

# Signaling Virtue? A Comparison of Corporate Codes in the Fields of Labor and Environment

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*The creation of a "market for virtue" and social responsibility is dependent on the flow of information from the corporation to the responsible agents. To achieve a free flow of information, excessive, missing and unreliable information must be avoided. More generally, a market for virtue should make it possible to create the appropriate means to signal true commitments and enable informed agents to know how to effectively use their limited resources for deploying market power that rewards and sanctions the corporations that deserve such responses. The underlying assumption of this query is that if corporations in fact compete among themselves in the dimension of social responsibility, then some corporations will identify ways of demonstrating credibility of both efforts and results. The purpose of publishing codes of conduct and annual Corporate Social Responsibility (CSR) reports would be to improve the level of information that is needed for the market for virtue to function. In order to assess the existence of a competitive market for virtue, the Article analyzes the codes and associated documents of sixteen multinational companies in three industries — textile, petrochemical and automobile. The Article finds some differences between labor and environmental norms, both within each of the sectors, as well as between sectors. However, the major finding casts doubt on the very assumption that labor and environmental norms are shaped by a*

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*market for virtue. Contrarily, the Article sheds new light on alternative reasons for developing social norms in corporations and rethinks the purpose of CSR reports.*

### **I. INTRODUCTION (BY SKEPTICS WHO ARE WILLING TO BE PERSUADED)**

The rapid emergence of corporate codes of conduct has been at the center of interest in the literature on corporate social responsibility (CSR), new governance and private regulation. There is a sense of ambivalence about the codes, described by many in terms of a "struggle." The struggle, crudely speaking, is between two competing views: One view holds that CSR provides an alternative to the traditional command-and-control regulation, remedies its shortcomings, gradually changes the corporations' perception *vis-à-vis* their commitments, and encourages a more responsible approach of corporations to their multiple stakeholders and diverse values. The opposite view suggests that corporate codes are nothing but a way of avoiding legal responsibility, masking traditional profit-maximizing interests by means of a superficial gloss of rhetoric. According to this latter view, not only do corporate codes not make a difference, but they are in fact harmful in the sense of creating a "false consciousness" among consumers and policymakers that shields corporations from being held legally responsible for their injurious practices. Moreover, the focus on self-regulation stirs public interest away from stepping up hard regulatory practices that can be more effective than the soft measures of social and environmental responsibility.

Over time, the "struggle over meaning" transformed into a more nuanced approach, in contemplation of the possibility that, in fact, both views can coexist. Moreover, not all corporate codes and methods of self-regulation are the same as peas in a pod. Differences in practice, rather than rhetoric, should be studied and some cases merit particular interest for being examples of "best practices." Therefore, instead of asking whether corporate codes are effective in bringing social and environmental change, we should ask under what circumstances such codes and CSR practices can be effective.

The efficacy of corporate codes as a mode of governance that improves the social and environmental responsibility of corporations rests on agents who are conscious, informed, and possess some form of power to influence the corporation's behavior. Generally speaking, there are two groups of such relevant agents and intermediaries. The first group consists of institutional agents that condition support or abstain from deploying sanctions on the

basis of the corporate social and environmental commitments and practices. Such agents include global financial institutions that possess the power to attach strings to their loans, as well as regulatory agents that can absolve from inspection corporations that demonstrate effective self-regulation. The second group is comprised of consumers, whose power lies in individual market rewards and sanctions (i.e., purchase only from socially responsible firms) and collective shaming techniques (such as organized boycotts and negative campaigns). Various intermediaries, among them state-based and international non-governmental organizations (NGOs, INGOs) and social movements, can assist in mediating between the corporation and the end-agents by conveying information on the corporations' practices and organizing positive measures of cooperation as well as by deploying negative techniques of collective shaming.

The emergence of a market for virtue and social responsibility is, therefore, dependent on a free flow of information from corporations to the responsible agents. To achieve such a free flow, excessive, deficient and unreliable information must be avoided. A general claim of commitment to social responsibility, for instance, is not likely to be enough to convince anyone that the asserted commitment is anything but a hoax. At the same time, excessive amounts of information can be just as deceptive. For example, a detailed list of emissions of pollutants, broken down into months, days and hours, at different sites, with thousands of entries, is unlikely to make sense to most people. More generally, a market for virtue should facilitate the creation of appropriate means to signal true commitments and enable informed consumers to effectively use their limited resources for deploying market power that rewards responsible corporations and sanctions irresponsible ones.

This Article approaches corporate codes at a rather developed stage of research and practice in CSR and seeks to analyze the codes from the agents' perspectives. Otherwise stated, we wish to position ourselves as curious agents who seek to understand whether corporations can be sorted according to their asserted responsibility for advancing virtue in a market environment. As researchers, we seek to understand how corporations develop techniques that lend credibility to their social and environmental responsibility claims. As consumers, we seek to identify whether a true market for social responsibility is emerging, whereby contractual choices can be made on the basis of informed decisions, or whether the field remains the domain of a marketing ploy. Lastly, as scholars, we seek to understand the nature of soft law governance and its *modus operandi*.

The underlying assumption of this inquiry is that if a market for virtue, wherein corporations compete among themselves in the dimension of social

responsibility, has indeed emerged, then some corporations will seek and identify creative ways of demonstrating that they are more socially and environmentally responsible than their competitors. To assess the problems that inhere in such a demonstration, as well as the methods that have been developed, we analyze the codes and associated CSR documents of fifteen multinational corporations in three industries — apparel, petroleum and automobile. We do not seek to assess whether the codes have been effective in creating social transformation. Such an assessment would have required us to conduct our own audit of corporate performances, or to survey and assess the audits of others.<sup>1</sup> Instead, we read the codes in line with our research question, namely: How and to what extent do corporations attempt to persuade their audience that their social and environmental commitments are indeed credible? We also seek to deepen the analysis and distinguish between the corporations' demonstration of commitment in two fields: labor and environment. Focusing on these two fields, while leaving others aside, allows for a more careful reading and a more focused comparison between them along similar thematic lines.

To sum up, the aim of this Article is to find answers to two interrelated questions: (a) How, and to what extent, do corporations make credible commitments to consumers and intermediary agents with regard to their claims concerning social responsibility? (b) Are the methods of signaling virtue different in the respective areas of labor rights and environmental protection? To provide answers to these two questions, the Article proceeds as follows: Part II sets up the theoretical discussion on the market for virtue and highlights the problem of information and signaling. Parts III, IV, and V analyze the codes and CSR reports, looking into the substantive norms which the corporations adopt (Part III), their methods of ensuring compliance (Part IV) and methods of reporting (Part V). Part VI concludes the discussion and reflects on the significance of the findings to the understanding of the nature of soft law governance.

## II. CORPORATE CODES OF CONDUCT — THE STRUGGLE OVER MEANING

### A. From Regulation to Governance

The world of regulation has undergone a major transformation over the last

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<sup>1</sup> Cf. Richard Locke, Fei Qin & Alberto Brause, *Does Monitoring Improve Labor Standards? Lessons From Nike*, 61 *INDUS. & LAB. REL. REV.* 3 (2006).

four decades, from the traditional state-centered "command and control" regulation of the 1970s to market-based instruments (still marshaled by the state) that characterized the turn of the century, and then to the various types of new governance mechanisms that are in vogue today. The novel approaches to governance — referred to in the literature as new governance or soft law — are based on legally non-enforceable voluntary norms, authored, controlled and monitored by various non-state actors. They have emerged as a result of both a shift in the way norms are produced and a widespread discontent with the efficacy of conventional modes of regulation, and were both informed and lent legitimacy by neo-liberal ideology.<sup>2</sup>

Traditional types of regulation are rooted in the notion that sovereign states and their agents are the primary, if not the exclusive, norm-generating institution. This, however, is no longer the case in today's globalized world. With the globalization of supply chains and the regular flow of capital and goods across national borders, state governments are no longer able to exercise effective regulatory control at the global level and as a result new forms of governance have emerged.<sup>3</sup> The world is increasingly governed by an intricate web of norm-producers, with states being only one of them.<sup>4</sup> Local governments, international organizations, transnational bodies, global financial institutions, multinational corporations (MNCs), NGOs, INGOs and social movements have all become major contributors, both directly and indirectly, to the content and shape of regulation.<sup>5</sup>

Among the new agents in the novel regulatory landscape, corporations, and especially MNCs, play a key role.<sup>6</sup> With revenues exceeding the GDP of

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2 Ronen Shamir, *Corporate Social Responsibility: Towards a New Market Embedded Morality?*, 9 THEORETICAL INQUIRIES L. 372 (2008).

3 Tim Bartley, *Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions*, 113 AM. J. SOC. 297, 298 (2007); Peter Evans, *Fighting Marginalization with Transnational Networks: Counter-Hegemonic Globalization*, 29 CONTEMP. SOC. 230, 235 (2000).

4 This by no means should be read as suggesting that states have become powerless and thus insignificant as regulators. Research has shown that states remain important actors, playing a key role in the shaping and reshaping of global order, cf. MAURO F. GUILLEN, *THE LIMITS OF CONVERGENCE: GLOBALIZATION AND ORGANIZATIONAL CHANGE IN ARGENTINA, SOUTH KOREA, AND SPAIN* (2001); ELLEN I. ROSEN, *MAKING SWEATSHOPS: THE GLOBALIZATION OF THE U.S. APPAREL INDUSTRY* (2002).

5 See Yishai Blank, *The City and the World*, 44 COLUM. J. TRANSNAT'L L. 877 (2006); David Vogel, *Private Global Business Regulation*, 11 ANN. REV. POL. SCI. 261, 262 (2008).

6 Dan Danielson, *How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance*, 46 HARV. INT'L L.J. 411 (2005).

many developing countries, corporations are able to exert enormous economic and political pressure on governments to regulate in a manner that is favorable to them.<sup>7</sup> They can also shape regulation by contributing to the interpretation of existing legal rules, evading them, or by supplying rules where none exist.<sup>8</sup> But corporations have to compete with national and subnational actors (such as local governments), as well as with other private actors (such as NGOs, INGOs and social movements) that work strategically to create new forms of power and consciousness, implementing their own model of world culture.

A separate yet interrelated concern that has brought about the shift from regulation to governance is the growing dissatisfaction with the traditional tools of regulation. The story of conventional command-and-control regulation falling into disfavor is a familiar one: Ever since the emergence of the administrative state, command-and-control mechanisms, based on uniform fixed standards, monitored and enforced by the state, were the principal methods of regulation. During the last couple of decades of the twentieth century, a growing concern was raised with regard to the efficacy of such measures. The setting of standards is slow, inflexible and ill-adapted to rapid changes in industry. It offers few incentives to go beyond compliance or to invest in technological improvements, and it tends to be unnecessarily expensive for corporations to implement. At the level of enforcement, command-and-control measures require extensive public expenditures on monitoring and therefore regulatory norms are often left unenforced. As a result, public standards are oftentimes left as sheer guidance, enforced indirectly through private litigation, itself a costly and not equally accessible method. It is unsurprising, therefore, that new modes of regulation were sought after to supplement the rigid, hierarchical, top-down command-and-control regulation with more flexible, reflexive, participatory and collaborative models of governance.<sup>9</sup> The result of these two interrelated developments was a transition from command-and-control regulation to new methods of governance with a plethora of regulatory measures emerging alongside the traditional instruments.

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<sup>7</sup> JOSEPH E. STIGLITZ, *MAKING GLOBALIZATION WORK* 187-88 (2006).

<sup>8</sup> Danielson, *supra* note 6, at 412.

<sup>9</sup> In the sphere of employment an additional module is noteworthy, because the standard command-and-control model was traditionally supplemented with, and to some extent even marginalized by, collective bargaining. Autonomous self-regulation, which foretold the development of modern governance methods, provided labor and employers with the means of adjusting their own standards and developing mechanisms of self-enforcement.

## B. The Debate over Corporate Self-Regulation

Regulation is usually referred to as either "public," authored and enforced by state agents, or "private," created and monitored by non-state actors. Public regulation is usually characterized as mandatory, while private standard-setting is considered voluntary. Both distinctions, however, are gross oversimplifications, and what we witness is, in fact, a wide range of hybrid types of private-public standardization that defy easy categorization.<sup>10</sup> For our purposes, it is convenient to roughly distinguish between three categories of norm-setting and enforcement systems, which can then intermesh and appear in various forms. These categories are distinguished along different axes: the source of the norms, the methods of monitoring and enforcement, and, most importantly, the degree of corporate discretion involved in each of them.

The first category includes traditional state regulation in which the state authors the norms and retains responsibility for their monitoring and enforcement. This type of regulation is, generally, considered to be mandatory, although its actual nature is dependent on the ability and political will of state agents to monitor and enforce the norms.

The second category refers to regulation by private or quasi-private agents such as global financial institutions, which set the standards and then assume responsibility for their monitoring and enforcement. This type is best demonstrated by the Equator Principles, which require corporations that seek financial support for large projects to abide by specific labor and environmental standards that are dictated, monitored and enforced by the banks.<sup>11</sup> Such corporations must demonstrate their compliance by tailoring their practices and reporting practices to the banks' requirements in each project. While such mechanisms are voluntary in the sense that corporations are not required by law to adopt them, they cannot be considered wholly voluntary because of the de facto indispensable reliance of corporations on financial institutions. The distinction between the first and second types of regulation is, therefore, mostly in the identity and nature of the regulator and less in the mandatory nature of the norm.

The third category consists of voluntary norms adopted by market actors,

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10 Kennet W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421 (2000); Dinah Shelton, *Law, Non-Law and the Problem of "Soft Law,"* in COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL SYSTEM 4 (Dinah Shelton ed., 2000).

11 THE EQUATOR PRINCIPLES, <http://www.equator-principles.com/> (last visited Sept. 1, 2010).

such as corporations, in the absence of any direct demand from either the state or monopolistic non state norm-setting bodies. Unlike the first two types of regulation, such norms are genuinely voluntary. From a formal legal perspective, such norms are outside the reach of the state's monitoring and enforcement mechanism and, despite constant attempts by NGOs and social movements to hold corporations legally accountable to norms they have assumed voluntarily, to date such attempts have been largely unsuccessful.<sup>12</sup> The only mechanism for enforcing them is the pressure of public opinion, which is carried directly by market mechanisms (drawing on consumer pressure) and indirectly by political ones (stirring public and political intervention).

### C. The Debate over Corporate Codes of Conduct

A prime example of the third type of regulation is corporate codes of conduct. Codes of conduct came to prominence in the 1990s. The reasons for their emergence are varied. Some corporations adopted them in an attempt to prevent government intervention in the form of mandatory regulation, others did it to limit political opposition to the growing globalization of markets, and still others as a response to pressures from consumer groups.<sup>13</sup> The codes can take different shapes and forms and vary widely in their scope, monitoring and enforcement mechanisms, and governance.<sup>14</sup> Despite the variation in both form and content, codes of conduct are similar in that they are (as of today) mostly beyond the reach of legal enforcement mechanisms and thus rely on the consciousness of consumers for their monitoring and enforcement.

While corporate codes present a relatively short set of rather abstract norms, they are joined by other documents that corporations issue that explicate and breath life into the codes. The bundle of CSR materials has

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12 Tim Bartley, *Corporate Accountability and the Privatization of Labor Standards: Struggles over Codes of Conduct in the Apparel Industry*, 14 POL. SOC. 211 (2005); Ronen Shamir, *Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility*, 38 LAW & SOC'Y REV. 635 (2004). It is important to note that the distinction between the first and third types of regulation is fluid and can change over time. There is an ongoing struggle over the legal meaning of the norms assumed voluntarily by corporations, and in the future courts may possibly interpret those commitments as legally binding, at least to some extent. However, so far courts have largely refused to imbue such commitments with legal meaning.

13 Bartley, *supra* note 12.

14 See, e.g., Ans Kolk & Rob van Tulder, *Setting New Global Rules? TNCs and Codes of Conduct*, 14 TRANSNAT'L CORP. 1 (2005).



progressively increased and become more common, particularly in MNCs, and to a lesser extent in domestic corporations.<sup>15</sup>

The efficacy of corporate codes in addressing the multiple objectives they claim to achieve is vigorously contested.<sup>16</sup> The more optimistic view of CSR, often referred to as the business case for CSR or "green gold," conceives it as a part of a larger scheme of new governance in which government, industry and multiple other stakeholders collaborate in attaining corporate social and environmental goals. The motivation behind this cooperative venture is that there *could* be (and, in fact, is) an alignment of interests among businesses and all other stakeholders, since socially and environmentally responsible behavior promotes both corporate profits (in terms of cost-cutting and consumer preferences for responsible corporations) and the good of society at large.

