments and attempting to influence policy positions: they can set standards, supply public goods and participate in international negotiations" (Abdelal & Brunder, 2005; Bartley, 2007, 2018; Büthe & Mattli, 2012; Cutler, 2002, 2003; Cutler, Haufler, & Porter, 1999; Graz & Nölke, 2012; Hall & Biersteker, 2002; Haufler, 2001, 2010, 2015; Kobrin, 2008, p. 255; Ruggie, 2004; Scherer, Palazzo, & Baumann, 2006; Sell, 2003). Scholars have also examined the power of TNCs more generally in international affairs (Barnet & Muller, 1974; Levy & Prakash, 2003; Mikler, 2013, 2018; Strange, 1996). TNCs engage in a variety of misconduct, including

> using child or forced laborers, suppressing trade unions, making employees handle dangerous substances without the necessary health and safety precautions, establishing inhuman working conditions in general, discriminating against women or ethnic or religious minorities in the workplace, using land belonging to indigenous people, polluting the environment and destroying the health and the livelihood of the people living in the region.
>
> (Weschka, 2006, p. 626)

Thus, understanding how to match corporate power by evaluating corporate responsibility becomes increasingly urgent for scholars in international studies.

Concerns about responsibility in global governance gained momentum following the end of the Cold War, leading to works identifying special responsibilities for individual states (Erskine, 2001), the international community (Bellamy, 2009), great powers (Bernstein, 2019; Bukovansky et al., 2012), rising powers (Gaskarth, 2017), international organizations (Pillinger, Hurd, & Barnett, 2016), informal associations (Erskine, 2014), militaries (Crawford, 2007), and nonstate actors (Karp, 2014; Keck & Sikkink, 1998). Yet there is no standard definition of responsibility in this scholarship. Indeed, as H. L. A. Hart (1968) argued, there are many different concepts of responsibility. Responsibility varies depending on the nature of the harm (moral, legal, criminal, social, political), type of claim (accountable, answerable, attributable), the subject made responsible (individual, collective), the logic of remedy (prospective, retrospective), and agentic framework (interactional, structural), to name a few dimensions (Ackerly, 2018; Ainley, 2011; Beardsworth, 2015; Erskine, 2003; French, 1984; Isaacs & Vernon, 2011; Karp, 2014; Lang, 2015; List & Pettit, 2011; Lu, 2017; Miller, 2007; Seaman, 2019; Young, 2004). Moreover, "debates over responsibility reveal not only the character of the individual actor in question but also prevailing social norms and relationships" (Gaskarth, 2017, p. 292). Thus, the aim of this article is not to provide an enduring definition of corporate responsibility devoid of social context. Instead, it is to highlight how corporate responsibility assumes different forms.

The article is structured around three research themes: corporate criminal liability, in which corporations are assigned responsibility by determining criminal intent and liability in domestic law; corporate social responsibility (CSR), in which corporations are assigned responsibility through praise and blame for adopting voluntary standards that conform with societal values; and, as a subset of CSR, corporate international responsibility, in which corporations are assigned responsibility by hardening international law (Abbott & Snidal, 2000), especially in human rights and the environment. The research themes overlap. For instance, Keck and Sikkink (1998) describe how in the 1970s it took a long time to derive a

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causal link between Nestle's baby milk formula and high infant mortality rates in developing countries to impose legal liability. Transnational shaming and consumer boycotts eventually led to the 1981 World Health Organization Code of Marketing for Breast-Milk Substitutes and more stringent national regulations (Starobin, 2013, p. 407). The three themes feature research on corporate responsibility across a variety of disciplines, including law, criminology, global governance, sociology, business, and critical theory.

Corporate Criminal Liability

The historical development of corporate criminal liability in domestic legal structures is too long to fully recount here (see Anderson & Waggoner, 2014, for a general overview). But there are two analytical anchors for understanding the evolution: corporate governance and corporate personhood.

Corporations in the United States originally served as "quasi-public organizations" that provided public services (Roy, 1997). A political decision to fully privatize corporations made these organizations accountable exclusively to their private owners (shareholders). Corporate governance began from the observation that the owners were not often in charge of running the corporation, which was done by managers. Berle and Means (1932) noted that about half of the 200 largest industrial corporations had their shares held by a diffuse set of investors such that no singular individual or group could be identified as an owner. For instance, in the Pennsylvania Railroad Company, the "twenty largest shareholders together accounted for only 2.7% of total common shares" (Blair, 1995, p. 29). This resulted in the "separation of ownership from control" (Berle & Means, 1932, p. 71). A follow-up study in 1975 argued that 82.5% of the 200 largest industrial corporations were under "management control" (Herman, 1981). Meanwhile, the Berle-Means corporation had limited traction outside the United States. In the United Kingdom and Continental Europe, "large firms remained dominated by large owners" (Culpepper, 2011; Gelter, 2016, pp. 5–6; Gourevitch & Shinn, 2005). In the United States, corporate governance set rules to mitigate the effects of "strong managers and weak owners" (Roe, 1994), such as the role of the board of directors or chief executive pay. Ultimately, corporate governance entails "the whole set of legal, cultural, and institutional arrangements that determine what publicly traded corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are allocated" (Blair, 1995, p. 3). In other words, by deciding whether and how to align owners with managers, especially in large, dispersed corporations, corporate governance defines some of the scope of domestic criminal liability. In the Berle-Means corporation, "unless the perpetrator has a substantial equity position in the firm, criminal sanctions applied to the firm may not directly act as a deterrent" (Anderson & Waggoner, 2014, p. 44).