The more skeptical outlook on codes of conduct sees them as nothing more than a public relations ploy with marginal, if any, contribution to attaining better social and environmental performance. According to this approach, corporate codes provide but broad and vague standards that mask persistent employment and environmental violations, and at the same time undermine the attainment of social and environmental goals through hard regulatory standards. Difficulty in enforcement, usually attributed to traditional hard law measures, is not corrected, because the fundamental problems, such as the need for monitoring, the difficulty of verifying compliance and the like, still remain. The development of codes by corporations, geared towards satisfying a mass of uninformed consumers and communities, does not alter the basic structures of social power, and cannot affect the fundamental utility function of corporations that seek to maximize shareholders' profit. The concern for stakeholders and public goods such as clean air and the improvement of labor standards therefore remains wholly instrumental to the economic power of corporations.

A more nuanced approach rejects both views, arguing that it would be naïve to assume that the new field of social responsibility can replace the

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15 Ans Kolk, *Trajectories of Sustainability Reporting by MNC's*, 45 J. World Bus. 367; KPMG, INTERNATIONAL SURVEY OF CORPORATE RESPONSIBILITY REPORTING (2008), available at <http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/International-corporate-responsibility-survey-2008.pdf>.

16 Marc A. Eisner, *Private Environmental Governance in Hard Times: Markets for Virtue and the Dynamics of Regulatory Change*, 12 THEORETICAL INQUIRIES L. 489 (2011); Elisabet Garriga & Domènec Melé, *Corporate Social Responsibility Theories: Mapping the Territory*, 53 J. BUS. ETHICS 51 (2004).

traditional means of regulation.<sup>17</sup> At the same time, critical scholarship has identified instances in which codes and other methods of self-regulation have been used by social agents and consumers as vehicles of corporate shaming, social activism, community-building, and even as a basis for legal actions, which were not previously possible.<sup>18</sup> These new corporate practices should therefore be seen as an artifact over which there is a struggle for meaning. The question is, therefore, not whether such codes and methods of self-regulation are intrinsically deficient or virtuous, but rather, how they can be used by social agents to advance corporate social and environmental responsibility.<sup>19</sup> The notion of "struggle" emphasized in the literature focuses on the *process* by which corporate codes enable different actors to draw on them for transformative action.<sup>20</sup>

In the process of developing corporate practices that are geared towards advancing social responsibility on the one hand, and contesting existing bad practices on the other hand, attempts were made to identify parameters and indicators that are likely to affect the corporate responsible practices. For example, Vogel notes three parameters that make codes effective.<sup>21</sup> (a) Firm's vulnerability: Corporations that produce high-end market brands are more vulnerable to the scrutiny of consumers and intermediaries. Thus, a branded product will elicit higher visibility compared to low-priced, non-branded items. Moreover, high-profit corporations whose practices carry extraordinary impact on the environment (such as oil) or involve military conflict (such as weapons and other military products) are likely to be scrutinized more thoroughly by communities and states than corporations that manufacture raw

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17 Bartley, *supra* note 12, at 212.

18 JILL L. ESBENSHADE, *MONITORING SWEATSHOPS: WORKERS, CONSUMERS, AND THE GLOBAL APPAREL INDUSTRY* (2004); César Rodríguez Garavito, *Global Governance and Labor Rights: Codes of Conduct and Anti-Sweatshop Struggles in Global Apparel Factories in Mexico and Guatemala*, 33 *POL. & SOC.* 203 (2005); Richard Locke & Monica Romis, *The Promise and Perils of Private Voluntary Regulation: Labor Standards and Work Organizations in Two Mexican Factories*, 17 *REV. INT'L POL. ECON.* 45 (2010).

19 For other examples, see Ronen Shamir, *The De-Radicalization of Corporate Social Responsibility*, 30 *CRITICAL SOC.* 669 (2004).

20 John Conley & Cynthia Williams, *Engage, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement*, 31 *J. CORP. L.* 1, 15 (2005); Sharon Livesey & Kate Kearins, *Transparent and Caring Corporations? A Study of Sustainability Reports by the Body Shop and Royal Dutch/Shell*, 15 *ORG. & ENV'T* 229 (2002).

21 DAVID VOGEL, *MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY* 107-08 (2005).

materials, industrial machinery and the like. (b) The structure of production: The more dispersed the manufacturing, the more difficult it is to monitor the corporation and thus the easier it is for the corporation to manipulate its code. In a similar vein, when the manufacturing or agricultural activities of one corporation dominate a region, with little competition, there is a greater likelihood that the corporation's practices will elicit the attention of regional intermediaries and political forces. (c) Some norms, such as the employment of children and direct injury to endangered species, are more easily observable and elicit greater public attention than other norms, which draw less attention and are more difficult to comprehend and monitor or more ambiguous in their effects, such as working time arrangements, structural discrimination, the emission of various pollutants, and sustainable production.

In this process, particular primacy is given to the market, where competition among producers allows social preferences to affect the choice of various agents, such as the ability of individual consumers to assert their preferences for some commodities over others based on the social values of their producers and the (sustainable) manner in which they were produced. More political sites for action, whereby collective decision-making takes place, include inviting corporations to join a community, subsidizing production, and endorsing or removing support from corporations. The media is yet another important arena in which information is presented, and digital (virtual) media also allows the interaction of individuals as well as group participation and community-building.

Understanding the process also requires observing the agents that operate in the field of CSR, which include both new and more traditional actors. The traditional agents include consumers and consumer groups, social movements, NGOs, INGOs, and public decision-makers. Among the new agents that operate in the field of CSR, we find corporations in the same sector that might take active part in "mutual self-enforcement," given their interest in raising the standard of the branch as a whole, and thus exclude the cost-cutting methods and marketing ploys of their rivals. Those agents draw on strategies that seek to raise awareness through both adversarial and cooperative means. In addition, a whole new industry has evolved around CSR, with a host of for-profit and not-for-profit organizations playing different roles in this industry. These include, inter alia, independent standardization agencies, some with a long history such as the International Organization for Standardization (ISO), others newly created, such as Social Accountability International (SAI); organizations that seek to standardize reporting requirements, such as the Global Reporting Initiative (GRI); industry-based alliances such as RugMark International (RMI); large accounting firms which specialize in social and environmental auditing;

and institutional investors that have chosen to invest in socially responsible firms. Lastly, a new occupation is emerging, that of CSR specialists that are employed in-house by large corporations, whose role is to coordinate the interaction between the corporation and its many stakeholders.

#### **D. The Problem of Signaling Virtue**

The transition from legal regulation to the new modes of governance which rely heavily on the market for the norms-formation and enforcement creates serious problems for both corporations and consumers.<sup>22</sup> Corporations vary considerably in their social and environmental performance. They range from laggards who fail to meet even minimal standards to leaders who go beyond compliance, with the majority of corporations located somewhere in-between those two poles.

The Achilles heel of monitoring code compliance is the lack of institutional mechanisms that guarantee the flow of *reliable* information from corporations to the market. The efficacy of corporate codes in transforming corporate practices is dependent on informed and knowledgeable consumers, who can exert market pressure on corporations that do not comply with the norms and standards in the codes, or reward those who do. Such information can be conveyed to consumers in two ways: either directly from the corporation to consumers who are interested in "shopping with a conscience," or more likely through intermediate agents, such as NGOs and institutional investors, which unlike consumers possess the expertise and can devote the required time to process the information, compare the performance of different firms and verify corporate claims. The problem of monitoring is augmented due to the globalization of trade and the complex supply chains in the modern economy. MNCs rely on a multitude of small and large subcontractors for the supply of raw materials, the manufacturing and production processes, and the marketing of the goods. Hence, information on social responsibility must encompass not only the direct actions of the corporation, but also those of the whole production chain, regardless of actual legal responsibility.

The problem of conveying reliable information is not confined to consumers (broadly defined), but is also a concern of some segments of the corporate world. Some corporations are interested in complying with higher labor and environmental standards either because their management is truly committed to advancing social and environmental values, or because they

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<sup>22</sup> See Bartley, *supra* note 3.

are brand-sensitive and thus vulnerable to adverse public campaigns. Such corporations face a similar problem to that of consumers: how to convey to consumers reliable information regarding their socially and environmentally responsible practices and thus enable them to choose their goods over those of less responsible corporations. In other words, voluntary norms and standards can be usefully understood as club goods:

Firms that choose to subscribe to such voluntary standards and/or require that their suppliers do so are often required to bear additional costs. In return they receive excludable branding benefits that enable them to receive credible recognition for their environmental [and social] commitment by stakeholders . . . who value the standards that their club membership signifies.<sup>23</sup>

Yet, in order for such a branding system to work, responsible corporations must find a way to persuade stakeholders that they not only formally adopt the highly regarded norms, but also apply and enforce them. To signal its commitment, the corporation should simply publicize its internal practices and norms as well as the outcomes of the corporation's asserted commitment to these norms. And, indeed, when one looks at the websites of most corporations, it is easy to identify the social responsibility section, alongside online-shops, information on economic performance for shareholders, and other useful information. This information can be considered to be part of the market's pricing mechanism.

Despite the interest of consumers on the one hand, and corporations on the other hand, in signaling virtue, there are reasons to suspect that signaling practices are far from adequate. The problem of information disclosure and transparency has arisen as a difficult obstacle in the new system of governance. As will be demonstrated in detail in the following Parts, CSR reports are clouded by a lack of commonly acceptable norms, measures, and benchmarks, an absence of uniform methods of presentation and comparable data, inadequate self-monitoring, difficulty in verifying data, incomplete data, and an overload of information that can easily confuse even the most sophisticated experts. Moreover, unlike regulation by financial institutions, such as the Equator Principles discussed earlier, in which corporations must tailor the data they provide to specified requirements, the general CSR reports

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<sup>23</sup> David Vogel, *Private Global Business Regulation*, 11 *Ann. Rev. Pol. Sci.* 261, 272-73 (2008) (summarizing the thesis of ASEEM PRAKASH & MATTHEW POTOSKI, *THE VOLUNTARY ENVIRONMENTALIST: GREEN CLUBS, ISO 14001, AND VOLUNTARY ENVIRONMENTAL REGULATIONS* (2006)).

are aimed at a diverse audience. Highly technical forms of norms-making and methods of enforcement may accommodate expert intermediaries, but may miss the mark when it comes to persuading lay consumers. Popular presentation may be more effective when individual consumers are involved, but it may also raise the suspicion of intermediaries that the corporation's social responsibility is nothing but a public relations ploy.

Conley and Williams argue that the reporting corporation keeps its power advantage by being the sole holder of the power to define and frame the reported issues.<sup>24</sup> Given the unilateral nature of corporate codes, the capacity to keep the power in the presentation of the corporations' obligations may be an advantage to some corporations, but it is a considerable disadvantage to competing corporations, those that are committed to raising the overall standard of performance in the sector or the region, to consumers, to communities, and to political agents. More generally, the overall promise that is vested in the newly forged system of governance cannot be fulfilled if corporations are unable to credibly single themselves out in terms of the scope of their social commitments and the rigor with which they pursue those commitments. A credible CSR policy should therefore be looking for ways to overcome the suspicion that renders such acts unreliable. A corporation that wants to prove to its diverse audience that it is truly committed must identify ways to "tie its hands" despite the absence of formal legal constraints and its ability to freely market a social ploy. Gaining the trust of consumers and intermediaries requires methods that indicate that the corporation is worthy of such trust.

In a nutshell, the methods of drawing on corporate codes to improve the benefits attributed to traditional regulation are based on the ability to differentiate between "good" and "bad" corporations. If this new system of governance is more than a mere public relations ploy, there should be competition over the level of social responsibility, just as there is competition over quality, price, brand name, warranty, and the like. Such competition requires a mechanism of signaling.

### **E. Seeking Methods of Differentiation**

With this theoretical framework in mind, we approached the codes, CSR reports and related documents of MNCs in three sectors — apparel, petroleum and automobiles — looking for the methods of signaling they use in order to differentiate themselves from their competitors. We chose

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<sup>24</sup> Conley & Williams, *supra* note 20, at 30.

these sectors due to their different degrees of vulnerability to allegations of violations of norms in the two fields on which we focus in this study — labor in the case of the apparel sector, the environment in the case of the petroleum industry, and both in the case of the automobile sector. In each of these sectors we chose firms that are based in different countries and are among the largest in the sector. We looked for methods of differentiation primarily within each sector, but also among the sectors. We also sought out methods of persuasion that are different in the case of labor from those used when reporting on environmental issues. We did not seek (and, in fact, are unable) to test and audit these companies' actual performance, but rather we sought to reveal the methods by which the companies attempt to persuade their consumers, stakeholders and intermediaries that they have forgone their unilateral power to frame and manipulate social responsibility and should therefore be rewarded with their confidence.

On the basis of the literature surveyed thus far, we approach the corporate codes and CSR reports with the following questions in mind:

- (a) How does the corporation set the norms it takes upon itself? To what extent are these norms the standard norms in the sector and to what extent are they below or above the common benchmark? More generally, is there a differentiation in the norms themselves?
- (b) How does the corporation conduct its monitoring and self-audit, and what measures can be used in its reports to ensure that the norms set are in fact implemented?
- (c) How can the presentation of the data allow ranking, comparison and sorting out of the price and value of virtue?
- (d) Who does the corporation market its policy to: lay-consumers or expert groups? And in what way are the reporting strategies adapted to distinct types of agents?
- (e) Generally, which strategies are found to be most persuasive in signaling commitment and sorting among competing corporations?
- (f) To what extent do the responses to these questions differ in the fields of labor and environment?

The analysis is based on a review of documents posed on the websites of fifteen companies (five in each sector). The main documents we analyzed are codes of conduct and annual CSR reports for the year 2008 (which were the latest reports published at the time the data was collected). But in addition, we also used supplementary documents published by the companies that are related to their labor and environmental norms and practices, including suppliers' codes, specialized codes, manuals in areas such as occupational health and safety, and diversity and environmental guidelines. These documents comprise hundreds of pages for each company. The scope

of the materials affected our methodology. Previous qualitative studies focused either only on corporate codes or on the whole set of documents of one or two corporations, engaging in a close textual analysis of their codes and CSR reports.<sup>25</sup> A different approach that was pursued was based on quantitative research of a very large number of CSR reports, sometimes over different periods of time.<sup>26</sup> These studies are very instructive for a bird's eye view of the developments in the practice of CSR reporting, but do not enable a higher resolution that reveals significant differences in the framing of norms and signaling methods. Our method sought to take the middle road and highlight, in a qualitative and critical fashion, selected examples that demonstrate noteworthy issues and problems. Hence, the amount of information studied was immense and incredibly rich in examples at multiple levels.<sup>27</sup>

The findings of our study will be presented in the following three Parts. Part III discusses the substantive norms to which the corporations subscribe in their codes and CSR reports. Part IV discusses the methods of ensuring compliance with the corporate norms. In Part V, we survey methods of reporting and strategies of persuasion used by corporations in their reports.

### III. SUBSTANTIVE NORMS

We compared the norms reflected in the codes and CSR policy of the studied corporations along three axes. The first axis is a comparison of the norms in the fields of labor and environment. The second axis is a comparison of the norms (both labor and environmental) *between* the three sectors — petroleum, automobiles and apparel. The third axis is a comparison of the norms *within* each of the sectors. We will discuss each of these axes separately, starting with the comparison between labor and environment in

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25 Livesey & Kearins, *supra* note 20.

26 For a periodic study of CSR reports, see KPMG, *supra* note 15. An impressive set of scholarly studies was conducted by Ans Kolk who systematically reviewed codes of the top Fortune 250 at various points in time, beginning in the 1990s. References to her work are cited throughout this Article.

27 For a broad and systemic survey of codes, see, for example, Carolyn Fischer et al., *Corporate Codes of Conduct: Is Common Environmental Content Feasible?* (Resources for the Future, Discussion Paper No. 05-09, 2005), available at <http://www.rff.org/RFF/Documents/RFF-DP-05-09.pdf>; WORLD BANK, COMPANY CODES OF CONDUCT AND INTERNATIONAL STANDARDS: AN ANALYTICAL COMPARISON (2003), available at [http://siteresources.worldbank.org/INTPSD/Resources/CSR/Company\\_Codes\\_of\\_Conduct.pdf](http://siteresources.worldbank.org/INTPSD/Resources/CSR/Company_Codes_of_Conduct.pdf).



which the differences are most evident, and ending with the comparison within sectors in which the differences are much more nuanced.