Corporate personhood is another analytic for determining corporate domestic legal liability. The process of incorporation beginning in the mid-19th century generated 66,000 new corporations between 1874 and 1966 (Nelson, 1959). Incorporation allowed corporations to be treated as "distinct legal subjects" in law that possess identity separate from the humans that a corporation is made up of (owners, employers, etc.). As such, a corporation became a "fictitious person" (corporate person) in law. Whyte (2017, p. 388) traces the philosophical foundation of rule of law as the "reification of criminal responsibility in the person of the rational, property-owning individual" and therefore treated the "fictional (corporate) person

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as a new, very different, type of criminal." Scholars note that corporate personhood provided new legal obligations but also facilitated "a structure of irresponsibility and impunity" (Pearce, 1993; Tombs & Whyte, 2015). Research on corporate crime—such as fraud, wage theft, insider trading, occupational health and safety hazards, pollution, and bribery—examines such impunity (Canfield, 1914; Clinard & Yeager, 1980, 2006; Corrall, 2001; Pearce, 1993; Sutherland, 1949; Tombs & Whyte, 2015; Wells, 2001). In a landmark study, Sutherland (1949) discusses criminality of corporations in the United States and the issue of inadequate legal response to crimes. Although "some grounding in discussion of legality" is needed to effectively hold corporations accountable for corporate crimes, it is important to realize that their acts are not intrinsically different from other types of criminal activities/offenses. Rather, Sutherland argues the socially produced understandings of laws and crime in our society stand in the way of holding corporations accountable for their crimes. Slapper and Tombs (1999) discuss the challenges in defining corporate violence and theft as "crime" given the lack of investigation and prosecution. They also highlight the biases toward criminalizing acts committed by lower-class individuals in comparison with those acts committed by higher-class individuals such as managers and directors of corporations. For sociologists of law, the "differential treatment is a product in part of the power of corporations to influence legislation so that violations do not have the stigma of the criminal law" (Clinard & Yeager, 2006, p. xiii).

Given this background, two questions motivate scholarship on corporate criminal liability: Can corporations have criminal intent? How should corporate criminal liability be dealt with in domestic law?

On the first question of intent and guilt in assigning corporate criminal liability, van der Wilt (2017) indicates that while it is widely acknowledged that corporations as nonhuman entities can commit acts and thus violations, the questions of intent (*mens rea*) and guilt that are central to criminal law remain controversial. Van der Wilt (2017) also raises the problems associated with assigning responsibility to corporations rather than individuals within corporations, especially in regard to international crimes that almost always involve malicious intent and top management that is aware of committed crimes (e.g., sale of weapons to a party involved in an armed conflict). The early British Factory Acts developed the concept of "strict liability" as a legal device to protect owners of corporations from harsh punishment as it did not require *mens rea* for crimes to have been committed, making corporate crimes for minor offences punishable by fines or administrative penalties rather than incarceration (Carson, 1980). Since then, the concept of strict liability has enabled corporations (rather than individuals) to be prosecuted for criminal breaches of duty (e.g., failure to finalize a public project). Courts need not look for any mental elements because a corporate person is treated as "a non-human entity" (Slapper, 1999, p. 51; Snider, 2015). Whyte (2017, p. 389) refers to the protection of owners and shareholders from criminal liability as a "corporate veil." For example, only 3% of workplace safety crimes are "laid against directors or senior managers" (Tombs & Whyte, 2007).

Scholars have responded in two additional ways to determine corporate criminal fault. A nominalist approach does not see corporations as separate from natural persons such as its employees or representatives. Fisse and Braithwaite (1986–1988) argue that corporations can be morally responsible because blameworthiness requires actors (a) to be able to make decisions and (b) to "inexcusably" fail to "perform an assigned standard." Here, corporations

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are “decision making structures” and are able to change their policies and procedures; thus, they can be morally responsible and culpable (Fisse & Braithwaite, 1986–1988, p. 485). For the nominalist approach, corporations are also responsible because of their negligence rather than malicious intent. A holistic approach “bypasses the natural person and ascribes action and intent directly to the corporation” because it perceives criminality to stem directly from a corporate culture or policy (van der Wilt, 2017, p. 402). Wells (2001, p. 156) argues that the holistic approach is the most adequate model for dealing with corporate crimes because crimes do not result from isolated incidents but from “complex interactions of many agents in a bureaucratic setting.” In a holistic approach, it is difficult to assign responsibility to any particular person because it is often impossible to trace corporate behavior down to any particular individual. Thus, there is no need to tie criminal responsibility to individual morality or blame. Scholars respond that the negligence and corporate culture criteria do not always work for assigning corporate responsibility, such as in crimes against humanity (van der Wilt, 2017).

On the second question of how corporate crimes should be dealt with, criminologists have developed two main schools of thought that follow from the nominalist and holistic approaches (Gray, 2002, 2006). First, the punishment school relies on the nominalist understanding of seeing corporate criminals as being the same as other types of criminals. This school advocates for criminal law and “tougher deterrence” approaches to corporate offenses such as including corporate criminal liability in criminal codes. The punishment school acknowledges that even when corporate criminal liability is included in criminal codes, most violations are dealt with using regulatory mechanisms (Bittle, 2012; Corrall, 2001). Second, the compliance model follows the holistic understanding of viewing corporations as members of society who can be socially responsible and are either unlikely to commit crimes or lack mental intent when they do. It follows that their offenses should be discouraged through education and regulation (Bardach & Kagan, 1982).

Countries vary in imposing corporate criminal liability. Some hold corporations liable for criminal conduct, whereas others only hold individuals liable for crime. Seck (2011, p. 143) notes that “there is no clear move toward standardization of corporate criminal liability” across legal systems. For instance, price fixing is a regulatory offense in Australia, a criminal offense in Canada, and either or both in the United States (Seck, 2011, p. 148). The Corporate Manslaughter and Corporate Homicide Act, introduced in the United Kingdom in 2008, exempts senior managers and directors from liability and demonstrates how governments reinforce the power of the “corporate veil” (Whyte, 2017). Australia allows for corporations to be held criminally responsible when they promote “a criminogenic corporate culture” that encourages/enable employees to behave in “illegal ways . . . viewed as normal and a routine part of their work” (Bittle & Snider, 2006; Gray, 2017, p. 393). Germany treats corporate violations outside of criminal law entirely (Weigend, 2008). Stricter domestic regulations for corporate criminal liability generally follow high-profile events, such as the Bhopal Union Carbide disaster and the Enron corruption scandal (Salter, 2008).