### **A. Comparing Labor and Environment: The Norm Convergence in Labor and Norm Divergence in Environment Hypothesis**

A major distinction we expected to find when comparing the norms in the realms of labor and environment (across all sectors) is that labor norms would be relatively few, homogenous, and commonly recognized by all corporations. By contrast, we expected that there would be a greater divergence of norms in the environmental field. This distinction was expected because the last decade witnessed the evolvement of an international canon of labor standards, at the center of which lies the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, recognizing the four Core Labor Rights (CLRs).<sup>28</sup> The four CLRs include the right to be free from slavery, the prohibition on child labor, the guarantee of the freedom of association, and the prevention of discrimination at work. Conversely, there is no corresponding set of core environmental duties applicable to all corporations and to all sectors.

Two major factors emerge from this supposed distinction. The first concerns the institutional infrastructure: Norms and standards in the realm of labor are developed by the ILO, which acts together with other international agencies to standardize a certain level of universally required threshold norms, whereas in the environmental realm no such organization and tradition exist. Second, labor standards focus on a rather limited set of employment norms, whereas environmental norms span a greater diversity of issues and touch upon multiple environmental spheres, including global effects, the working environment in the production facilities, the effect on the localities that surround the production facilities, and the environmental impact of the final product.

This hypothesis of convergence of labor norms and divergence of environmental norms is also prevalent in the literature. According to Vogel,

[e]nvironmental management and practices are important and highly visible components of CSR. But in contrast to labor standards where a rough consensus has emerged about how firms in developing countries that supply Western companies should treat their employees, the

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28 ILO, DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK, June 1998, 37 I.L.M. 1237 (1998), *available at* <http://www.ilo.org/public/english/standards/decl/declaration/index.htm>.

standards for corporate environmental responsibility are much less clear.<sup>29</sup>

Similarly, Fischer et al. argue that "common content for codes of conduct is being developed for labor according to [ILO] standards, to which most countries adhere. However, environmental standards have no clearly articulated, internationally accepted consensus framework."<sup>30</sup> This hypothesis, if validated, is quite important, as it enables a corporation to manipulate its audience in the environmental realm by cherry-picking the norms that place the corporation in a positive ("green") light, concealing all others that don't, while the same tactic would not be possible in the realm of labor.

However, the picture that emerges from our study is much more complex and nuanced, showing trends of convergence and divergence in both environmental and labor norms, with convergence occurring mostly within sectors, while some variance of norms is maintained between sectors.<sup>31</sup>

One finding of our study, which is both significant and unambiguous, is the existence of great divergence between sectors in reporting about labor issues, environmental issues, or both. While labor and environmental standards are of concern to all sectors, the norm of reporting about environmental issues is, generally, widespread in the petroleum sector and almost nonexistent in the apparel sector; the opposite is true with regard to labor issues. These differences can be explained by the level of risk — both legal and extralegal — each sector is exposed to and the different expectations arising from their social licenses to operate.<sup>32</sup> NGOs, communities and conscientious consumers target the apparel industry for its labor practices to a much greater extent than for its environmental practices, while the opposite is true for the petroleum industry. But why is that?

The reasons for this divergence are outside the scope of this Article, although several hypotheses can be proposed with regard to the distinct interests that consumers display. There are objective factors, such as the

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29 See VOGEL, *supra* note 21, at 110.

30 Fischer et al., *supra* note 27, at 2.

31 Ans Kolk similarly finds, on the basis of a 2001 dataset, trends of convergence within sectors, but also highlights divergence between regions (according to the home-base of the MNC), see Ans Kolk, *Environmental Reporting by Multinationals from the Triad: Convergence or Divergence*, 45 MGMT. INT'L REV. 145 (2005). This point of geographical divergence was not tested in our study.

32 On the social license to operate, as distinguished from other types of license, see NEIL GUNNINGHAM, ROBERT A. KAGAN & DOROTHY THORNTON, *SHADES OF GREEN: BUSINESS, REGULATION AND ENVIRONMENT* 41-74 (2003).

significance and potential hazards of the petroleum sector to the environment, which are much greater than that of textile manufacturing. Another factor is the divergent organizational structures of the different industries, such as the massive use of outsourcing by companies in the apparel industry to small contractors in undeveloped regions, compared to larger subcontractors in the automobile industry. While these differences may explain to some extent why there is a more intensive application of the corporate code to suppliers in the apparel industry, it would have been reasonable to expect similar concerns in other industries as well. For example, petroleum corporations should have given more attention to the working conditions of their franchisees (the employees in the many gas stations dispersed around the globe) and subcontractors (including construction teams, drivers, movers, etc.). The fact that the codes and reports in the petroleum industry are almost exclusively limited to the core of the companies' activities by its direct staff and fully owned operations indicates that NGOs, consumers and other CSR agents are either disinterested in the working condition in the oil business or have not yet developed equally powerful strategies that would require firms to extend their responsibility to the periphery of their corporate activities. While there is no intrinsic reason why working conditions in the petroleum sector should be removed from the consumers' attention, such attention seems to be path-dependent and reliant on social fads and biased media coverage.<sup>33</sup>

With regard to the hypothesis that environmental norms are more likely to diverge and labor standards to converge, our findings are much more ambiguous. In a nutshell, while it is true that there is a great diversity in environmental norms, corporations are not entirely free to pick and choose among them. They are constrained by the standardization of norms that has evolved over the years primarily within each sector, but more recently also between sectors. The opposite development took place in the field of labor. While evidently there is a canon of labor rights that revolve around the four CLRs, the list of labor norms above and beyond the CLRs varies significantly, primarily between sectors, but also within each sector. Moreover, the form of adaptation of the four CLRs diverges considerably among different corporations, with the same norms being

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<sup>33</sup> See generally Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 *COGNITIVE PSYCHOL.* 207 (1973); Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 *SCIENCE* 1124 (1974).

interpreted, adapted and implemented in diverse ways. In what follows, we demonstrate the asserted interplay between convergence and divergence.

## B. The Common Canon of Labor Rights and its Variations

*1. The Variation in Labor Norms: Expanding the Core of Labor Standards*  
The baseline for all codes is recognition of the four CLRs promulgated by the ILO in 1998.<sup>34</sup> Companies that have joined the UN Global Compact are required to adhere to the same four principles.<sup>35</sup> However, despite the basic canon that serves as a focal point for all corporations, there is still significant divergence.

One reason for the divergence is the wide variation in the methods whereby these rights are incorporated in the codes. In some cases, the code provides nothing more than a general statement that recognizes these principles, while in others there is a detailed elaboration of the rights as well as the ways in which the company seeks to advance them. A weak commitment can be found in Chevron's Human Rights Statement (adopted in 2006), stating that

we treat our employees with respect and dignity. We adhere to all applicable domestic laws, and to the internationally accepted labor principles articulated in the International Labor Organization's Declaration on Fundamental Principles and Rights at Work and in the Global Sullivan Principles. These include prohibiting child labor, forced labor, and discriminatory behavior, as well as recognizing the rights to freedom of association and collective bargaining. We prefer business partners that treat their employees similarly.<sup>36</sup>

The weakness of this statement is apparent in the general acceptance of the principles, without further elaboration, in addition to the rather general statement of a *preference* for business partners that treat their workers similarly. There are no indications as to the nature of that preference, how it is affecting the day-to-day business operation, and what other preferences may prevail in forging business partnerships.

By contrast, some of the apparel companies draw on the four CLRs in

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<sup>34</sup> ILO, *supra* note 28.

<sup>35</sup> See UNITED NATIONS, GLOBAL COMPACT, princ. 3-6 (2000). On the relationship between the Global Compact and the ILO's Declaration, see *About Us*, UN GLOBAL COMPACT, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/labour.html> (last visited Sept. 1, 2010).

<sup>36</sup> CHEVRON, BUSINESS CONDUCT AND ETHICS CODE 27 (2010).

a very different manner. Instead of merely iterating a general commitment to the ILO principles, they spell out their own interpretation of them. This can lead to variations in the corporations' norms. For example, Gap stresses that the freedom of association is the right to choose to join *or not to join* a union (a matter that is considered controversial in the jurisprudence on association),<sup>37</sup> while Levi Strauss refer only to the freedom to join a union.<sup>38</sup> At the same time, Gap provides a comprehensive list of prohibited causes of discrimination (gender, race, color, nationality, religion, age, maternity, marital status, indigenous status, social origin, disability, sexual orientation, membership in unions and political affiliation), while Levis Strauss suffices with a general claim that "while we recognize and respect cultural differences, we believe that workers should be employed on the basis of their ability to do the job, rather than on the basis of personal characteristics or beliefs."<sup>39</sup>

An important element that underscores the comparison between different forms of adapting the four CLR's is the level of their specificity in the codes. While many companies suffice with general statements, formulated as "standards" rather than as precise "rules," only few companies set out a more detailed list of measurable rules. Consider, for example, statements against child labor, which commonly suffice with declaring a general commitment to the ILO or UN standards. Resonating with the general debates in the internal labor community, some codes adhere to a specific age under which child labor is prohibited, while others address the problem of exploitative child labor. In any case, these formulations remain simple and provide very little guidance.<sup>40</sup>

By contrast, it is possible to draw on H&M's code to illustrate a much better alternative:

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37 GAP INC., CODE OF VENDOR CONDUCT 9 (2007). For the jurisprudential problem with the freedom to abstain from trade union membership, see SHELDON LEADER, FREEDOM OF ASSOCIATION: A STUDY IN LABOR LAW AND POLITICAL THEORY (1992).

38 LEVI STRAUSS & CO., GLOBAL SOURCING AND OPERATING GUIDELINES 2 (1991).

39 Compare GAP INC., *supra* note 37, at 8 with LEVI STRAUSS, *supra* note 38, at 2.

40 The most common norm is to set the prohibitive age at fifteen, or the age at which compulsory education ends in the state of production (whichever is higher), with provisions for employment from the age of fourteen under the circumstances specified in the ILO's Minimum Age Convention 138 (1973). Exceptions in the sample of codes we read were Tata, Shell (with no reference to a prohibitive age), Chevron, RWE, BP (prohibits child labor, but does not set a specific age), Tullow Oil, H&M, VF (additional provisions for ages fifteen to eighteen), and Quicksilver, which sets the age of sixteen. On the variance in references regarding child labor, see Ans Kolk & Rob Van Tulder, *Ethics in International Business: Multinational Approaches to Child Labor*, 39 J. WORLD BUS. 49 (2004).

H&M does not accept child labour.

We are concerned about the situation of children in many parts of the world. We acknowledge the fact that child labour does exist and can't be eradicated with rules or inspections, as long as the children's social situation is not improved. We want to actively work with factories and with NGO's (Non Government Organisations) in third world countries, to try to improve the situation for the children affected by our ban on child labour.

If a child (see definition under 2.2) is found working in any of the factories producing our garments, we will request the factory to make sure that the measures taken are in the child's best interest. We will, in co-operation with the factory, seek to find a satisfactory solution, taking into consideration the child's age, social situation, education, etc. We will not ask a factory to dismiss a child without a discussion about the child's future. Any measures taken should always aim to improve, not worsen, each individual child's situation. Any costs for education, etc. have to be paid by the factory.

We will firmly demand that the factory employs no further children.

We recommend factories with predominantly female workers to arrange day care for children below school age . . . . If a supplier does not accept our policy on child labour, we will not continue our co-operation with this supplier

In countries where the law permits apprenticeship programmes for children between 12 and 15 years of age, we will accept that children of this age work a few hours per day. The total numbers of hours daily spent on school and light work should never exceed 7 (seven) hours (ILO convention No. 33).

The factory must be able to prove that this work is not interfering with the child's education, that the work is limited to a few hours per day, that the work is light and clearly aimed at training, and that the child is properly compensated. If we have any reason to doubt that these conditions are met, such apprenticeship programmes will not be accepted in factories producing garments for H&M.

We acknowledge, that according to the UN Convention on the Rights of the Child, a person is a child until the age of 18. We therefore recommend our suppliers to make sure, that employees in the age group 15-18 years, are treated accordingly. Limits for working hours

and overtime for this age group should be set with special consideration to the workers' low age.<sup>41</sup>

The persuasive power of this policy, which distinguishes it from many others, includes the following: a transition from a negative prohibition to the adoption of positive measures; a preference for tackling the problem in cooperation with NGOs; recognition that the simple solution of terminating the employment relationship is the right thing to do, but not necessarily the most conducive to the child's welfare and that of her family, and at the same time a strict prohibition of further employment of children; the reference to several international instruments in a manner that reveals an awareness of controversies over the preferred age that is set as the threshold; and a distinction between compulsory rules and recommendations (daycare and apprenticeship programs). As noted at the outset, we are unable to verify whether or how this complex policy is applied in the real world. At the same time, the policy itself, with its sensitivity to the most progressive discourse in international law regarding the desirable measures for confronting child labor, sets itself, even if only at the expressive level, miles apart from the mere adherence to the CLRs.

There are two other forms of divergence with regard to the canon of CLRs and its adoption in the corporate CSR codes and policies. First, with regard to the labor standards recognized in the codes, a previous study of several corporate codes conducted in the 1990s revealed that most companies sufficed with recognition of the four CLRs with very few additional rights. Moreover, the exclusion of the freedom of association was common.<sup>42</sup> By contrast, at present there is a much lengthier list of rights that are recognized in the codes. There are, however, notable differences that are visible first and foremost between sectors. In the petroleum sector most corporations suffice, at most, with adherence to the four CLRs, usually supplemented by occupational health and safety. Some do not even explicitly spell out the four CLRs.<sup>43</sup> In

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41 H&M, CODE OF CONDUCT § 2.5.

42 Guy Mundlak, *The Transformative Weakness of Core Labor Rights*, in WELFARE AND LAW IN AN ERA OF GLOBALIZATION 231, 445-46 (Eyal Benvenisti & Georg Nolte eds., 2003).

43 The absence of occupational health and safety from the four CLRs has been discussed in the literature criticizing the scope of the ILO's focus. See Philip Alston, *Core Labour Standards and the Transformation of the International Labour Rights Regime*, 15 EUR. J. INT'L L. 457 (2004); Mundlak, *supra* note 42. For examples of CLRs' minor role in the petroleum sector, see BP, CODE OF CONDUCT (2005) (providing only general guidelines that resonate with the CLRs, linking to more detail in the company's intranet); CHEVRON, *supra* note 36 (generally referring to the CLRs as part of the human rights section); RWE, CODE OF CONDUCT (2005);

the textile industry, by contrast, there is a relatively extensive discussion of labor norms and most of the codes go beyond the four CLR's. The additional norms include health and safety, living conditions, fairness in employment of foreign workers, humane treatment, and dormitory facilities. There are also references to minimum wage and vacations, but these are always made by reference to local legislation. By contrast, working time is sometimes capped in addition to local regulation.<sup>44</sup> The automobile sector is situated between the two other sectors in terms of adhering to norms beyond the four CLR's.<sup>45</sup>

The second factor that distinguishes between corporations is whether they guarantee rights solely to employees who are employed directly by the corporation, or extend such rights also to employees of subcontractors and suppliers.<sup>46</sup> For example, in some apparel corporations, the main code of conduct is in fact a code for suppliers.<sup>47</sup> For most of the corporations in the petroleum industry, the code applies mandatorily only to the corporation itself and to its direct employees, while its application to subcontractors, suppliers, and franchisees is generally a recommendation.<sup>48</sup> In the automobile industry there is greater variation. For example, BMW requires all of its suppliers to conform to its environmental and labor standards (starting from 2009). However, failure to comply with the standards leads to an improvement

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TULLOW OIL, CODE OF BUSINESS CONDUCT (2009) (listing the CLR's and referring to health and safety); SHELL, CODE OF CONDUCT (2006) (not referring to the CLR's).

44 H&M, *supra* note 41; Levi Strauss & Co., *supra* note 38; LIZ CLAIBORNE INC., CODE OF CONDUCT; VF, CODE OF BUSINESS CONDUCT (2006).

45 Closer to the codes of the apparel industry is RENAULT, EMPLOYEES FUNDAMENTAL RIGHTS DECLARATION (2004) (supplementing rights over and above the basic four CLR's). In the interim are TOYOTA MOTOR CORP., CODE OF CONDUCT (2006); Volvo Cars Corp., *Code of Basic Working Conditions*, in VOLVO CARS CORP., GRI REPORT 43 (2008); BMW GROUP, JOINT DECLARATION ON HUMAN RIGHTS AND WORKING CONDITIONS (2005) (referring to the CLR's and health and safety). At the other end of the spectrum is TATA, CODE OF CONDUCT (not referring to the CLR's).

46 Generally, reference to supply chains in CSR reports is on the increase, although it was found that approximately half of the major multinationals omit reference to their suppliers. See KPMG, *supra* note 15, ch. 5.