However, imposing corporate criminal liability is complicated by lobbying and corruption. In 2005, Canada attempted to include a corporate culture provision in its criminal code to include corporate criminal liability as a response to the Westray Mine disaster that killed 26 miners (McMullen & McClung, 2006; Tucker, 1995). Bittle (2012) explains that the attempt was not successful because of lobbying from business groups. After the 2007–2008 financial

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crisis, some U.S. politicians pushed for imposing corporate penalties for high-level bankers. But pursuing individual prosecutions was not a priority for the Department of Justice, as James Comey, then Director of the Federal Bureau of Investigation, said in a 2014 speech <http://www.fbi.gov/news/speeches/confronting-corporate-crime>: “Risky behavior isn’t a crime, no matter how many innocent people got hurt by [it]. In this country, we put people in jail when we prove they knew that they were doing something criminally wrong.” In 2014, a whistleblower who worked at the Federal Reserve exposed a “culture of fear and servility when dealing with the very banks that they were supposed to be regulating” (Gray, 2017, p. 396; Younge, 2014). The case reaffirms what Seabrook and Tsingou (2009) detail as the intellectual capture of regulation (risk management) by powerful elites in the financial sector. Others have shown oversized corporate influence in limiting corporate criminal liabilities in various sectors, including food (French & Phillips, 2000), banking (Pollock & Price, 2012), taxes (Sikka, 2014), and worker safety (Tombs & Whyte, 2007). In the United States, “convictions of corporate actors have been declining since the 1990s” (Anderson & Waggoner, 2014, p. xii). However, corporations do not always get their way in avoiding criminal liability. For instance, Pacific Gas & Electric, California’s largest utility company, pled guilty to involuntary manslaughter charges brought by the state for the 2018 Camp Fire wildfires that killed 85 people after an ill-maintained power line came down.

Increasingly, despite differences in *whether* and *for what* corporations are criminally liable, scholars generally agree that most forms of criminal accountability place an “emphasis on encouraging corporations to adopt and implement policies and programs that will prevent future problems, rather than punishing business enterprises for wrongful past conduct” (Seck, 2011, p. 147). As such, there have been other models of conceptualizing corporate responsibility beyond domestic law alone.

Corporate Social Responsibility

The second research theme on conceptualizing corporate responsibility relies on consumer mobilization for voluntary corporate adoption of corporate social responsibility (CSR). Broadly, CSR promotes “corporations as institutions, like the government, that have social obligations to fulfill” (Carroll, 2008, p. 24; Tsutsui & Lim, 2015). Thus, “along their supply chains, MNCs are asked to take responsibility for more and more social and environmental externalities to which they are connected. The idea of social connectedness is replacing the idea of legal liability” (Scherer & Palazzo, 2011, p. 907). Indeed, “most authors agree that CSR includes those actions of companies that address social and environmental concerns beyond what is required by law” (Vasi, 2015, p. 367).

Consider the United Nations (UN) Global Compact, the largest CSR initiative in the world with 11,700 business signatories (Andonova, 2017). Its 10 principles are as follows <https://www.unglobalcompact.org/what-is-gc/mission/principles>:

Human Rights:

1. Businesses should support and respect the protection of internationally proclaimed human rights; and
2. make sure that they are not complicit in human rights abuses.

Labor:

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3. Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
4. the elimination of all forms of forced and compulsory labor;
5. the effective abolition of child labor; and
6. the elimination of discrimination in respect of employment and occupation.

Environment:

7. Businesses should support a precautionary approach to environmental challenges;
8. undertake initiatives to promote greater environmental responsibility; and
9. encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption:

10. Businesses should work against corruption in all its forms, including extortion and bribery.

While adoption is voluntary, the Global Compact requires signatories to submit an annual report or "Communication on Progress" (CoP). Failure to produce the CoP report on implementing the 10 principles can result in being delisted from the Global Compact. By 2012, 4,078 participants had been delisted (Andonova, 2017, p. 102). Moreover, socially responsible investment indices like the Dow Jones Sustainability Index (DJSI) or the FTSE4Good Index are additional tools to reward voluntary adherence to the Global Compact. Corporations must expend resources to stay on the indices as "the questionnaire that the DJSI sends to companies is more than seventy pages long and covers topics ranging from executive compensation to philanthropic donations to corporate bribery" (Meyer, Pope, & Isaacson, 2015, p. 58). Despite criticisms that the Global Compact enables corporate "bluewashing" by taking advantage of the UN's image (Berliner & Prakash, 2012), major international civil society actors like Amnesty International, Oxfam, and Human Rights Watch are signatories to the Global Compact in order to "put pressure on business 'from within'" (Coni-Zimmer, Flohr, & Wolf, 2019, p. 327). Moreover, the Global Compact is positioned as "a hub both to catalyze and leverage other voluntary initiatives" (Utting, 2015, p. 79) and has become a "global norm" (Shoji, 2015).

CSR initiatives like the Global Compact promote that "it is consistent with stockholders' long-term interests for corporations to be socially minded" (Lee, 2008, p. 59). Moreover, CSR creates a "bundle of normative expectations" for corporations to be responsive to "social and environmental standards, human rights, and working conditions" (Bruhl & Hofferberth, 2013, p. 361). CSR campaigns follow up on violations of the normative expectations through protests, boycotts, and litigation to name and shame corporations. Not all violators are equally shamed, however. CSR activists target "global corporations with recognizable brands, often those that have recently experienced some disaster or crisis that makes them reputationally vulnerable" (Haufler, 2015, p. 154; Hiscox & Smyth, 2011). Examples include targeting the Gap following the Rana Plaza factory collapse or targeting Nike for its child labor practices. Also, "firms' past prosocial claims and a positive reputation increase the likelihood of a firm being targeted" (King & McDonnell, 2015, pp. 431–432). For instance, campaigners forced Apple to make recyclable batteries (Arnold & Bowie, 2003). Campaigns for labor rights also

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entail “face-to-face interactions with firm representatives that are sometimes contentious, often more cooperative” (Fransen, 2013, p. 439). Corporations now adopt CSR as part of a larger branding strategy:

> In 1977, less than half the Fortune 500 firms even mentioned CSR in their annual reports. By the end of the 1990s, close to 90% of Fortune 500 firms embraced CSR as an essential element in their organizational goal, and actively promoted their CSR activities in annual reports.
>
> (Lee, 2008, p. 54)

Moreover, firms find it easier to pool expertise and work together on private CSR standards, such as the Common Code for the Coffee Community, the Fair Labor Association, the Global Reporting Initiative or the World Gold Council (Bartley, 2009; Deitelhoff & Wolf, 2010; Fransen, 2013; Hassel, 2008; Haufler, 2015; Locke & Romis, 2010; O’Rourke, 2006; Prakash & Potoski, 2007; Utting, 2015). CSR is also behind the rise of “B Corporations,” or benefit corporations, which are allowed to consider social good as well as shareholder good when making business decisions. Examples include Ben & Jerry’s, Patagonia, and Kickstarter.