47 See, e.g., GAP INC., *supra* note 37; LEVI STRAUSS & CO., *supra* note 38; VF, *supra* note 44.

48 Typical of the petroleum sector are statements such as CHEVRON, *supra* note 36, at 27 ("We encourage our suppliers to treat their employees . . . in a manner that respects human dignity. We require our key suppliers to adhere to all domestic law and encourage them to be consistent with the ILO core labor principles."); BP, *supra* note 43, at 44 ("[W]e must seek to ensure parties are aware of the code and should seek their cooperation in adhering to the code"). Similar soft language is used in the automobile industry.



program, not necessarily to the termination of contract. While termination remains an option on the books, the company reported that it has never been used thus far.<sup>49</sup>

## 2. *Transposing Rights into Duties and HRM Policy*

Another source of divergence that emerges from the comparison of how the codes and CSR reports outline their internal labor norms is apparent in the narrow borderline between detailing protective labor standards and human resource management (HRM) policy. This form of slippage is the result of two factors. First, corporate codes deal first and foremost with the corporation's own employees, and only some engage with the employment conditions of workers in more remote links of the production chain (such as suppliers and contractors). While minimum labor standards are of utmost importance with regard to contractors and suppliers, who are usually based in developing countries, they are of little significance to those who are employed directly by large industrial enterprises and administrative back-offices in developed countries. The latter tend to belong to the primary labor market, which often offers lucrative employment prospects for their employees. CSR in this context tends to emphasize "sustainability" in the sense of "beyond compliance," signaling an overall quality of workplace conditions.

A second reason for the slippage between employment standards and general HRM practices seems to be ideological. HRM evolved as a discipline and practice on the basis of a belief in unitary values, that is, the assumption that workers and employees have a joint interest in the business success of the corporation. In this, HRM is distinguished from industrial relations, a discipline and practice based on dualism — the notion that between workers and their employer lies an inevitable cleavage that can be mediated and negotiated, but never eliminated.<sup>50</sup> Hence, some codes demonstrate a preference for portraying a unitary image, while others are based on the need to secure rights despite, and because of, the intrinsic conflict.

For example, Tullow Oil's statements commence with very general claims that emphasize a corporate vision of employees and managers being jointly responsible for conducting the company's business in a "fair, honest and ethical manner." In addition to recognizing the CLRs, the company is

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<sup>49</sup> BMW Group, *Sustainable Value Report*, § 01.3 (2008).

<sup>50</sup> On the distinction between unitary (HRM) and dual (industrial relations) theories, see BRUCE E. KAUFMAN, *THE ORIGINS AND EVOLUTION OF THE FIELD OF INDUSTRIAL RELATIONS IN THE UNITED STATES* (1993).

committed only to very general statements such as "we positively encourage the development of all our employees by providing a working environment that fosters new talent and ways of thinking."<sup>51</sup> In this, the corporation rapidly transitions from a general recognition of rights to a unitary HRM policy. Hence, objectives such as "aiding workers achieve their potential" and company objectives such as the "development of strategic HR" aid in blurring the line between CSR and HRM, assuming both are one and the same. Similarly, BP notes in its annual report that its reporting scheme emphasizes several concerns, among them "people energy," which is defined as "making sure we have the right people in the right roles."<sup>52</sup>

It is noteworthy that the road from the unitary HRM approach to duties (as opposed to rights) is short. Under the heading of "employment policies," we found policies that deal with issues that are related to corporate wellbeing, including the prohibition of sexual harassment, protection for whistleblowers, prohibition on drug and alcohol abuse, and rehab programs that are offered to employees. As in other companies that underscore the HRM perspective, these are often joined by strict rules regarding the infringement of trade secrets and by the monitoring of employees to ensure that they comply with the code and ethical obligations of employees.<sup>53</sup> Consequently, the discussion of CSR is translated into a list of workers' duties and obligations, rather than guarantees of their rights. The duties approach is particularly apparent when the rights approach is weak (which is most evident in the petroleum industry). This tradeoff can be found in RWE's preamble to the code, holding that the corporation "encourages every single employee to take responsibility for his or her actions, and it seeks to provide them with appropriate guidance."<sup>54</sup> Moreover, RWE places the burden of compliance with the CLRs on the workers themselves, stressing the employee's personal duty to be part of the corporate commitment to the stakeholders. In what may seem a recruitment of all for the team's effort to induce compliance, there is no hierarchy of obligations and no notion of workers rights as trump, but merely a layout of multiple obligations and commitments.

### C. The Convergence and Divergence of Environmental Norms

Despite the assumption of divergence in the field of environmental norms,

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51 TULLOW OIL, *supra* note 43, at 1, 6.

52 BP, *Sustainability Review*, 18 (2008).

53 See, e.g., BP, *supra* note 43; RENAULT, CODE OF GOOD CONDUCT.

54 RWE, *supra* note 43, at 5.

our study found that corporations are not, in fact, wholly free to pick and choose among the diverse environmental norms and standards, but are constrained by the expectations that have evolved over the years as a result of both regulatory requirements and the continuous standardization efforts promoted by NGOs, social movements and other corporations in the industry.<sup>55</sup> When the environmental norms in each of the sectors are examined, it is apparent that much standardization has taken place. By contrast, when the norms prevalent in corporations from different sectors are compared, a great deal of diversity is revealed, despite a growing cross-sector standardization of some environmental norms. Consequently, as in the realm of labor, in the environmental context too we witness notable processes of both convergence and divergence.

### *1. Inter-Sector Comparison: The Diversity of Environmental Norms*

Since the environmental field is comprised of a multitude of issues, among them climate change, air and water pollution, water use and treatment, waste and sewage management, forestation and the use of certain chemical agents, and given that it is implicated in every aspect of both the production process and the product itself, environmental norms are many and varied. A comparison of the codes and CSR reports of corporations from the three studied sectors reveals a wide variation in environmental norms, with some closely related to the environmental risks that the specific industry creates, while others contend with more general environmental issues.

In the petroleum industry we find norms that range from reducing Greenhouse Gas (GHG) emissions in the production facilities, reducing air pollution, investing in renewable and clean energy, and preventing oil spills (which are closely related to the harms created by the oil industry) to waste treatment, reducing fresh water use, implementation of environmental management systems (EMS), and the conservation and enhancement of local biodiversity (which are more general environmental concerns not connected specifically to the oil industry).<sup>56</sup>

The environmental norms developed in the automobile industry include the following: initiatives to reduce GHG emitted from both the production process and the product (vehicles), recycling and recovery of defunct cars and the reduction of air pollution in both the production process and the

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<sup>55</sup> See Bartley, *supra* note 3.

<sup>56</sup> Shell, *Sustainability Report*, 4, 17-19, 22-24, 29-30, 35, 36 (2008); Tullow Oil, *Delivering Growth Responsibly: Corporate Social Responsibility Report*, 10-13, 22, 25-26 (2008); Chevron, *Corporate Responsibility Report*, 12-25 (2008); RWE, *Our Responsibility: Status 2008*, at 6, 8-11; BP, *supra* note 52, at 6, 7, 11, 15-17.

vehicles (which are closely related to the environmental harms created by the industry), waste treatment, water use, environmental management systems, and energy saving as well as environmental projects in cooperation with local communities (which are more general environmental concerns not connected specifically to the automobile industry).<sup>57</sup>

Finally, in the apparel industry environmental norms are the least developed, ranging from none at all to scant and inadequate norms. The corporations that do mention the environment focus on sewage and bio-solids management, the transport and management of hazardous waste, solid waste management, prevention of water pollution, storage of hazardous materials, and in a few cases also EMS implementation and some limited reference to initiatives at reducing GHG emissions in the production process.<sup>58</sup> There is one noteworthy exception in the apparel industry: H&M, which, on the basis of its reports, appears to be an environmental leader. H&M dedicates a substantial portion of its report (as large as the labor section) to the environment and provides real objectives and specified targets on a wide variety of environmental matters.<sup>59</sup>

The inter-sector divergence in environmental norms is due to several interrelated reasons. First, some sectors are generally more environmentally harmful than others. Second, each sector raises different concerns and creates distinctive environmental risks, both in terms of the environmental subject matter (air, water, soil, forests, etc.) and in terms of scale (global, regional or local). Third, each sector is subject to different regulatory regimes, which form various benchmarks and fashion different expectations for the environmental performance of the corporations in the sector. For example, whereas in the apparel sector the product (clothing) is subject to lax environmental regulation, in the automobile sector the product (vehicles) is subject to stringent regulation with regard to both maximum CO<sub>2</sub> emissions

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57 BMW Group, *supra* note 49, at 37-46, 86-95; Volvo Car Corp., *Corporate Report with Sustainability*, 15, 18-20, 28 (2008/9); Volvo Car Corp., *supra* note 45, at 48-59; Tata, *Social Responsibility Annual Report*, 16-21 (2008-2009); Toyota Motor Corp., *Sustainability Report*, 16-47 (2009); Renault, *Registration Document*, 101-15, 282-87 (2008).

58 H&M, *Sustainability Report*, 27-36 (2008); Gap Inc., *Social Responsibility Report*, 72-92 (2007-2008); Levi Strauss & Co., *Profits/Principles 2008 Annual Report*, 12-15.

59 H&M, *supra* note 58, at 26-36.

from vehicles (especially in the EU, and recently also in the United States) and the recovery and recycling of out-of-use vehicles in the EU.<sup>60</sup>

Hence, it is not surprising that the environment is a major concern for the petroleum and automobile sectors, while it is conceived of as being less important in the apparel industry. This predilection is augmented by the different sectors' diverse social licenses to operate — NGOs and conscientious consumers are much less interested in the environmental impact of the apparel industry than they are in the impact of corporations in the petroleum and automobile sectors.

## 2. *Early Signs of Inter-Sector Convergence of Norms and its Variations*

Despite the wide variation in environmental norms, signs of inter-sector convergence can be detected, particularly in industries that raise similar environmental concerns. Thus, it is apparent from the environmental norms listed above that some recur in all sectors. Inter-sector norm convergence can be explained by the high visibility of some environmental risks, such as climate change, in public discourse and the media, and by the enormous social and political attention they receive. Other important factors are whether the norm is quantifiable and the various initiatives at reporting standardization, such as the GRI, Carbon Disclosure Project (CDP), as well as the many certification programs (chief among them ISO 14001).<sup>61</sup>

Despite partial convergence, even when the environmental norms are similar across sectors, there remains a difference in the quantitative and qualitative levels of their application. Take, for example, the fields of GHG emission reduction and EMS implementation, which appear in both the petroleum and automobile sectors and to a lesser extent also in the apparel industry. With regard to GHG emission reduction, all corporations in the petroleum and automobile industries pledge to combat climate change by lowering their carbon footprint and report at length their GHG emission reduction initiatives, making abundant use of numbers, tables and graphs that "illustrate" the success of these initiatives.<sup>62</sup> However, there are two major differences between the sectors in reporting GHG emission reductions. First, while corporations in the petroleum industry report on GHG emission from the production facilities, car manufacturers report not only GHG emitted in the production process, but also, and more extensively, those emitted from their

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60 In Europe, see Council Directive 2000/53, The End of Life Vehicles Directive, 2000 O.J. (L 269) (EC); In Japan, see The Automobile Recycling Law (January 2005).

61 See Tim Bartley, *Certification as a Mode of Social Regulation*, in HANDBOOK OF THE POLITICS OF REGULATION (David Levi-Faur ed., forthcoming 2011).

62 See sources cited in *supra* notes 56-57.

products — cars and automobiles. Second, while in the petroleum industry the norm is that no real targets for CO<sub>2</sub> emission reduction are specified, in the automobile industry car manufacturers almost invariably set targets using concrete numbers and indicating the year they expect to achieve each target.

A similar distinction between the two sectors emerges in the context of environmental management systems (EMS). The prevalent norms in the petroleum industry are quite weak. The standard EMS is ISO 14001, which does not require the corporation to demonstrate actual environmental improvements, and demands only the incorporation of various procedural mechanisms throughout the organization.<sup>63</sup> Yet, only two of the five corporations in the petroleum industry (both British) have ISO 14001 certification,<sup>64</sup> while the others make weaker commitments such as implementing internally developed (and thus uncertified) EMS.<sup>65</sup>

In the automobile industry more rigorous norms can be detected. Most corporations in the industry hold ISO 14001 certification for some of their production plants. BMW, an environmental leader in the sector, declares that all of its production plants are independently certified according to environmental protection standard ISO 14001. The BMW Group further declares that it does not suffice with classic environmental management and conventional solutions and seeks to identify measures for greater environmental protection in the early stages of investment projects.<sup>66</sup> But there are also corporations that lag behind. Tata Motors, for instance, reports the unimpressive information that only four of its manufacturing facilities are ISO 14001-certified.<sup>67</sup>

At first sight it may appear that the voluntary environmental norms in the automobile industry are more rigorous than those in the petroleum industry. Unfortunately, the more stringent norms that are found in the automobile industry did not evolve voluntarily. They reflect the stringent regulation that automobile manufacturers are subject to, especially in Europe and Japan, and increasingly so in the United States.<sup>68</sup> When hard regulation is taken into account, a clear pattern of norms convergence can be detected within the

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63 INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO), ISO 14001: ENVIRONMENTAL MANAGEMENT SYSTEMS (1996).

64 Tullow Oil, *supra* note 56, at 12; BP, *supra* note 52, at 11.

65 RWE, *supra* note 56, at 18; Shell, *supra* note 56, at 29-30; Chevron, *supra* note 56, at 3, 6 (page 6 refers to pages 22-28, which do not fully support the corporate statement of internal EMS).

66 BMW, *supra* note 49, at 40.

67 Tata Motors, *supra* note 57, at 20.

68 See *infra* note 71 and accompanying text.

industry, aligning with the regulatory requirements with very few attempts to go beyond compliance.

### 3. *Intra-Sector Comparison: Towards Convergence of Norms*

Within each of the three studied sectors we found a relatively high level of standardization of environmental norms. The standardization is manifest in the similar norms that different corporations have chosen to report, sometimes even in the identical formulation of these norms. At first glance, this finding is both significant and promising. The significance of standardization is that it indicates the development of a certain level of public and professional expectation that corporations in each of the sectors must fulfill. A good example can be found in the standardization of reporting in the petroleum industry. While the issues dealt with in the reports of the various corporations diverge, ranging from air pollutant emissions (such as NO<sub>x</sub> and SO<sub>2</sub>), water use, oil spills, waste treatment and disposal to biodiversity conservation, the major emphasis is on combating climate change by reducing GHG emissions and by investing in renewable and clean energy (solar, wind, biofuels, etc.). This standardization makes it possible to conduct an intra-sector comparison among corporations, measuring the level of compliance with the same norm, a comparison that is crucial to the process of "ratcheting up" standards in the industry.<sup>69</sup> The comparison is also facilitated by the standardization in the reporting of emissions from operations brought about by the growing prevalence of the GRI and, in the GHG emissions case, also the CDP.

Unfortunately, we found very few signs indicating that a ratcheting up process indeed takes place. On the contrary, with the exception of a few notable cases, the convergence in environmental norms is at a relatively low level and tends to revolve around the existing "hard" regulatory requirements. For example, a comparison of the corporate reports in the petroleum industry reveals that the difference between environmental leaders and laggards is not considerable and the norms reflected from the codes and reports are far from impressive, especially given the harmful environmental effects of this industry. This conclusion is consistent with the findings of other studies, which show that due to the pressures of the economic license to operate on the one hand and the regulatory and social license to operate on the other

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<sup>69</sup> Charles F. Sabel, Dara O'Rourke & Archon Fung, *Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace* (KSG, Working Paper No. 00-010; Colum. L. & Econ., Working Paper No. 185, 2000), available at <http://ssrn.com/abstract=253833>.

hand, corporations tend to align with each other, not lagging too far behind the standard prevailing in the industry, but also not exceeding it by much.<sup>70</sup>

A similar phenomenon can be detected in the automobile industry. Car manufacturers are subject to strict regulation with regard to maximum emissions from vehicles, and the environmental norms tend to converge around the regulatory requirements. The EU regulation, for instance, instructs all car manufacturers that by the year 2012, sixty-five percent of their new vehicle fleet must meet the requirement for maximum average emissions of 140 grams per kilometer.<sup>71</sup> The European car manufacturers report their respective plans to cut GHG emissions both in the manufacturing process and from their product, setting specific targets and due dates that correspond, more or less, to the regulatory requirements. A similar phenomenon can be found in the reports of the Japanese manufacturers.