CSR operationalizes “social responsibility” into easily digestible and measurable indicators, reflecting the dominant economic approach (Garriga & Melé, 2004). Social movements scholars have shown that CSR works best when tools that corporations adopt as a response to pressures from activists (such as CSR reporting) help increase accountability as well as “firms’ receptivity to future activists’ challenges” (McDonnell, King, & Soule, 2015, p. 654). The United States has “created a wide array of objective and detailed data on corporate behavior in a variety of CSR fields from environment and pollution to housing and banking” (Lee, 2008, p. 66). Crouch (2011) argues that even government intervention through bailouts, like banks or car manufacturers after the 2008 financial crisis, furthers the idea of corporations as “socially useful and productive” enterprises where governments demonstrate “continued faith in business morality” (Tombs, 2017, p. 347). Moreover, CSR relies on corporate reputation, which is tracked by different indicators, such as the World’s Most Ethical Companies *<https://www.worldsmostethicalcompanies.com/honorees/>* assessment from the Ethisphere Institute, the Axios Harris Poll of 100 most reputable companies *<https://theharrispoll.com/axios-harrispoll-100/>*, and the Reputation Institute’s CSR RepTrak *<https://www.reptrak.com/>*. Finally, the International Organization for Standardization (ISO) launched *<https://www.iso.org/iso-26000-social-responsibility.html#:~:text=The%20standard%20was%20launched%20in,it%20represents%20an%20in*
the ISO 26000 social responsibility standard in 2010 to “help businesses and organizations translate principles into effective actions and share best practices relating to social responsibility.” Its detailed guidance encompasses seven core subjects: human rights, labor practices, the environment, fair operating practices, consumer issues, and community involvement and development. ISO 26000 has “achieved considerable convening power and geographical reach” (Utting, 2015, p. 86).

CSR has thus become “an institutionalized organizational field” (Meyer et al., 2015, p. 45) with affiliated names like “business ethics, business and society, corporate accountability, corporate citizenship, corporate sustainability, critical management studies, stakeholder theory, etc.” (Scherer & Palazzo, 2011, p. 923). However, the meanings and practices of CSR

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have changed over time. CSR is “mostly a product of the 20th century” (Carroll, 2008, p. 3; Banerjee, 2008). Prior to 1980, some scholars split CSR into four eras (Murphy, 1978). The 1950s were the Philanthropic Era when corporate responsibility meant donation to charities above all else. Howard Bowen, the father of CSR, argued in 1951 that corporate social responsibility was “a complementary and corrective measure for some social failures inherent in laissez-faire economy” (Lee, 2008, p. 56). Bowen (1953, p. 6) defined CSR as “the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society.” 1953 to 1967 was the Awareness Era, so named in recognition of business responsibility with communal affairs. For instance, “the new concept of social responsibility recognizes the intimacy of the relationships between the corporation and society and realizes that such relationships must be kept in mind by top managers as the corporation and the related groups pursue their respective goals” (Walton, 1967, p. 18). From 1968 to 1973, the Issue Era focused corporate responsibility on specific issues, such as racial discrimination and pollution. Finally, from 1974 to 1978, the Responsiveness Era saw social science scholars scrutinizing corporations’ activities as irresponsible and criminal with a particular attention to multinational corporations (Vernon, 1977).

CSR broadened in the 1980s. It went beyond employees to communities, and new terminology emerged like corporate social performance, corporate social responsiveness, and public responsibility. This was when “stakeholder theory” came into being to move beyond shareholders as the primary corporate constituent. Jones (1984) wrote:

> corporate social responsibility is the notion that corporations have an obligation to constituent groups in society other than stockholders and beyond that prescribed by law and union contract. Two facets of this definition are critical. First, the obligation must be voluntarily adopted; behavior influenced by the coercive forces of law or union contract is not voluntary. Second, the obligation is a broad one, extending beyond the traditional duty to shareholders to other societal groups such as customers, employees, suppliers, and neighboring communities.
>
> (Jones, 1984, pp. 59–60)

The 1990s saw the founding of the Ethics Officer Association, with concepts such as global social investment, corporate reputation, community partnerships, and corporate social policy. By the 2000s, the emphasis on theoretical contributions to the concept and meaning of CSR had given way to empirical research on the topic and a splintering of interests away from CSR and into related topics such as stakeholder theory, business ethics, sustainability, and corporate citizenship.

Thus, over the 20th century, the meaning of CSR moved from macrosocial to organizational in the level of analysis, from ethical to managerial in its theoretical orientation, from an explicit to an implicit ethical orientation, and from a mutually exclusive to a tight coupling between CSR and corporate financial performance (Lee, 2008, p. 56). Moreover, “older efforts largely focused on corporate philanthropic activities that usually had little to do with the firm’s core business practices” (Auld, Bernstein, & Cashore, 2008, p. 415). In “‘the new CSR’ . . .

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corporate image builders . . . show that their firm is actively promoting social and environmental standards that regulate or alter their core practices, often in an attempt to show they are ahead of their competitors" (Auld et al., 2008, p. 415).

Scholars have lobbed many critiques at CSR over the years (Baars, 2012; May, Cheney, & Roper, 2007; Palazzo & Scherer, 2008; Shamir, 2004a, 2004b, 2008; Tombs, 2015; Vogel, 2005; Waheed & Moriarty, 2018). There are three overall challenges.

First, CSR has been integrated as yet another corporate strategy for improving financial performance. Now, "CSR no longer means something of a moral 'responsibility' but as a strategic resource for performance improvement" (Lee, 2008, p. 62). In other words, corporations believe that socially desirable behavior makes them financially better off. For instance, in 2004 "82% of companies surveyed by the U.S. Chamber of Commerce and Corporate Citizenship Center at Boston College believed that good corporate citizenship helps the bottom line" (Lee, 2008, p. 63). In another survey "conducted by The Conference board, nearly 90% of corporate managers reported that their companies take CSR as a part of core business principles, and 70% reported that their companies have a corporate foundation that advances social causes" (Lee, 2008, p. 55). Indeed, "more than one hundred empirical surveys on the contribution of corporate social performance to corporate financial performance are a clear expression of this underlying premise of CSR research" (Scherer and Palazzo, 2011, p. 904). But scholars observe that "companies, consultants, lawyers, NGOs and other interest groups have separate definitions for [CSR]" (Olufemi, 2011, pp. 67–68). As such, "CSR is stretched and applied to 'all activities a company engages in while doing business' as well as the competitive context of the company" (Lee, 2008, p. 62).