Finally, in the apparel industry the environmental norms are the least developed. Liz Claiborne and VF do not mention their environmental policy, achievements or targets in their CSR reports. Levi Strauss and Gap include an environmental section in their reports, but its content is quite insipid, containing neither specified commitments nor clear targets. Gap is situated slightly further up the continuum, reporting the completion of the first phase of an environmental footprint assessment across select owned and operated locations, pledging to develop quantifiable environmental goals based on that assessment by the end of 2010, and announcing the reduction of GHG emissions by twenty percent between 2003 and 2008.<sup>72</sup> This is, however, the most concrete statement that can be found in the report. None of the above mentioned corporations report on their EMS certification, and it is therefore reasonable to conclude that they hold no such certification. Again, the notable exception is H&M. A substantial portion of H&M's 2008 Sustainability Report is dedicated to the environment and provides tangible commitments and specified targets on a wide variety of environmental matters, including the use of chemicals in the production process, water and sewage treatment, consumption of energy in the production process, transportation, and the stores themselves, including their carbon footprint. They even report negative facts: an increase in their CO<sub>2</sub> emission levels in 2004-5.<sup>73</sup>

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70 GUNNIGHAM, KAGAN & THORNTON, *supra* note 32, at 137-39.

71 Regulation (EC) No 443/2009, of the European Parliament and of the Council of 23 April 2009, Setting Emission Performance Standards for New Passenger Cars as Part of the Community's Integrated Approach to Reduce CO<sub>2</sub> Emissions From Light-Duty Vehicles, 2009 O.J. (L 140).

72 Gap Inc., *supra* note 58, at 78-79.

73 H&M, *supra* note 58, at 27-36.



#### IV. ENSURING COMPLIANCE

In addition to substantive norms, corporate codes and CSR documents also provide information regarding monitoring and other methods of ensuring compliance. Since it is assumed that unlike "hard" legal measures, corporate self-regulation is not legally enforceable, it is necessary to find ways to verify the credibility of the corporations' claim to social and environmental responsibility.

In theory, monitoring schemes could have been best understood as a continuum, whereby at one end lie the weakest methods such as self-monitoring and accountants' certification of CSR reports, and at the other end the strongest methods such as "joint monitoring," in which a corporation opens its gates to the inspection of others (such as independent NGOs), with all corporations positioned somewhere along the continuum. Reality, however, does not lend itself to such simple categorization. H&M, for example, specifies in its report several methods of cooperation with external agents and outlines what seems to be a very detailed self-monitoring system. At the same time, it expressly states that "we do not currently assure our report. While we recognize that some stakeholders appreciate assurance, we believe our resources are still best placed in furthering our sustainability work."<sup>74</sup> This statement blurs the boundaries between "weak" and "strong" methods for monitoring compliance, casting doubt on the actual merit of stronger types of monitoring.

Bearing in mind this caveat, the following pages outline the common methods for monitoring compliance.

##### A. Self-monitoring

Self-monitoring is considered the most inferior way of ensuring compliance, since it provides no method for external agents to verify the validity of the claims. Our study found that few corporations strictly adhere to self-monitoring as a sole method. One such example is RWE, which places most of the responsibility for complying with the code on its employees and low to mid-level managers. Its code states that "RWE works to continually improve the occupational safety and health conditions for its employees

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<sup>74</sup> *Id.* at 13.

and the safety of its facilities. Every employee is responsible for helping to keep his/her workplace safe and to protect the environment. Every employee must comply with all relevant laws and regulations."<sup>75</sup> Similarly, Volvo holds in the opening paragraph of its report that "external assurance has not been conducted on this report, instead we use a format of *inviting* key external stakeholders to *read and assess* the completeness and materiality of the report."<sup>76</sup>

Where self-monitoring is dominant, corporations usually rely on some form of whistle-blowing as well as similar types of "report and complaint" systems in which employees and corporate officials are expected to serve as watchpersons for ensuring compliance with the code by coworkers and corporate officials.<sup>77</sup> Companies often run an advisory program for code compliance in the form of online personal assistance, a 24/7 hotline, or delegates in the large companies. BP, for example, provides data on the number of questions that were submitted to their "opentalk" system.<sup>78</sup> The company reports that between 500 and 1200 questions were submitted each year (during the last five years), although it is difficult to assess the nature of these questions and, thus, the significance of these numbers. It is, however, noteworthy that approximately seventy-five percent of the questions were referred from North America and Europe, while only a small percentage of the questions came from developing countries. Moreover, the system is only open to the corporation's employees and not to suppliers and subcontractors. The effectiveness of the complaints system as a monitoring device is therefore questionable.

## **B. Auditing of Reports by Accounting Firms**

A second common monitoring method is verification of the CSR reports by an accounting firm (usually one of the four largest international accountancy

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<sup>75</sup> RWE, *supra* note 43, at 22; *see also* RWE, *supra* note 56, at 14-16.

<sup>76</sup> Volvo Cars Corp., *supra* note 57, at 1 (emphases added).

<sup>77</sup> The literature recognizes the relationship between the practice and law of whistle-blowing and the new mode of governance. *See, e.g.*, CYNTHIA ESTLUND, *REGOVERNING THE WORKPLACE: FROM SELF-REGULATION TO CO-REGULATION* (2010); Orly Lobel, *Citizenship, Organizational Citizenship, and the Laws of Overlapping Obligations*, 97 CAL. L. REV. 433 (2009).

<sup>78</sup> BP, *supra* note 52, at 20.

firms).<sup>79</sup> The accountants' statement, commonly reported in a short annex to the report, supposedly verifies the content of the report, but in fact does very little in terms of substantive monitoring. A close reading of the qualifications and waivers incorporated in the auditor's statement reveals that the audit is very limited, focusing on a scrutiny of the procedures used by the corporations in their reporting, and contains no verification of validity of the claims made in the reports. Such limited auditing measures have been standardized, for example under the ISAE 3000, and are used by almost all the corporations in all sectors.<sup>80</sup>

The auditor's confirmation is carefully phrased in very legalistic terms, delineating a zone in which the inspiration of soft law measures meets the harsh reality of hard law measures, providing an open-ended waiver of legal responsibility. Liability-fending statements such as the following are common: "[W]e are not aware of any additional issues of stakeholder interest that are not currently included in the Report's scope and content,"<sup>81</sup> or "the [name of corporation's] Corporate Responsibility Report has been approved by [corporation's] management, who are solely responsible for the collection, presentation and accuracy of all data and information presented."<sup>82</sup> Thus, the auditing of reports by accountants provides some assurance as to good practices by the corporation in its reporting, but no assurance at all in terms of the actual implementation of the substantive norms they elect to present.

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79 In the survey conducted by KPMG, it was found that forty percent of the social reports published by the major MNCs were audited by external agents, seventy percent of which were accountant firms. See KPMG, *supra* note 15, ch. 6. For an analysis of the evolution of auditing by accountant firms and other external

agents and the reason for the growth in auditing practices, see Ans Kol & Paolo Perego, *Determinants of the Adoption of Sustainability Assurance Statements: An International Investigation*, 19 BUS. STRATEGY & ENV'T 182 (2010).

80 See ACCOUNTABILITY, INTERNATIONAL STANDARD ON ASSURANCE ENGAGEMENT 3000, ASSURANCE ENGAGEMENTS OTHER THAN AUDITS OR REVIEWS OF HISTORICAL FINANCIAL INFORMATION 1045 (2005), available at [http://www.accountability21.net/uploadedFiles/Issues/ISAE\\_3000.pdf](http://www.accountability21.net/uploadedFiles/Issues/ISAE_3000.pdf) ("The objective of a limited assurance engagement is a reduction in assurance engagement risk to a level that is acceptable in the circumstances of the engagement, but where that risk is greater than for a reasonable assurance engagement, as the basis for a negative form of expression of the practitioner's conclusion").

81 BP, *supra* note 52, at 23.

82 Chevron, *supra* note 56, at 44.

### C. Monitoring by External Agents<sup>83</sup>

Involving external agents in the process of ensuring compliance with the corporation's declared CSR practices is designed to lend more credibility to the process.<sup>84</sup> Such external agents, independent of the corporation, are supposedly neutral and thus have the interest of stakeholders, rather than that of the corporation, in mind. However, when the actual practice of external monitoring is examined, one comes across a diverse set of options, some more credible than others. RWE, for instance, uses an unconvincing scheme of external monitoring according to which employees' questions with regard to code compliance should be first addressed to the company's managerial hierarchy, and when necessary they would be referred to contacts external to the corporation.<sup>85</sup> Unfortunately, the names of these "external contacts" appear only in RWE's intranet and it is thus impossible to know who and how independent these contacts really are. Moreover, if an employee insists on referring a question to an external contact, it "will be forwarded (at the employee's request: anonymously) to the RWE AG Compliance Officer," who will then send it to the external contact. Hence the control over the process remains within the internal managerial hierarchy. Similarly, Volvo provides only a short statement that "Volvo Cars has implemented third-party reviews of current and potential suppliers based on requirements in the Code of Conduct. Reviews have been conducted in accordance with a plan to establish control over actual conditions. To date, 476 of the suppliers have completed independent inspections in 17 countries."<sup>86</sup> This short statement is far from persuasive, as it does not disclose the nature and identity of the external agents, the method of monitoring, the names or even the percentage of suppliers that are inspected, or the outcome of the inspections carried out.

A better scheme of external monitoring is an inspection of the corporate CSR practices by an independent expert. BP, for example, nominated

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83 A related matter is discussed *infra* in Section V.f.

84 In the survey conducted by KPMG it was found that twenty-seven percent of the surveyed MNCs included in their reports *commentaries* by external agents, including stakeholder panels, academics, individual experts, NGOs and other stakeholder groups. It should be emphasized that this finding refers to commentaries, but not necessarily to an active monitoring of compliance. See KPMG, *supra* note 15, ch. 6; see also Ans Kolk, *Sustainability, Accountability and Corporate Governance: Exploring Multinationals' Reporting Practices*, 18 BUS. STRATEGY & ENV'T 1, 10-11 (2008).

85 RWE, *supra* note 56, at 24-26.

86 Volvo Cars Corp., *supra* note 45, at 25.

a member of its U.S. Refineries Independent Safety Review Panel in 2008 to serve as an independent expert to monitor the progress in applying the Panel's recommendations.<sup>87</sup> The independent expert conducted interviews and inspected BP's refineries and issued a hefty report — the Independent Expert's Annual Report — highlighting both the successes and the shortcomings in the implementation of the Panel's recommendations. Yet, there is room to question the actual independency of the "independent expert," as the nominated expert is a member of BP's permanent staff.

#### D. Certification Programs

The most trustworthy method that incorporates external agents in the monitoring process is to use one or more of the many certification programs that have come to prominence in the CSR field. Certification programs were introduced by NGOs as a result of their failure to convince states to adopt formal legislation mandating labor and environmental standards. "These emergent associations purport to temper exploitation and reward responsibility firms through (1) voluntary standards, (2) monitoring of production sites by accredited auditors, (3) certification (or similar recognition) of participating firms, and (4) the provision of information to consumers and other audiences (sometimes through a product label)."<sup>88</sup> Certification programs encompass many issues, including the implementation of environmental management systems (ISO14001),<sup>89</sup> forestry conservation (FSC),<sup>90</sup> recycling of electronic equipment (e-Stewards),<sup>91</sup> and labor practices (AIP/FLA and SA8000).<sup>92</sup>

While all certification programs involve the setting of norms and monitoring by external agents, they come in a variety of colors and stripes. Some programs are very limited in scope and deal with one specific issue (e-Stewards and FSC), while others are more comprehensive (ISO 14001 and FLA). Some are very demanding and make substantive requirements

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<sup>87</sup> BP, *supra* note 52, at 10.

<sup>88</sup> Bartley, *supra* note 3, at 301.

<sup>89</sup> ISO 14001, *supra* note 63.

<sup>90</sup> *FSC Certification*, FOREST STEWARDSHIP COUNCIL, <http://www.fsc.org/certification.html> (last visited Mar. 24, 2011).

<sup>91</sup> *e-Stewards Certification introduction*, E-STEWARDS, <http://e-stewards.org/certification-overview/> (last visited Mar. 24, 2011).

<sup>92</sup> SOCIAL ACCOUNTABILITY INTERNATIONAL (SAI), SA8000 (2008), *available at* [http://www.sa-intl.org/\\_data/n\\_0001/resources/live/2008StdEnglishFinal.pdf](http://www.sa-intl.org/_data/n_0001/resources/live/2008StdEnglishFinal.pdf).

(FLA and SA8000), while others are more procedural and require very little in terms of substantive norms (ISO 14001).

The reports reveal that most corporations rely on one or more certification programs in the various realms of their operation. A common certification program in the realm of environmental protection is ISO 14001. This can be attributed to the fact that ISO 14001 certification does not require anything in terms of substance, but only a commitment to a process. Other standards that were commonly used include the EU Eco-Management and Audit Scheme (EMAS), which integrates ISO 14001, and for which external verification of compliance with the standard is required;<sup>93</sup> OHSAS 18001 (for which a company can self-declare compliance or seek external certification);<sup>94</sup> OHRIS Occupational Health and Risk Management System (an industrial safety certification system certifiable in Bavaria);<sup>95</sup> and references were also made to the newly developed social responsibility standard ISO 26000.<sup>96</sup>

It is noteworthy that corporations have chosen to join certification programs that are more procedural than substantive. For example, none of the corporations in our study are SA8000-certified (although Gap includes it as a goal to be pursued<sup>97</sup>), and only H&M, Liz Claiborne and two of VF's brands are accredited by FLA and subject themselves to its monitoring.<sup>98</sup>

### E. The Use of Sanctions

Almost none of the corporations in our study mention any type of sanctions for noncompliance with the norms to which the corporation is allegedly

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93 Regulation (EC) No. 1221/2009 of the European Parliament and of the Council of 25 November 2009, the Voluntary Participation by Organisations in a Community Eco-Management and Audit Scheme.

94 *The Health and Safety & OHSAS Guide*, OHSAS 18001 HEALTH & SAFETY STANDARD, <http://www.ohsas-18001-occupational-health-and-safety.com/> (last visited Mar. 24, 2011).

95 OHIRS, ATTENBERGER GMBH, <http://www.attenberger-gmbh.eu/ouroffer/ohris/index.html> (last visited Mar. 24, 2011).

96 INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO), ISO 26000 (2010). Volvo emphasizes its active role in the standard-setting process, Volvo Cars Corp., *supra* note 57, at 27. On the significance and process of the newly negotiated ISO 26000, see Halina Ward, *The ISO 26000 International Guidance Standard on Social Responsibility: Implications for Public Policy and Transnational Democracy*, 12 THEORETICAL INQUIRIES L. 665 (2011).

97 Gap Inc., *supra* note 58, at 30.

98 H&M, *supra* note 58, at 8; LIZ CLAIBORNE, *supra* note 44; VF, *Global Compliance Report*, 23 (2005).

committed. A weak form of self-imposed monitoring and sanctions system is demonstrated by Chevron, which presents a formal complaint mechanism to identify and redress situations of noncompliance.<sup>99</sup> Their Code states:

Each of us must comply with this Code, and with all Company policies. If we fail to do so, we may face disciplinary action, possibly including termination. Likewise, any supervisor, manager, officer or director who is aware of any violation and does not promptly report and correct it may be subject to similar consequences . . . .

Each of us must speak up promptly if there is any reason to suspect that anyone in Chevron or its affiliates has violated Company policies or local laws. We must also report any activity that could damage the Company's reputation. One resource available to each of us is the Chevron Hotline. You can call or submit a report to the Hotline, which operates 24 hours a day, seven days a week . . . .

Chevron does not tolerate any form of retaliation for reports made in good faith. This includes blatant actions, such as firing, transferring, demoting, or publicly attacking someone, as well as more subtle retaliation, such as avoiding someone, leaving him or her out of professional or social activities, and so on. It includes actions taken by managers and employees alike.<sup>100</sup>

While this statement may seem exemplary in terms of its tough stance on code violation, it is, in fact, rather lax. First, the norms in Chevron's code are relatively vague and open-ended. Hence, it would be subject to Chevron's own interpretation to decide when a violation had occurred or when someone could be blamed for disrupting the company's practice, and in fact damaging its reputation (the criteria offered for bad conduct). It also ignores the difficulty that workers face in issuing complaints against their firm. Moreover, the subjects of sanctions are the employees and low to mid-level management and there is no reference to top management or to any form of responsibility the corporation itself assumes in case of noncompliance.

An occasional reference to sanctions is made with regard to suppliers. Some corporations merely state a preference (rather than an obligation) for contracting with suppliers that adhere to the corporate standards, while others

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<sup>99</sup> Even this weak form of self-monitoring is relatively rare. *See* Kolk, *supra* note 84, at 8.