Second, by operationalizing indicators of "corporate social opportunity" (Grayson & Hodges, 2004), CSR maintains the illusion of "stakeholders" as a stand-in for a broad public commitment while in actuality reflecting a smaller self-defined audience. For instance, in the stakeholder framework, "social issues are defined as sufficiently substantial public issues that prompt eventual legislation or regulation. If no such legislation or regulation exists, it may be a stakeholder issue, but not necessarily a social issue" (Lee, 2008, p. 61). Scholars argue that "corporations have many stakeholders, not all of whom are interested in [for instance] labor rights" (Ackerly, 2018, p. 61). Some lament that the excessive focus on economic theories and the "business case for CSR" means that "if the marginal value of CSR becomes smaller than the cost of implementing CSR, the business case for CSR disappears, and malfeasance becomes more attractive based on the business case logic" (Lee, 2008, p. 64). While CSR notes that corporations should have certain responsibilities to stakeholders, it rarely suggests that corporations have the responsibility to engage in any activities that do not relate to profitability (Vogel, 2005). For critical scholars, CSR indicators helps corporations create an illusion that they are honest about their practices and as such represents a "false truth telling" (Fleming, 2017, p. 412). Overall, "the question remains of how the legitimacy of corporate activities can be normatively accessed when no universal criteria of ethical behavior are available in a post-modern and post-national world" (Scherer & Palazzo, 2011, p. 906).

Third, and most provocatively, CSR is seen as "a form of propaganda that preys on non-corporate form of life or even opposition in order to enhance economic value through reputation" (Hanlon & Fleming, 2009, p. 945). Neoliberalism and "free market" discourse promoted antiregulatory efforts and thus created a perfect environment for CSR (Tombs,

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2017). In this way, for some scholars, CSR has become a tool or strategy used to defend capitalism and "fill the spaces created by de- and re-regulatory moments" (Tombs, 2017, p. 356; Glassbeek, 1988). CSR can help corporations enter new markets to "strategically colonize" public sector "spheres of activity such as education, health, and welfare" (Mooney & Miller, 2010, p. 460). In this way, CSR is a "process of 'colonization' and 'commodification' of social, political, and ethical spheres by business and market forces" (Gond, 2017, p. 362; Fleming & Jones, 2013). The idea of a "corporate citizen" puts corporations in a position of equal standing with other citizens. Politically, this can be problematic, because it "blurs the lines between business and politics" when it comes to corporate involvement in politics. It legitimates corporate involvement in politics while it implies that government should not interfere in corporate activities. The idea of a corporate citizen also gives corporations "the right to principled opposition to existing or prospective laws" (Neocleous, 2003; Tombs, 2017, p. 349). In short, CSR helps create "legalized spaces for corporate freedoms" (Tombs, 2017, p. 353).

Despite these critiques, scholars still maintain optimism that CSR may be good for "harnessing of business activity to the social interest" (Bowen, 1978, p. 123; Ireland & Pillay, 2009; Porter & Kramer, 2006, 2011). Acquier, Gond, and Pasquero (2011) argue that Bowen saw CSR as useful for influencing corporations' values and norms when combined with other legal and market tools. CSR also extends corporate responsibility from shareholders to other stakeholders (McBarnet, Voiculescu, & Campbell, 2007; Wolff & Barth, 2005). Even the "materialized forms of CSR" in reporting standards, CSR ratings, and accountability norms are all potentially useful tools (Gond & Nyberg, 2016). CSR ultimately treats a corporation as a "social" entity and as such can respond to concerns that are outside of the legal, market, or shareholders' requirements (Kolonoski, 1991). Within CSR, another research strand studies emerging corporate obligations in international law for transboundary human rights and environmental issues.

Corporate International Responsibility

The third research theme is a specific subset of CSR research on moving beyond voluntary or "soft law" to hardening obligations for TNCs in international law. This research is most active in transnational corporate violations concerning human rights and the environment.

Human Rights

TNCs have an international responsibility to uphold human rights not only because of domestic criminal liability or social reputations but also because they are moral transnational agents (Karp, 2014) that are legally empowered (Kinley & Nolan, 2008) with rights as well as duties (Rondinelli, 2002). Activists and lawyers are increasingly interested in "corporate criminal liability-based accountability on the international level, as well as demanding, in the UK, for example, the introduction of domestic law of corporate liability for international crimes and other human rights violations" (Baars, 2017, p. 426; Bush, 2009; Kinley & Tadaki, 2004; Stoitchkova, 2010). Karp (2014) argues that:

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> If all moral agents can be human rights violators, and if corporations can be viewed as moral agents, or at the very least as collections of moral agents, then there would be no reason to separate these companies out from other agents, as unique bearers of human rights responsibility.
>
> (Karp, 2014, p. 3)

But scholars complicate conflating legal and moral agency for granting corporations international human rights protection or obligation.

> Corporations may share important attributes with humans, but these do not include many of the attributes that inform normative accounts of why members of the species ought to be accorded certain minimal standards of treatment. A business corporation cannot be tortured or psychologically abused because it is not made of flesh, nor does it possess emotions.
>
> (Isiksel, 2016, p. 319)

Nonetheless, scholars in global governance have increasingly recognized that

> individuals and communities adversely affected by corporate globalization began to invoke the language of human rights to express their grievances, resistance, and aspirations. Human rights discourse—affirming the intrinsic worth and dignity of every person, everywhere—became a common ground from which they began to challenge and seek redress for the human costs of corporate globalization.
>
> (Ruggie, 2013, p. 151)

Thus, if TNCs are

> directly involved in human rights violations or profit from human rights violations by the host state, it is not sufficient to assume a mere moral responsibility. Instead, it should be possible to hold TNCs legally responsible under binding international law, which is enforceable and provides for the compensation of damages for victims.
>
> (Weschka, 2006, p. 627)

One tactic of hardening transnational corporate obligations for human rights is through national courts. Some foreign claimants have been successful in the United States by bringing corporations under the Alien Tort Claims Act (ATCA) for serious international human rights violations. In *Doe v. Unocal*, a group of Burmese peasants successfully "brought tort claims under the ATCA against the US-based oil-company Unocal for egregious human rights violations committed by the Burmese military in connection with the construction of the Yadana-pipeline from Burma to Thailand" (Weschka, 2006, p. 636). In *Wiwa v. Royal Dutch Petroleum (Shell)*, members of the Nigerian Ogoni tribe brought a case against Shell's "alleged complicity in massive human rights violations by the Nigerian government," which included torture, hangings, and shooting of protestors and leaders of the tribe's movement for the protection of Ogoni people (Weschka, 2006, p. 637). The U.S. District Court decided that "the actions of Royal Dutch/Shell . . . constituted participation in crimes against humanity,

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torture, summary execution, arbitrary detention, cruel, inhuman and degrading treatment and other violations of international law" (Weschka, 2006, p. 637). In 2009, Shell settled with the Wiwa plaintiffs out of court with a "cash sum of $15.5 million . . . and no admission of liability" (Karp, 2014, p. 19). Yahoo was sued under ATCA for its Chinese subsidiary's contribution to "forced labor and torture, because it complied with an official request from the Chinese authorities to release the IP address and the personal details of activist journalist Shi Tao to the Chinese police" (Karp, 2014, pp. 1–2). Just like Shell, Yahoo settled out of court in 2007, paying "an undisclosed sum of money to the victims and their families" (Karp, 2014, pp. 17–18). Shell was also sued under the ATCA by victims in the Niger Delta region who claimed Shell "contributed to the detention and eventual execution of human rights and environmental activists" (Karp, 2014, p. 2). But in *Kiobel v. Royal Dutch Petroleum* (2013), the U.S. Supreme Court unanimously ruled against the extraterritorial application of ATCA, arguing "there is no indication that the Alien Tort Statute was passed to make the United States a uniquely hospitable forum for the enforcement of international norms." Finally, the Herero and Nama communities in Namibia took their genocide case against Germany to the U.S. District Court of Manhattan under ATCA (Lu, 2017, p. 4). In another major setback, the Supreme Court's 2018 decision in *Jesner v. Arab Bank* barred the practice of foreigners suing foreign corporations in the United States altogether.

In other national courts, 1,104 Koreans engaged in a class action lawsuit in South Korea against 70 Japanese corporations, including Mitsubishi Heavy Industry and Nippon Steel, for "forced labor in Japanese munitions factories during World War II, claiming $90 million in unpaid wages and damaged" (Lu, 2017, pp. 5–6). In 2012, the South Korean Supreme Court allowed the cases to proceed, which led many Korean courts to order Japanese companies to pay millions in overdue compensation and damages. The companies appealed the rulings, which created a diplomatic rift between Japan and South Korea (Kim, 2019).

Another tactic of hardening corporate international responsibility for human rights involves creating new public international law at the UN. In the 1990s, the UN Sub-commission on Promotion and Protection of Human Rights tried and failed to pass the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. In 2008 the UN Human Rights Council (UNHRC) developed the "Protect, Respect, and Remedy" Framework for Business and Human Rights under the direction of John Ruggie. The framework described the obligations of corporations and their home states (where corporations are domiciled) in regard to harmful conduct in human rights. Its three core principles were to specify the state duty to protect against human rights abuses by nonstate actors, including corporations, articulate corporate responsibility to respect human rights, and create more effective remedies. In 2011 the UNHRC formally adopted the Guiding Principles on Business and Human Rights, asking that corporations have "an independent corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved" (Ruggie, 2013, p. 171). In 2014, the UNHRC adopted a further resolution on "elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights." The resolution establishes

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> an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights; whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

Scholars have noted the “relative imbalance of power and the dependence of developing countries on the presence of TNCs” (Weschka, 2006, p. 629). As such, it is interesting that the 2014 resolution passed with almost all developing or emerging economies voting in favor, including China, India, and Russia, and all developed countries voting against, including the United States, the United Kingdom, Germany, France, and South Korea.

Attempts to harden corporate international responsibility for human rights in public international law have seen some progress, but are ultimately hampered as corporations do not have the same legal standing as states. Thus, while the UN’s Guiding Principles are an important step, they do not create any new legally binding obligations. Scholars interpret its vision of corporate responsibility “as being merely to ‘respect’ human rights, which [the Guiding Principles] defines as avoiding an infringement of such rights. The focus is thus upon a negative responsibility not to infringe rights rather than on any positive responsibility to assist in the realization of human rights” (Bilchitz & Deva, 2013, p. 15). Scholars argue that the Guiding Principles conflate two kinds of responsibility:

> Responsibility not to harm human rights is non-discretionary, and requires agents to possess only a basic threshold of moral agency. Responsibility to respect human rights is discretionary, and requires agents to construct (in a sound way) and to refer to (in a valid way) thicker frameworks of ethical judgement.
>
> (Karp, 2014, pp. 4–5)

In fact, the Guiding Principles focus more on clarifying state duties, such as “judicial, administrative, legislative or other steps to ensure access to an effective remedy,” given corporate abuses of human rights (Bilchitz & Deva, 2013, p. 16). Scholars have thus also criticized the Guiding Principles as a failed attempt to use CSR as a governance tool for issues that are a product of international capitalism (Bittle & Snider, 2013).

However, there have been promising developments in hardening corporate international responsibility for human rights through private international law. Private law refers to “the law governing relations among persons, including juridical persons such as corporations. The law of contracts, the law of torts, and the law of commercial transactions are prime examples” (Clapham, 2006; Cutler, 2003; Muchlinski, 2007; Snyder, 2003, p. 375; Zerk, 2006). In private international law, “firms are increasingly considered not just legal persons but bearers of human rights” (Isiksel, 2016, p. 294). Scholars have argued that instead of being used to protect human beings (as originally envisioned), human rights language, norms, and concepts are being employed in “the context of international investment law to articulate, adjudicate, and vindicate the claims of investors [in] the dehumanization of human rights” (Isiksel, 2016, p. 297). Similarly, corporations have claimed rights under regional trade agreements as

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> many of the [North American Free Trade Agreement] NAFTA investment protections echo human rights contained in the Universal Declaration of Human Rights and the principal human rights conventions, including rights against discrimination, to security, to recognition as a legal person, to nationality, to freedom of movement, and to own property and not be arbitrarily deprived of it. … Seen from this perspective, the NAFTA investment chapter is a human rights treaty for a special-interest group.
>
> (Alvarez, 1996–1997)