<sup>100</sup> CHEVRON, *supra* note 43, at 4. A similar position is taken by BP, *supra* note 43, at 4.

require compliance with the standards as a strict condition.<sup>101</sup> With regard to periodic assessments, corporations usually abstain from a strong obligation to terminate the contract with non-complying suppliers. More commonly they devise a plan for inducing compliance, sometimes with an explanation that quick termination may harm the employees (with no reference to potential damage to business concerns).<sup>102</sup> Rarely does a company take a stronger position on these matters. An example of such a position can be found in H&M's code, which makes an explicit threat, but distinguishes between general problems of compliance that do not merit termination and problems of abusive child labor, slavery and repeat offenses that do.<sup>103</sup>

## V. REPORTING AND METHODS OF PERSUASION

A third important module of signaling commitment to social responsibility involves the corporations' reporting methods. In this Part we analyze two types of signaling strategies used in CSR reports: the reports' format, including the presentation of benchmarks, targets and actual performance, and disclosure of relevant data; and substantive methods of persuasion, such as the listing of rankings, awards and prizes, and the introduction of collaborative partnerships and joint projects.

### A. Avoiding Legal Liability

As discussed above, the environmental vulnerability of both the petroleum and the automobile industries leads them to focus heavily on environmental issues.<sup>104</sup> This is true, however, only for the corporations' CSR reports, which are filled with detailed descriptions of environmental protection measures and initiatives implemented by the corporation, accompanied by

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101 See *supra* notes 48-50 and accompanying text.

102 See, e.g., RWE, *supra* note 43, at 6 ("If the Code conflicts in the course of business with another company's ethics policy, RWE will do its best to find mutually acceptable solutions"); TOYOTA MOTOR CORP., SUPPLIER CSR GUIDELINES (2009) ("[W]e clarify our expectation of suppliers. We respectfully ask for their full support.").

103 H&M, *supra* note 58, at 16-17. Other companies in the apparel industry similarly suggest corrective measures with the option of terminating the contract if such measures fail. See GAP INC., *supra* note 37, at 15; VF, *supra* note 44.

104 See *supra* Part III. The apparel industry, as discussed above, generally gives only scant attention to the environment in both the codes and the reports and is therefore not included in this discussion.



images, tables and graphs, all designed to persuade the audience of their sincerity about protecting the environment. The codes of conduct, on the other hand, are surprisingly dull and use, almost invariably, general vague declarations regarding environmental protection.<sup>105</sup> Most codes include very general statements, such as: "[W]e continually look for ways to reduce the environmental impact of our operations, products and services,"<sup>106</sup> "wherever we operate, we will strive to minimize any damage to the environment arising from our activities,"<sup>107</sup> or "Chevron's policy is to maintain the safety and health of people and the quality of the environment where we operate."<sup>108</sup> Furthermore, in the petroleum industry's codes environmental protection is usually not dealt with independently, but as a subsection of the "Health, Safety, Security and the Environment" section, thus downplaying its importance and relegating it to being a part of the working environment rather than a concern for the environment at large.<sup>109</sup>

This phenomenon of codes containing very abstract and illusive norms, accompanied by hefty and detailed annual reports reflecting more concrete norms, but using backward-looking, noncommittal language, can be understood as a liability-evasion maneuver that has become the standard in some sectors. As described by both Shamir and Bartley, in recent years attempts have been made by NGOs and advocacy groups to hold corporations accountable to the commitments they have undertaken in their codes of conduct.<sup>110</sup> These attempts, though usually unsuccessful, have raised concerns among corporations and discouraged them from making commitments that could be later interpreted as legally binding. The "division of labor" between the code and the report can be understood as an attempt by corporations to minimize their legal liability, while at the same time continuing to reap the advantages of CSR, including the dodging of governmental intervention and the protection of the corporations' reputation in the face of social movement campaigns.

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105 There are, however, some exceptions. Toyota, for instance, issued an environmental code for suppliers, which makes numerous requirements that all suppliers must adhere to, most of which are essential to enable car manufacturers to comply with regulatory requirements in the EU and Japan. TOYOTA MOTOR CORP., GREEN PURCHASING GUIDELINES. For the EU and Japanese regulatory requirements, see *supra* note 60.

106 SHELL, *supra* note 43, at 10.

107 BP, *supra* note 43, at 16.

108 CHEVRON, *supra* note 43, at 14.

109 *Id.*; BP, *supra* note 43, at 12; SHELL, *supra* note 43, at 20.

110 Bartley, *supra* note 12, at 228-32; Shamir, *supra* note 12.

## B. Reporting Format

Information regarding the corporate code can be found in various sources, and one single document is never enough in order to understand a company's CSR policy.<sup>111</sup> The pervasive assumption is that the code of conduct is the chief CSR document and reading it will provide sufficient information as to the corporation's CSR policy. In reality, this is far from true. First, as discussed above, in most cases the code is very short and abstract, and to learn anything about the corporation's policy requires delving into the corporation's annual reports. Second, for some corporations the general code of conduct is only one among several codes, and not the most important, for there are others that carry more weight, notably codes for suppliers and contractors. Moreover, in some cases corporations choose to detail some matters, such as sexual harassment, equality policy, or environmental guidelines, in separate codes.<sup>112</sup> As for the CSR reports, the most common practice is to have one, all-inclusive and very detailed annual report, although some corporations provide idiosyncratic reports,<sup>113</sup> and others provide more than one CSR report with much overlap and varying levels of detail.<sup>114</sup> As a result, understanding a corporation's CSR policy is a daunting task that requires moving back and forth among numerous documents.

Some codes are long and filled with graphics and grand declarations, while others are short and informative. Paradoxically, there seems to be an inverse relationship between form and content. H&M's code of conduct, for instance, provides brief and dense statements, but succeeds in conveying a deep sense of commitment. The code opens with the following powerful statement: "In order to make our position clear to our suppliers, our own staff, as well as any other parties, we have set up a Code of Conduct. It is a non-negotiable requirement from our side that all our suppliers and their

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111 Ans Kolk, *More than Words? An Analysis of Sustainability Reports*, 3 NEW ACAD. REV. 59 (2004).

112 *See, e.g.*, TULLOW OIL, HARASSMENT POLICY (2009); TULLOW OIL, EQUAL OPPORTUNITIES (2009); TULLOW OIL, ENVIRONMENTAL, HEALTH AND SAFETY POLICY (2009).

113 BMW, for instance, has the following reports: "Compliance: Acting Responsibly and Lawfully," "Joint Declaration on Human Rights and Working Conditions," "Value-Oriented Human Resources Policy," as well as a separate document on environmental protection.

114 Examples are Renault's annual report and registration report and Volvo's annual report and GRI report.

subcontractors, without exception, should follow this code."<sup>115</sup> Following this statement is a list of norms, without any illustrations, graphs or other decorations. For a lawyer, it reads like a familiar legal text.

The GRI reporting standard<sup>116</sup> appears in most reports and is aimed at providing a standardized map for the reports. Particularly convenient was Volvo's GRI report, in which each indicator was responded to, although often in very general terms.<sup>117</sup> However, in most reports the corporation suffices with providing a complex reference system, pointing to the various pages of the annual report, sometimes using intricate color-coded schemes. Hence, even the growingly acceptable structure of the GRI provides only a partial organizing device, but does not resolve the general difficulty in identifying comparable data.

### C. Benchmarks, Targets and Performance

A common method of persuasion used by corporations in their annual reports is to list the goals and targets set by the corporation and the level of their achievement alongside. This method is much more amenable to measurable and quantifiable types of data such as pollutant emission levels, and thus it is much more prevalent in environmental reporting than in the more qualitative employment standards, such as the freedom of association and antidiscrimination norms.

Most, if not all reports, make abundant use of benchmarks, targets and goals to demonstrate their commitment to CSR. Unfortunately, only rarely does this presentation of benchmarks and targets provide rigorous and informative data, while in most cases it provides nothing but anecdotal data and is thus often misleading. The GRI attempts at standardization notwithstanding, corporations have wide discretion as to which data to highlight in their reports, as well as the method of their presentation (choice of baseline year, level of holding that requires reporting, reporting the data of operated vs. owned facilities, reporting methodology, etc.). It is, therefore, difficult to assess from the reports whether any sincere efforts are being made by the corporation to advance its CSR policy. A related presentation strategy is that in nearly all the CSR reports the corporations refer mostly to past achievements, remaining noncommittal towards future targets. To

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115 H&M, *supra* note 41, at 1.

116 GLOBAL REPORTING INITIATIVE (GRI), SUSTAINABILITY REPORTING GUIDELINES (2006), available at <http://www.globalreporting.org/ReportingFramework/G3Guidelines/>.

117 VOLVO CARS CORP., *supra* note 45.

the extent that they do provide a target, their prediction is qualified and the target is set at such a low level that missing it would be almost impossible.<sup>118</sup>

Another recurrent problem in the reports is both over— and under-reporting. Under-reporting is a result of the discretion left to corporations as to what information they choose to report (outside the confines of the basic GRI requirements), which leads to arbitrary and haphazard reporting. Moreover, reports tend to obscure important data that is necessary for comprehending the benchmarks, targets and achievements, for instance by reporting targets for GHG reductions but omitting the baseline year which is necessary to know whether any real reduction has been achieved. Another example is the use of different measurement units from the one common in the industry.<sup>119</sup>

Over-reporting, on the other hand, takes the form of repetitive references to the same figures and detailed data, which are difficult, sometimes impossible, to sensibly comprehend. For example, all the corporations in the energy sector, and to some extent in the automobile sector as well, pledge to combat climate change by lowering their carbon footprints and report at length on their GHG emission reduction initiatives, making abundant use of numbers, tables and graphs that "illustrate" the success of these initiatives. This data bombardment leads to an "information overload," which makes it very hard to assess the merit of the corporations' claims. The numbers are very hard to decipher for most readers, and could therefore easily mislead them into believing that the corporations are doing more in terms of emission reduction than they actually are.<sup>120</sup>

A potentially persuasive method of reporting is the explicit disclosure of failures, rather than the highlighting of successes only. Very few corporations make use of this method.<sup>121</sup> One such example can be found in Chevron's annual report, which states the amount of fines it paid for environmental damage (mostly spills) and occupational health and safety issues (without

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118 For example, Chevron reports that its total emissions for 2008 were 59.6 million metric tons, improving on the goal which was 62.5 million metric tons, and sets the preliminary goal for 2009 at the level of 60.5 million metric tons, slightly higher than the actual emissions for 2008. Chevron, *supra* note 56, at 14.

119 For example, Toyota measures CO<sub>2</sub> emissions reduction using volumes of CO<sub>2</sub> emitted per unit of sales from the 2001 level, instead of measuring the reduction per kilometer driven as done by most car manufacturers. See Toyota Motor Corp., *supra* note 57, at 22.

120 For a detailed demonstration of over-reporting, see Issachar Rosen-Zvi, *You Are Too Soft: What Can Corporate Social Responsibility Do for Climate Change?* 12 MIN. J.L. SCI. & TECH. (forthcoming, 2011).

121 Similar findings are reported by KPMG, *supra* note 15, at ch. 5.

admission of guilt or responsibility), and what percentage they accounted for of the company's expenditures in these areas.<sup>122</sup> Similarly, RWE reports that

to our great regret, the year 2008 was not without fatalities. A total of twelve people died as a result of industrial accidents. As eight of them were employees of companies working under contract to RWE, involving subcontractors in our internal processes will henceforth be a focus of our efforts to improve occupational safety.<sup>123</sup>

#### **D. Innovative Presentation — Clarification and Simplification**

Some corporations use unorthodox ways to introduce their CSR policy to the readers. Chevron, for instance, opts for a detailed Q&A method that seeks to "bring to life" the more abstract statements.<sup>124</sup> This could be particularly useful when a company seeks to integrate its code into the daily life of its managerial team and employees. The use of Q&A often indicates that the audience of the code are not external agents (i.e., consumers and NGOs), but rather employees and low to mid-level managers. The Q&A seems to be a means for building the corporation's organizational culture.<sup>125</sup>

Unfortunately, in most cases the questions and answers are rather trivial and merely reiterate the very general statements instead of clarifying them. For example:

Q: I am a supervisor who has only one minority employee. Unfortunately this employee is having performance problems. I am afraid to give a negative review for fear of being accused of discrimination. What should I do?

A: Provide consistent feedback to all members of your group. Be fair in your evaluation and document your proof with facts and examples. If you are accused of discrimination, the Company will support you. If you need help, consult with your local Human Resources business partner.<sup>126</sup>

This question may be a rather difficult one under many domestic employment hard law regimes, but it is answered in a manner that avoids the difficulty (e.g., a manager needs to be careful of biases towards minorities)

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122 Chevron, *supra* note 56, at 25.

123 RWE, *supra* note 56, at 15.

124 CHEVRON, *supra* note 43, at 15. A similar strategy is used by BP, *supra* note 43.

125 GIDEON KUNDA, *ENGINEERING CULTURE* (2d ed. 2006).

126 CHEVRON, *supra* note 43.

and seeks to prevent potential hard law costs in the form of employment discrimination lawsuits. The Q&A can, therefore, serve as a rather superficial form of presentation that does not indicate any real commitment to equality beyond the obvious need to avoid legal liability.

There are, however, a few corporations that use the Q&A method to provide candid answers to real problems. For example:

Q: what has been your most difficult challenge when it comes to strengthening workers' rights and improving working conditions in supplier factories?

A: To start with, to be able to accomplish anything at all we need a clear picture of what the situation is like in factories producing for us. Unfortunately, in China it is common for factories to keep actual salary and working time records from auditors. This lack of transparency has been very challenging and hard to break through. Our auditors and factory compliance staff ended up in a cat and mouse game, where auditors chased true documents and factory staff kept finding more sophisticated ways of hiding those records. We have not been able to rely on the documents provided to us during audits, and factory staff has found it hard to trust that showing correct documents will not lead to loss of business.<sup>127</sup>

In this case, the corporation actually raises a major critique that experts who are well versed in the field of CSR would raise. It displays awareness of the shortcomings of the corporation's own measures and, somewhat paradoxically, signals a credible message to consumers that lack of transparency is not viewed as an asset, but as an obstacle. A similar approach, although not in the form of Q&A, was taken by Gap, which displays in its website a table listing the factors contributing to poor working conditions and the extent to which Gap can contribute to their improvement.<sup>128</sup>

### **E. Rankings, Prizes and Awards**

A common method of persuasion used by all corporations in all the

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<sup>127</sup> *Case Studies & Q&As*, H&M, [http://www.hm.com/us/corporateresponsibility/\\_\\_\\_csr\\_caseStudies.nhtml?page=1](http://www.hm.com/us/corporateresponsibility/___csr_caseStudies.nhtml?page=1) (last visited Sept. 1, 2010) (Q&A with Tobias Fischer and Erik Carlborg, regional CSR managers in China, on supplier transparency).

<sup>128</sup> *See Social Responsibility*, GAP INC., [http://www.gapinc.com/GapIncSubSites/csr/Goals/SupplyChain/SC\\_Factory\\_Working\\_Conditions.shtml](http://www.gapinc.com/GapIncSubSites/csr/Goals/SupplyChain/SC_Factory_Working_Conditions.shtml) (last visited Sept. 1, 2010).

sectors is to list rankings, prizes and awards that serve to demonstrate the corporation's social and environmental responsibility as recognized by supposedly impartial third parties using objective and transparent criteria.

Rankings are, indeed, an important form of signaling. There are, however, quite a few ranking systems: the Dow Jones index, Ethibel Sustainability Index, FTSE4 Good Index, ECPI ethical index, Global 100 most sustainable corporations, ÖkoTrend, Sustainable Value, Vigeo, the Carbon Disclosure Project, among many others.<sup>129</sup> There are also regional and state-based indexes, such as the ECPI Europe ethical index and the OMX GES Sustainability Sweden index. Ranking systems and indices come in different shapes and forms: some are based on voluntary submissions by corporations, others are selected by the indexing companies based on the corporations' self-reporting, while for still others some third-party auditing is required; some look only at a particular dimension of CSR (such as environmental practices), while others seek to score the overall social and environmental performance of the corporation; some are sectorial or regional, while others attempt to encompass a broader gamut of companies. The proliferation of indexes and other ranking systems is a bane rather than a boon, as it requires readers to have extensive knowledge about the specificities of a wide range of ranking systems and indices, which few if any possess.