In 2016, a private arbitration tribunal in *Urbaser v. Argentina*, brought under the Spain-Argentina Bilateral Investment Treaty, argued that a Spanish corporation, Urbaser, had a responsibility to uphold the human right to water (ICSID Case No. ARB/07/26). International lawyers summarized the landmark decision:

> The tribunal considered that, as corporations are the recipients of rights under BITs, they are subjects of international law and can also bear obligations in international law. The tribunal referred to the Universal Declaration on Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) to establish that there were human rights obligations associated with a right to water. In addition to these rights, the tribunal used Article 30 UDHR and Article 5(1) ICESCR to establish that private parties owe human rights obligations. The tribunal also relied on the International Labor Office's Tripartite Declaration of Principles concerning Multilateral Enterprises and Social Policy to support this position. Using the terminology found in these provisions, the tribunal concluded that, in addition to human rights giving effect to the right to water, there was also "an obligation on all parts, public and private parties, not to engage in activity aimed at destroying such rights."
>
> (Guntrip, 2017)

Private arbitration cases do not typically set precedent. But private international law scholars have since started referring to this decision as the "Urbaser Standard" for corporate obligations "not to aim to destroy human rights" (Attanasio & Sainati, 2017; Crow & Escobar, 2018, p. 100). Thus, since TNCs are empowered with legal rights in private international law, for instance to protect their investment from government expropriation, there is also a possibility for imposing legal obligations using the same private law instruments, for instance to respect human rights.

Corporate international responsibility for human rights features some of the more dramatic cases for international studies, such as atrocity crimes. There are ongoing developments in both public and private international law to frame and codify corporate responsibility for human rights. The responsibility may be negative—not to violate human rights—or positive—to protect human rights. In all these instances, the growing literature helps scholars interpret different meanings of "human," "rights," "responsibility," "violate," and "protect" as they become more or less formalized in domestic and international law.

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The Environment

Global environmental governance scholars have acknowledged that “companies are actually taking over and driving, rather than responding to, debates on sustainability” (Adger & Jordan, 2009; Clapp, 2005; Clapp & Fuchs, 2009; Dauvergne & LeBaron, 2014; Dauvergne & Lister, 2012; Delmas & Young, 2009; Falkner, 2003; Finger & Svarin, 2012; Fuchs, 2007; Haufler, 2009; Levy & Newell, 2005; Lyon & Maxwell, 2008; Mikler, 2013, p. 10; Utting & Clapp, 2008; Vogel, 2005). But this was not always the case. During the 1970s, TNCs like Nestle, Union Carbine, and Exxon came “under direct attack, often as a result of accidents (nuclear, chemical, oil spills), related scandals, or concrete industrial projects” (Finger, 2013, p. 288). In 1972, the Club of Rome report warned that economic growth would vanish in the 21st century given the consumption of finite resources (Meadows, Meadows, Randers, & Behrens, 1972). The report presented an “existential threat to firms, and especially TNCs which were emerging precisely at that time, fueled by decolonization and the beginnings of globalization” (Finger, 2013, p. 288). Soon after, corporations became involved in influencing international political agendas by pushing for more market-based and self-regulatory efforts in environmental governance. In 1991, the International Chamber of Commerce (ICC) unveiled a “green charter” in which 200 TNCs, including Ford and General Motors, pledged to protect the environment a year before the Rio Earth Summit. The ICC framed the issue as “sustainable development” that “permits economic growth while protecting the global environment,” calling the voluntary charter a “moral commitment involving rigorous self-examination” (Hunt, 1991). In 1993, the UN reported that TNCs “generated more than 50% of greenhouse gases emissions” (Morgera, 2009, p. 5). The corporate process of “greening” through voluntary CSR initiatives involved “a shift in businesses’ mission statements to include stakeholders as well as society more broadly, and it incorporate[d] means to operationalize that shift via management auditing and reporting” (Clapp, 2005, p. 26). Spending on “green marketing” tripled between 1995 and 2000 (Vasi, 2015, p. 384). Concepts like “sustainable development” and “green growth” shaped “the discourse on corporate social responsibility” by asking TNCs to take actions that “adhere to higher standards and global norms” (Haufler, 2009, p. 128). By 2000, the environment was no longer seen as “a threat to industrial development and growth, but a business opportunity, especially for TNCs” (Finger, 2013, p. 290).

Meanwhile, CSR research on the environment asked questions such as: “Does it pay to be green?” (Hart & Ahuja, 1996); “Do corporate global environmental standards create or destroy market value?” (Dowell, Hart, & Yeoung, 1999); and “Does the market value environmental performance?” (Konar & Cohen, 2001). Largely answering in the affirmative, the “new CSR” for the environment studied “win-win” situations where corporate “solutions are available internally [and] improvements in practices are also profitable” (Auld et al., 2008, p. 415). The “new CSR” identified seven types of environmental CSR actions: “individual firm efforts; individual firm and individual NGO agreements; public-private partnerships; information-based approaches; environmental management systems; industry association corporate codes of conduct; and private-sector *hard law* known as nonstate market-driven governance” (Auld et al., 2008, p. 417). The following are examples of each type, respectively: McDonald’s sustainability policies; World Wide Fund and Unilever agreement; UN Global Compact; Global Reporting Initiative; ISO 14000 procedures; Common Code for the Coffee Community; and the Forest Stewardship Council (FSC) certification (Auld et al., 2008, pp.

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417–425). Voluntary CSR standards, such as the ISO 14001, have successfully reduced pollution emissions (Potoski & Prakash, 2005). Moreover, the FSC's sustainable forestry certification is the "gold standard" for hardening corporate responsibility (Auld & Cashore, 2012; Bartley, 2003; Cashore, Auld, & Newsom, 2004).

Nonetheless, scholars have had long-standing concerns with "greenwashing," which is largely symbolic corporate environmentalism (Greer & Bruno, 1997). Empirical studies have shown that "although the adoption of [CSR] frameworks is not usually associated with lower actual pollution, it is often associated with higher perceived EP [environmental protection]" (Vasi, 2015, p. 384). However, selection effects make it impossible to even "show that the adoption of CSR frameworks *causes* an improvement in actual or perceived EP" (Vasi, 2015, p. 388). In other words, more environmentally minded TNCs are likelier to join voluntary CSR initiatives like the UN Global Compact. In fact, one study finds that corporate members of the Global Compact are associated with higher environmental externalities than nonmembers on "costly and fundamental performance dimensions," showing improvements in only "superficial dimensions" (Berliner & Prakash, 2015, p. 115). Moreover, although corporate sustainability programs (CSPs) are meant to help corporations create corporate sustainability culture, reporting remains symbolic and inadequate given that corporations are not obligated by any regulation to either adopt the concept of corporate sustainability or to evaluate the performance of their CSPs (Lee, 2017).