Even more dispersed and confusing is the evolving industry of awards and prizes. Tullow Oil, for instance, refers in its website to a variety of prizes and awards, among them: the 2006 commendation in the annual ACCA (Association of Certified Chartered Accountants) conference; Ireland Sustainability Awards for CSR reporting; The BitC (Business in the Community) Big Tick awarded in 2007 and reaccredited for 2008; Overseas Programmes Award by Chambers Ireland 2008; the most enterprising company of the year 2007; RoSPA gold standard award in the area of occupational health and safety management system and culture; an award for the most improved narrative reporting by the Strategic Planning Society; a top mark of three stars in the Sunday Times Best Companies to Work; and finally an award by the UK Investor Relations Society for improving the presentation of its policy and use of key performance indicators and its handling of risk.<sup>130</sup>

Tullow Oil is merely an example, as all other companies also provide

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129 On ranking systems generally, see Oren Perez, *Private Environmental Governance as Ensemble Regulation: A Critical Exploration of Sustainable Business Indexes and the New Ensemble Politics*, 12 THEORETICAL INQUIRIES L. 543 (2011).

130 Awards, TULLOW OIL, <http://www.tulloil.com/index.asp?pageid=163> (last visited Sept. 1, 2010).

extensive lists of prizes and awards. These include prizes that are related to general indexing measures (such as the Dow Jones Social Index), prizes provided by research institutes (such as The Woodrow Wilson Prize), regional prizes by local governments and national prizes by states, prizes by industrial and commerce agencies, and awards by NGOs engaged in social and environmental improvement.

The abundance of prizes makes the inquisitive reader wonder how the industry of prizes and awards does not collapse under its own weight. It is difficult, and sometimes impossible, to verify the nature of the numerous awards. Some of them require prior registration, and for others our research has not produced clear findings regarding the credentials (and thus credibility) of the award-giving institutions. It is sometimes even difficult to understand what the prize or award is given for, due to the obscurity of some awards and the many categories and subspecialties for which they are granted. One such example is "the greatest improvement in reporting methods over the last year," which is distinguished from the prize for "the best reporting methods."<sup>131</sup> Yet another obstacle is the obscure bylaws governing these awards. In some instances it seems that all those who register win a prize, and in others awards are based solely on self-reporting by the companies. It is even hard to figure out the hierarchy of gradations within each prize or award. Other issues that are difficult, if not impossible, to ascertain are whether the prize is competitive, how meaningful the award is, and to what extent it is free of considerations of the financial contribution of the company to the local economy.

#### **F. Partnerships with External Agents**

Another method of signaling credibility is to list partnerships with external agents (such as NGOs and social movements). The role of such external agents has already been discussed above as one of the more credible monitoring schemes. However, partnership need not serve only the purpose of monitoring. It may also refer to alliances that seek to advance social goals, at the community level or within the sector. The importance of such partnerships can be viewed, for example, in BMW's joint Declaration on Human Rights and Working Conditions, which provides the basic goals and

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<sup>131</sup> See *IR Best Practice Awards archive*, IR SOCIETY, <http://www.ir-soc.org.uk/index.asp?pageid=114&AwardYear=2008> (last visited Sept. 1, 2010).



implementation measures in the realm of labor.<sup>132</sup> The declaration was drafted following a negotiation between representatives of BMW's European Works Council and the International Metalworkers Federations. This cooperation is unique because it concerns the very formulation of the norms. Although the norms are rather conventional and tend to stick to the CLRs (with some carefully phrased additions), the mere fact that it is presented as a joint effort lends a sense of legitimacy to the declaration's objectives.

Most corporations mention alliances with partners, sometimes designated as representatives of stakeholders; however, the level of detail regarding such cooperative ventures varies significantly. Volvo, for example, suffices with stating that "an ongoing dialogue with non-profit organizations provides additional perspectives and is an important source for identifying current social issues. Volvo Cars believes that cooperation with organizations that represent various interests promotes a common understanding of challenges facing society."<sup>133</sup>

A distinct example of alliances is joint programs by H&M and Gap, otherwise rival companies, which work together to improve labor conditions in suppliers that manufacture for both brands.<sup>134</sup> This process of intercompany alliances within the sector resembles traditional collective action in the labor sphere, whereby employers (particularly the leaders in the industry) have an interest in ratcheting up working conditions and removing a relatively high floor of wages and benefits from competition. Hence, while not within the domain of traditional labor law, which cannot easily function in a transnational fashion, such alliances are credible because of the tradition within which they operate, the self-interest rationale behind them (inter alia to eliminate low-waged producers from the competition), and the potential for effective change when employers in the industry cooperate.

## VI. CONCLUDING OBSERVATIONS: THE MODUS OPERANDI OF CSR CODES AND REPORTS

In seeking to respond to the questions outlined in Part II, we resolved at the outset to read through numerous corporate codes. This method of comparing codes was used in previous studies and was assumed to suffice in order

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132 BMW GROUP, JOINT DECLARATION ON HUMAN RIGHTS AND WORKING CONDITIONS (2005).

133 Volvo Cars Corp., *supra* note 57, at 10.

134 H&M, *supra* note 58, at 25.

to understand the method by which corporations signal to external agents (consumers, NGOs, interest groups, and the like) their level of commitment and assist them in distinguishing between leaders and laggards.<sup>135</sup> However, in the course of conducting the research, it became clearer that it is no longer (if it ever was) possible to understand the corporations' position and practices in the field of CSR just by reading codes. The codes are in most cases very short, oftentimes very general and vague, and sometimes fragmented into multiple documents. With a few notable exceptions, what reading through the codes yields is rather standardized and banal statements. Moreover, in some cases the codes totally neglect certain issues (e.g., environmental matters in the apparel industry), while a deeper probe into the more detailed CSR reports reveals that the corporations actually engage in more extensive practices in the area, and thus reading only the codes may be misleading.

Yet, analyzing the CSR reports and related material, trying to distill from it the information we were looking for, has proved to be a daunting task. Despite the growing adherence to the GRI standard of reporting, which was designed to subject all corporations in the various sectors to a uniform method of reporting, its actual usefulness in comparing the targets and performance of corporations, both within and between sectors, is in fact quite limited. This is so for a few reasons: First, in many cases the GRI is only a page or two that references to specific pages in the report, making it very cumbersome for the readers to follow and trace the information. Second, there is hardly any comparative data in the reports. Surprisingly, companies rarely if ever name their competitors in their reports. At best, they point to their position in a general ranking, or a sector-based ranking, as if they "speak for themselves." Third, a very common method used by corporations to report their performance and try to distinguish themselves from other corporations is by listing awards and prizes that the company was awarded as well as rankings and standards to which it subscribes. Alas, due to the abundance of possible awards, prizes and rankings a corporation can provide (which seems to be infinite), they do not serve as good signaling devices and, instead of diminishing the problem of comparability, in fact augment it. The irony is that it seems there is currently a great need for a ranking of rankings, a prize for best prize, and a standard for standard-setting. The large public bureaucracies responsible for authoring "hard norms" and enforcing them are no longer matched by a lean and efficient self-regulation.<sup>136</sup> Instead,

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135 See, e.g., WORLD BANK, *supra* note 27.

136 Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342 (2004).

a non-vertical, semi-chaotic or at best partially coordinated global private industry has emerged that seems to be more unruly than, and as unwieldy as, hard law institutions if not more so.

The difficulty (which rises almost to the level of an impossibility) in sifting through the extensive CSR materials placed by the corporations on their websites raises two interrelated questions with which we would like to conclude. First, who is the target audience of the CSR codes and reports? Second, what is the lesson to be learned from the coexisting trends of convergence and divergence in CSR practices, as revealed throughout our analysis?

The findings of our study complicate the answer to the first question. Notwithstanding the abundance of materials corporations publish and the millions of dollars they spend on collecting the data, writing the reports and publicizing them, they do not seem to target any specific audience. These "off the rack" CSR reports, and the assorted wide of codes, are not sufficiently informative and too detailed at one and the same time. For consumers these reports are way too much, striking them with the confusion that results from information overload, while for intermediaries, who are well versed in the details of labor and environmental standards, they are often too little or too superficial. International financial institutions and governmental agencies do not suffice with such CSR reports and require corporations applying for finance, subsidies, licenses, permits, and the like to submit tailor-made, detailed reports.<sup>137</sup> Consequently, it is not at all clear that these CSR reports are really being used as a signaling mechanism by anyone. This conclusion raises, therefore, a puzzle: Why do corporations do it? In what follows, we offer several hypotheses for the very existence of CSR reports.

One possible answer is that these reports have little instrumental value to external agents (such as governments, consumers, and NGOs). Instead, they are merely the output of a growing bureaucracy both within corporations (CSR departments and officers) and outside them (indexes, prizes, journals, etc.). In conformance with the classical literature on bureaucracy, CSR reports and website outputs can be viewed as the display window of the bureaucracies' efforts. Together with agents who profit from the industry (such as accounting firms that have developed departments for social and environmental responsibility auditing), the glossy display justifies the persistence and even the evolution of the CSR industry, which can be explained or justified by nothing but a desire to perpetuate its own existence.<sup>138</sup>

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137 See, e.g., THE EQUATOR PRINCIPLES, *supra* note 11.

138 See generally ANTHONY DOWNS, INSIDE BUREAUCRACY (1967) (arguing that

A second explanation shares the assumption of the first hypothesis — that the codes and CSR reports do not serve as a signaling device — but offers a more charitable account for their persistence. According to it, CSR codes and reports are a focal point for persuading the higher echelons of the corporate world that a new ethical discourse is indeed emerging. They are the scripts that construct the new ethics, gaining a life of their own, forging new modes of communication, and incrementally changing the rules of the corporate game and the perceptions of the corporate agents.<sup>139</sup>

A related view, which focuses on the agents, rather than on their communications, suggests that CSR reports function as "club goods."<sup>140</sup> Corporations want to be a part of prestigious clubs, and corporate social responsibility has become over the years the type of club corporations cannot afford to be excluded from. Social accountability reports and corporate codes serve as the entry ticket.

All the explanations provided thus far share an underlying assumption that CSR reports are intended first and foremost internally, for the corporate world rather than for its social overseers. By contrast, the following two lines of reasoning revert back to the assumption with which this Article began, that CSR codes and reports indeed serve as a signaling device. However, their audience is neither end-consumers nor intermediary agents such as financial institutions and NGOs, as assumed by the prevalent literature on corporate codes. One possibility is that the CSR documents, which are made public via the internet, are intended to signal virtue to the firm's competitors both within and outside the sector. They signal the social and environmental achievements of the firm to other corporations in order to persuade them to adopt similar measures and standards of responsibility, thus leveling the playing field. Hence, this signaling is intended to aid in overcoming collective action problems, when a "race to the bottom" is not viewed as the optimal strategy for leading corporations that are exposed to social sanctions such as "naming and shaming" for bad social and environmental

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over time all bureaucracies will substitute private, bureaucratic objectives for the public objectives that characterized their origination); *see also* Jonathan R. Macey, *Administrative Agency Obsolescence and Interest Group Formation: A Case Study of the SEC at Sixty*, 15 *CARDOZO L. REV.* 909, 915 (1994). For a similar development in the corporate world with regard to privacy — the development of privacy departments led by Chief Privacy Officers — *see* Kenneth A. Bamberger & Deirdre K. Mulligan, *Privacy on the Books and on the Ground*, 63 *STAN. L. REV.* 247 (2011).

139 Wendy Nelson Espeland & Michael Sauder, *Rankings and Reactivity: How Public Measures Recreate Social Worlds*, 113 *AM. J. SOC.* 1 (2007).

140 PRAKASH & POTOSKI, *supra* note 23.

behavior. What is more, leaders in the CSR field have good reason to display their particular achievements in order to prevent free-riding laggards from claiming in a much generalized way that they too are socially and environmentally responsible.

Another possibility (which is complementary rather than contradictory to the first) is that the CSR reports are intended to signal virtue inside the corporation, and thus their audience encompasses corporate managers and employees. The corporate management and board of directors are ready to spend millions on CSR activities (hiring CSR officers, establishing CSR departments, and publishing CSR reports), and employees willingly chip in, since it makes them feel better about their workplace and hence about themselves. No one wants to manage or work for a "badass" corporation that exploits people and harms the environment. CSR reports are, therefore, used as a way to signal virtue within the corporation, in an attempt to persuade managers and employees that they should be proud, rather than ashamed, of their workplace.<sup>141</sup>

Which of the above-described accounts provides the best explanation for the flood of CSR materials is left for future research. For our purposes, it is important to tie this question to the findings about the interplay between convergence and divergence tendencies, which further support the notion that the studied CSR instruments function only partially as a signaling device, and more importantly that they contribute to the incremental structuring of the new soft law regime.

The various bundles of CSR that were studied indicate a process in which convergence and divergence take place concomitantly. There is a highly visible process of standardization, particularly within sectors, and to a lesser extent between sectors. In most reports we observed adherence to the ILO's four CLRs, general statements on reducing the carbon footprint, GRI roadmaps, accountants' audits of the reports, and numerous legal caveats that prevent the use of hard law measures against the corporation. Within each sector there are deeper signs of conversion, with concern about the employment rights of workers employed by subcontractors in the apparel industry, the environmental impact of products in the automobile industry, and reports about oil spills and general EMS in the petroleum industry. Generally, convergence is based on relatively "shallow" norms — general obligations (to prevent discrimination or decrease emissions), vague

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141 Cf. Deborah E. Rupp & Cynthia A. Williams, *The Efficacy of Regulation as a Function of Psychological Fit: Re-Examining the Hard Law/Soft Law Continuum*, 12 THEORETICAL INQUIRIES L. 581 (2011).

qualitative commitments, and low quantitative requirements, or alternatively, compliance with higher standards where mandated by hard norms from different sources.

The growing convergence can be interpreted in different, nonexclusive ways. It can indicate the power of soft norms in building consensus over CSR, a rhetoric and form that prescribes seemingly voluntary measures, but which are, in fact, strongly bounded by custom and market measures. At the same time, it can also indicate a "ritual of compliance." The ritual evolves over the years, becoming more complex, with many more points of adhesion which the corporate management must take into account. Be that as it may, a ritual is but a ritual. Under both interpretations, CSR designates a process and a deliberative framework. Be they custom or ritual, CSR codes and reports rarely signal anything exclusive and of importance about the corporation. However, when read together, they designate the state-of-the-art responsibility practices of MNCs generally and those within a particular sector in particular. Any single corporation's CSR policy is embedded in the more general intricate web of soft norms.<sup>142</sup>

To the extent that the only visible trend that can be deduced from the bundles of codes and reports is convergence, the idea that consumers, communities, NGOs and other external agents who care about corporate responsibility practices are capable of distinguishing leaders from laggards can and should be contested. At the same time, the development of a generally acceptable standard that emerges from the bottom up has its merits. In this process, soft law resembles the incremental and slow development of customary international law. The question that should therefore be asked is how conventions change over time. It can be assumed that leaders in the industry set the tone. Cooperation between such leaders (such as the joint efforts of Gap and H&M in the apparel industry) may, in time, require others to join their benchmark, thus ratcheting up the standards. The capacity of an external standard-setting agent to gather a critical mass of subscribers can have a similar effect. For example, the more substantive SA8000 was not adopted by any of the corporations studied here, and the list of companies that have adopted it indicates that these are mostly smaller firms, or local branches of larger firms.<sup>143</sup> By contrast, as the study demonstrates, less demanding, process-oriented standards such as accounting

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142 For Oren Perez's notion of "ensemble regulation," see Perez, *supra* note 129.

143 For the list of certified facilities, see *SA8000 Certified Facilities: As of September 30, 2010*, SAAS, [http://www.saasaccreditation.org/certfaclists/2010\\_Q3/Q3%20Certs%20List,%20Public%20List,%20alphabetical.pdf](http://www.saasaccreditation.org/certfaclists/2010_Q3/Q3%20Certs%20List,%20Public%20List,%20alphabetical.pdf) (last visited Mar. 24, 2011).

and EMS standards (ISAE3000 and ISO 14001) enjoy a large degree of acceptance. Hence, the ability of a soft-norms mechanism to develop and expand CSR practices does not dwell in the capacity of agents to distinguish between corporations, but in the process of informal convergence between the corporations and the creation of standardized platforms of allegedly voluntary compliance. The question of "signaling virtue" is therefore largely misplaced.

At the same time, the study also revealed instances of divergence, most notably between sectors and to a lesser degree within each of them. Divergence may resonate with the preliminary assumption of signaling. A few companies tend to "stick out in the crowd." This was apparent in the method by which they presented the norms themselves, the benchmarks and targets they adopted, the data they chose to present, the concrete outlines of internal monitoring they apply, and the ongoing relationship they build with external agents such as NGOs, social movements and trade unions. Due to the proliferation of prizes, awards and rankings in the CSR industry, these were not perceived as useful signaling devices. Descriptions of standalone projects and corporate philanthropy were also discounted. Some persuasive signals that we did expect to find — such as comparative (and reliable) data that aids in distinguishing between firms in the sector, detailed monitoring outcomes and actions taken in cases of noncompliance, or admissions of failure with an outline of the organizational learning that developed as a result — were very scarce. Bits and pieces of such indicators do exist. However, any expectation of self-critique and reflective considerations is for the most part far removed from the corporations' reporting practices. By contrast, negative signals were more easy to identify: manipulative data, substitution of systemic reporting with anecdotes, the prescription of next year's targets according to last year's achievements, the presentation and measurement of CSR solely in terms of profit, reporting of awards and prizes that are unrelated to social responsibility, the conflation of sustainability, profitability and social responsibility into one amorphous potpourri, and finally the capacity to write lengthy reports that are ridden with New Age rhetoric and wonderful graphics, but are otherwise of little substance.