Thus, global governance scholars have recognized the need for a "legally-binding, externally driven treaty which requires parties to enact laws designed to enforce environmental and social accountability on TNCs" to make a significant advancement in governing corporate environmental behavior globally (Clapp, 2005, p. 31). Vogel (2005) reminds us that most CSR efforts are in developing countries where pressures are stronger and where government regulation remains a more powerful force than voluntary CSR adoption for changing corporate environmental performance. Lyon and Maxwell (2008) describe the disagreement over whether environmental CSR means that corporations have responsibilities beyond obeying the law (e.g., voluntarily committing to protecting the environment) or if this commitment should come at the expense of corporate profits for social benefit. Some economists do not agree with additional hardening of corporate international responsibility for the environment because corporations in the United States are legally allowed to prioritize anyone but their shareholders and the costs to comply would come at the expense of this obligation (Reinhardt, Stavins, & Vietor, 2008).

Public international law on the environment has largely avoided hardening corporate international obligations. International treaties like the 2015 Paris Agreement only apply to states. UN declarations from the 1972 Conference on the Human Environment (Stockholm), the 1992 Earth Summit (Rio), the 2002 World Summit on Sustainable Development (Johannesburg), and the 2012 Rio+20 Summit, have avoided the use of "international legal liability" for TNCs. The 2002 summit "more effectively [drew] attention to the international level of action, rather than solely focusing on domestic measures for environmental liability" (Morgera, 2009, p. 17). However, while global civil society called for an international liability regime in Johannesburg, states preferred that "direct liability of the private sector be strictly limited to a very narrow ambit of ultra-hazardous activities at the international level" (Morgera, 2009, p. 17). Similar to the 2011 Guiding Principles, the UN's emphasis remains on specifying additional state responsibility for corporate violations. For instance, the

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UN Committee on Economic, Social, and Cultural Rights recommended in 2004 that Ecuador "implement legislative and administrative measures to avoid violations of environmental laws and rights by transnational companies" (Karavias, 2013, p. 47).

National courts have varied in assigning foreign direct liability to corporations for transnational environmental violations, where "questions of jurisdiction have placed unfair obstacles in the way of foreign plaintiffs, thereby implicitly discriminating in favour of multinationals trying to escape responsibility for damages caused abroad" (Morgera, 2009, p. 17). This asymmetry was previously discussed in the U.S. Supreme Court, which all but ended the use of the ACTA for international law applications in 2018. However, transnational climate change litigation has undergone changes. In 2014, a major study revealed that 90 oil, gas, coal, and cement companies ("carbon majors") were responsible for about two-thirds of industrial carbon emissions from 1751 to 2010 (Heede, 2014). Fifty of the carbon majors are privately owned. The research was "a leap forward in attribution science" (Center for International Environmental Law, 2017, p. 4). In 2015, the Philippine Human Rights Commission launched the Carbon Majors Inquiry *<https://essc.org.ph/content/nicc/>* on assigning foreign direct liability for 47 of the 50 TNCs. In 2019, the commission announced during the UN climate negotiations in Madrid that the carbon majors could be found liable. In the same year, the U.K. Supreme Court heard a complaint in *Vedanta v. Lungowe* concerning environmental damage caused by the foreign subsidiary of an English company in Zambia. The court affirmed that the parent company "could owe a duty of care to foreign claimants affected by operations of their subsidiaries abroad and that the English courts could have jurisdiction to hear such cases, even when a foreign court is a more appropriate forum for the trial" (Varvastian & Kalunga, 2020, p. 2). Just a year earlier, in 2018, the English courts had dismissed a complaint from 42,500 Nigerians in the *Okpabi v. Shell* case concerning oil pollution in the Niger Delta involving an Anglo-Dutch subsidiary on jurisdictional grounds. That case is pending at the U.K. Supreme Court, but observers agree it will now be decided on merit because *Vedanta* paved the way jurisdictionally.

Finally, in private international law, international financial institutions have moved to impose direct corporate international responsibility. Specifically, the International Finance Corporation (IFC), a private arm of the World Bank and the "largest multilateral source of financing for private sector projects in the developing world," identifies "the responsibility of the private sector on the basis of international environmental standards" (Morgera, 2009, p. 144). The IFC's 2006 Performance Standards set environmental requirements that apply through its investment terms and include a self-assessment and environmental management system. The incorporation of IFC "standards as conditions into loan agreements will make such international environmental standards for corporate accountability contractually binding on private companies" (Morgera, 2009, p. 167). Other global financial institutions like the European Bank for Reconstruction and Development and the Inter-American Development Bank also refer to some IFC standards in their loan conditions.

Just like in human rights, the issue area of the environment features innovations in assigning corporate international responsibility by hardening CSR expectations in international law. As activists lose patience with corporate "greenwashing" and attribution science becomes more robust, the development of foreign direct liability for the environment through transnational litigation and private international law is bound to become more complex.

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Conclusion

This article has described three research themes on conceptualizing corporate responsibility: corporate criminal liability in domestic law, corporate social responsibility, and corporate international responsibility for human rights and the environment. While these conceptualizations draw on varied disciplines, they share a common purpose to explore whether and how corporations may be held responsible. Each theme prioritizes different debates and questions for research. For corporate criminal liability, the most important questions are about corporate intent in assigning blame for criminal behavior and how to deal with corporate criminal liability in domestic law. For corporate social responsibility, the most important questions are about determining what obligations corporations take on as part of their social compact, how to track progress, and whether CSR leads to nonsymbolic corporate reforms. For corporate international responsibility, the most important questions are articulating on what grounds corporations should be held responsible for transnational violations of CSR obligations in state-based public international law or contract-based private international law. There is no one way to assign corporate responsibility in the three research themes. Corporations may lack souls and bodies, but they effect billions of souls and bodies around the world. As such, the future of conceptualizing TNCs' responsibility is diverse and open for examination for scholars of international studies.

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Notes

1. The literature sometimes prefers multinational corporation (MNC) and other times transnational corporation (TNC). I prefer TNC but retain MNC if used in quotations.

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