Admittedly, some of these assessments of signals may seem quite subjective. However, in this case subjectivity is not a fault but a virtue. We only claim that codes with no commitment, and reports without substantive specification, are deficient as a signaling device. We do not attempt to grade the reports, and the study remains at a qualitative level, drawing largely on examples. We also concede that what has struck us as persuasive (or unpersuasive) may be judged differently by others. The basic point we make regarding divergence is that consumers and policymakers can distinguish between otherwise similar corporations, but only with a

considerable investment of time and methodological effort. At the end of the day, we did succeed in picking out the leaders and laggards among the companies in the rather small sample we studied, but the path to such findings was long and complicated.

The large private industry, the polycentric nature of CSR, the multiplicity of signals on the verge of standardized chaos (or chaotic standardization), and the concurrent phenomena of convergence and divergence that emerge from the comparison, all lead us to conclude with some final reflections on the struggle over the meaning of CSR and the debate on the relationship between hard and soft norms. We do not presume to issue a final verdict on the ongoing struggle over meaning. Instead, the findings keep the two competing understandings of the field on the table: the one, which sees a bottom-up emergence of standardization in the shadow of the (hard) law as a focal point for the development of corporate policy that is different from the strict attempt to maximize shareholders' rent; and the other, which sees CSR as nothing but an attempt to obstruct hard norms by means of myths and rituals that create the illusion that corporations are likely to be better social agents if left outside the state's regulatory realm. Even if hard norms in the era of production chains and globalization are no longer a feasible option, these myths and rituals merely serve as the basis for a flourishing industry that collapses under the weight of its own lack of hierarchy and structure.

The advantage of soft law measures emerging from the codes and reports points at two useful ways to think about the future of the field. One is to think about CSR as a market, in which consumers are able to privilege some corporations over others on the basis of their commitments and performance. CSR, like warranties, becomes an additional qualitative dimension of products that consumers are willing to pay for. Market mechanisms make sense of soft law measures, replacing the vertical, hierarchical modes of enforcement that are used for hard law. This story of shaming "bad" corporations and rewarding the "good" ones resonates with the question that launched this study ("signaling virtue?"), but admittedly has found very little support in our findings.

A different way of understanding soft law is to avoid the market/hierarchy contrast to hard law altogether. Some of the voluntary commitments made by corporations were nothing more than an affirmation of their compliance with hard regulatory standards, not a substitute for them. Other commitments that seemed to be a voluntary adoption of sector-based norms should be understood as a non-voluntary need to conform to industry standards. The potential merit of soft forms of self-regulation lies, therefore, in this process of convergence. A deliberative framework, the multiple agencies, the need



to squeeze in yet another obscure prize for some social category, the cross-referencing of standards, and even the ritual of an annual corporate meeting that summarizes CSR achievements, all accumulate into a managerial and marketing discourse that is bound by different rules.

#### APPENDIX — SOURCES AND REFERENCES

References in the footnotes refer to the following instruments.  
All website references were last visited at Aug. 1, 2010.

Document	URL
<b>Apparel</b>	
<b>H&amp;M</b>	<a href="http://www.hm.com/il/#/startns/">http://www.hm.com/il/#/startns/</a>
Code of Conduct	<a href="http://www.hm.com/filearea/corporate/fileobjects/pdf/en/COMMON_CODEOFCONDUCT_ENGLISH_PDF_1124202692491_1150269822085.pdf">http://www.hm.com/filearea/corporate/fileobjects/pdf/en/COMMON_CODEOFCONDUCT_ENGLISH_PDF_1124202692491_1150269822085.pdf</a>
Sustainability Report 08	<a href="http://www.hm.com/filearea/corporate/fileobjects/pdf/en/CSR_REPORT2008_PDF_1240240530209.pdf">http://www.hm.com/filearea/corporate/fileobjects/pdf/en/CSR_REPORT2008_PDF_1240240530209.pdf</a>
<b>Gap</b>	
Code of Vendor Conduct	<a href="http://www.gapinc.com/GapIncSubSites/csr/documents/COVC_070909.pdf">http://www.gapinc.com/GapIncSubSites/csr/documents/COVC_070909.pdf</a>
2007-2008 Social Responsibility Report	<a href="http://www.gapinc.com/GapIncSubSites/csr/Utility/report_builder.shtml">http://www.gapinc.com/GapIncSubSites/csr/Utility/report_builder.shtml</a>
<b>Levis</b>	
Worldwide Code of Business Conduct	<a href="http://levistrauss.com/sites/default/files/librarydocument/2010/5/wwcoc-english_0.pdf">http://levistrauss.com/sites/default/files/librarydocument/2010/5/wwcoc-english_0.pdf</a> [link refers to latest version. 2006 version which was used by the authors is on file with the authors]
Global Sourcing and Operating guidelines	<a href="http://levistrauss.com/sites/default/files/librarydocument/2010/4/Sourcing_and_Operating_Guidelines.pdf">http://levistrauss.com/sites/default/files/librarydocument/2010/4/Sourcing_and_Operating_Guidelines.pdf</a> [summary]
Profits. Principles 08 annual report	<a href="http://levistrauss.com/sites/default/files/librarydocument/2010/4/AR_2008.pdf">http://levistrauss.com/sites/default/files/librarydocument/2010/4/AR_2008.pdf</a>
<b>Liz Claiborne</b>	
Code of Conduct	<a href="http://www.lizclaiborneinc.com/web/guest/home">www.lizclaiborneinc.com/web/guest/home</a> <a href="http://www.lizclaiborneinc.com/web/guest/codeofconduct">www.lizclaiborneinc.com/web/guest/codeofconduct</a>

Philanthropic Programs	<a href="http://www.lizclaiborneinc.com/web/guest/overviewofprograms">www.lizclaiborneinc.com/web/guest/overviewofprograms</a>
<b>VF</b>	<a href="http://www.vfc.com/">www.vfc.com/</a>
Code of Business Conduct	<a href="http://media.corporate-ir.net/media_files/irol/61/61559/CorpGov/Code_of_Conduct.pdf">media.corporate-ir.net/media_files/irol/61/61559/CorpGov/Code_of_Conduct.pdf</a>
Global Compliance Principles	<a href="http://www.vfc.com/VF/corporation/resources/images/Content-Pages/Corporate-Responsibility/VFC-Global-Compliance-Principles.pdf">www.vfc.com/VF/corporation/resources/images/Content-Pages/Corporate-Responsibility/VFC-Global-Compliance-Principles.pdf</a>
Global Compliance Report 2005	<a href="http://www.vfc.com/VF/corporation/resources/images/Content-Pages/Corporate-Responsibility/VFC_Glo_Compli_Report.pdf">www.vfc.com/VF/corporation/resources/images/Content-Pages/Corporate-Responsibility/VFC_Glo_Compli_Report.pdf</a>
<b>Petroleum</b>	
<b>BP</b>	<a href="http://www.bp.com/bodycopyarticle.do?categoryId=1&amp;contentId=7052055">http://www.bp.com/bodycopyarticle.do?categoryId=1&amp;contentId=7052055</a>
Code of Conduct	<a href="http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/C/coc_en_full_document.pdf">http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/C/coc_en_full_document.pdf</a>
sustainability review 08	<a href="http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/e_s_assets/e_s_assets_2008/downloads/bp_sustainability_review_2008.pdf">http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/e_s_assets/e_s_assets_2008/downloads/bp_sustainability_review_2008.pdf</a>
<b>Chevron</b>	
Business Conduct and Ethics Code	<a href="http://www.chevron.com/documents/pdf/chevronbusinessconductethicscode.pdf">http://www.chevron.com/documents/pdf/chevronbusinessconductethicscode.pdf</a>
Corporate Responsibility Report 08	<a href="http://www.chevron.com/globalissues/corporateresponsibility/2008/documents/Chevron_CR_Report_2008.pdf">http://www.chevron.com/globalissues/corporateresponsibility/2008/documents/Chevron_CR_Report_2008.pdf</a>
<b>RWE</b>	
Code of Conduct	<a href="http://www.rwe.com/web/cms/mediablob/en/2194/data/2438/50620/rwe/rwe-group/about-rwe/code-of-conduct/en-download.pdf">www.rwe.com/web/cms/mediablob/en/2194/data/2438/50620/rwe/rwe-group/about-rwe/code-of-conduct/en-download.pdf</a>
Our Responsibility. Status 2008	<a href="http://www.rwe.com/web/cms/mediablob/en/225288/data/179662/36779/rwe/responsibility/Our-Responsibility-2008-.pdf">www.rwe.com/web/cms/mediablob/en/225288/data/179662/36779/rwe/responsibility/Our-Responsibility-2008-.pdf</a>
<b>Shell</b>	
Code of Conduct	<a href="http://www-static.shell.com/static/aboutshell/downloads/who_we_are/code_of_conduct/english.pdf">www-static.shell.com/static/aboutshell/downloads/who_we_are/code_of_conduct/english.pdf</a>
Responsible Energy — Royal Dutch Shell PLC Sustainability Report 2008	<a href="http://sustainabilityreport.shell.com/2008/servicepages/downloads/files/entire_shell_ssr_08.pdf">http://sustainabilityreport.shell.com/2008/servicepages/downloads/files/entire_shell_ssr_08.pdf</a>

<b>Tullow Oil</b>	<a href="http://www.tulloil.com/index.asp">www.tulloil.com/index.asp</a>
Code of Business Conduct	<a href="http://www.tulloil.com/files/pdf/Code_of_Business_Conduct_2009_Rev_2.pdf">www.tulloil.com/files/pdf/Code_of_Business_Conduct_2009_Rev_2.pdf</a>
Delivering growth responsibly	<a href="http://smartpdf.blacksunplc.com/tullo2008csr/Tullo_2008_CSR.pdf">http://smartpdf.blacksunplc.com/tullo2008csr/Tullo_2008_CSR.pdf</a>
Environmental health and safety policy	<a href="http://www.tulloil.com/files/pdf/EHS_policy.pdf">www.tulloil.com/files/pdf/EHS_policy.pdf</a>
Corporate Social Responsibility Policy	<a href="http://www.tulloil.com/files/pdf/CSR_policy.pdf">www.tulloil.com/files/pdf/CSR_policy.pdf</a>
Equal Opportunities	<a href="http://www.tulloil.com/files/pdf/Equal_opportunities.pdf">www.tulloil.com/files/pdf/Equal_opportunities.pdf</a>
Harassment policy	<a href="http://www.tulloil.com/files/pdf/Harassment_policy.pdf">www.tulloil.com/files/pdf/Harassment_policy.pdf</a>
<b>Cars</b>	
<b>B.M.W</b>	<a href="http://www.bmwgroup.com/bmwgroup_prod/e/nav/index.html?http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/home/home.html">www.bmwgroup.com/bmwgroup_prod/e/nav/index.html?http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/home/home.html</a>
Compliance. Acting Responsibly and Lawfully	<a href="http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/unternehmen/unternehmensprofil/compliance/BMWGroup_Legal_Compliance_Code.pdf">www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/unternehmen/unternehmensprofil/compliance/BMWGroup_Legal_Compliance_Code.pdf</a>
Joint Declaration on Human Rights and Working Conditions in the BMW Group	<a href="http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/leitbild_nachhaltigkeit/_pdf/BMWGroup_Human_Rights.pdf">www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/leitbild_nachhaltigkeit/_pdf/BMWGroup_Human_Rights.pdf</a>
Value-oriented Human Resources Policy	<a href="http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/publikationen/downloads/_pdf/BMWGroup_Personnel_Policy_Guidelines.pdf">www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/publikationen/downloads/_pdf/BMWGroup_Personnel_Policy_Guidelines.pdf</a>
Environmental Protection. BMW Group Environmental Guidelines.	<a href="http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/publikationen/downloads/_pdf/BMWGroup_Environmental_Guidelines.pdf">www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/publikationen/downloads/_pdf/BMWGroup_Environmental_Guidelines.pdf</a>

Sustainable Value Report 2008	<a href="http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/publikationen/sustainable_value_report_2008/_pdf/SVR_2008_engl_Gesamtversion.pdf">www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/publikationen/sustainable_value_report_2008/_pdf/SVR_2008_engl_Gesamtversion.pdf</a>
<b>Volvo</b>	<a href="http://www.volvocars.com/intl/top/about/corporate/volvo-sustainability/a-sustainable-approach-to-business/Pages/default.aspx">http://www.volvocars.com/intl/top/about/corporate/volvo-sustainability/a-sustainable-approach-to-business/Pages/default.aspx</a>
Code of Basic Working Conditions	Appears on p. 42 of the GRI Report (2008), <i>infra</i>
GRI Report 2008	<a href="http://www.volvocars.com/SiteCollectionDocuments/TopNavigation/About/Corporate/VolvoSustainability/Volvo_Cars_GRI_Report_2008.pdf#page=16&amp;view=fit&amp;pagemode=bookmarks">http://www.volvocars.com/SiteCollectionDocuments/TopNavigation/About/Corporate/VolvoSustainability/Volvo_Cars_GRI_Report_2008.pdf#page=16&amp;view=fit&amp;pagemode=bookmarks</a>
Corporate Report With sustainability 2008/9	<a href="http://www.volvocars.com/SiteCollectionDocuments/TopNavigation/About/Corporate/VolvoSustainability/VolvoCars_report_2008_ENG.pdf">http://www.volvocars.com/SiteCollectionDocuments/TopNavigation/About/Corporate/VolvoSustainability/VolvoCars_report_2008_ENG.pdf</a>
<b>Toyota</b>	<a href="http://www.toyota.co.jp/en/index.html">http://www.toyota.co.jp/en/index.html</a>
Code of Conduct	<a href="http://www2.toyota.co.jp/en/vision/code_of_conduct/code_of_conduct.pdf">http://www2.toyota.co.jp/en/vision/code_of_conduct/code_of_conduct.pdf</a>
Supplier CSR Guidelines	<a href="http://www.toyota.co.jp/en/csr/relationship/pdf/supplier_csr_en.pdf">http://www.toyota.co.jp/en/csr/relationship/pdf/supplier_csr_en.pdf</a>
Green Purchasing Guidelines 2006	<a href="http://www.toyota.co.jp/en/environment/vision/green/pdf/all.pdf">http://www.toyota.co.jp/en/environment/vision/green/pdf/all.pdf</a>
Sustainability Report 2008	<a href="http://www.toyota.co.jp/en/csr/report/08/download/pdf/sustainability_report08.pdf">http://www.toyota.co.jp/en/csr/report/08/download/pdf/sustainability_report08.pdf</a>
<b>Renault</b>	<a href="http://www.renault.com/en/groupe/developpement-durable/pages/developpement-durable.aspx">http://www.renault.com/en/groupe/developpement-durable/pages/developpement-durable.aspx</a>
Code of Good Conduct	<a href="http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Code%20of%20ethics%20-%20en.pdf">http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Code%20of%20ethics%20-%20en.pdf</a>
Employees Fundamental Rights Declaration	<a href="http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Declaration%20of%20fundamental%20rights%20-%20en.pdf">http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Declaration%20of%20fundamental%20rights%20-%20en.pdf</a>
Annual Report 2008	<a href="http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202008%20Annual%20Report.pdf">http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202008%20Annual%20Report.pdf</a>
Registration Document 2008	<a href="http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202008%20Registration%20Document.pdf#page=292">http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202008%20Registration%20Document.pdf#page=292</a>

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Declaration of employees' fundamental rights — Specific actions carried out in 2007 in the Renault group	<a href="http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Declaration%20of%20fundamental%20rights%20-%20specific%20actions%20-%20en.pdf">http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Declaration%20of%20fundamental%20rights%20-%20specific%20actions%20-%20en.pdf</a>
<b>TATA Motors</b>	<a href="http://www.tatamotors.com/">www.tatamotors.com/</a>
Code of Conduct 2008	<a href="http://www.tata.com/aboutus/articles/inside.aspx?artid=NyGNnLHkaAc=">www.tata.com/aboutus/articles/inside.aspx?artid=NyGNnLHkaAc=</a>
Global Reporting Initiative Report 2008-2009	<a href="http://www.tatamotors.com/our_world/csr-pdf/GRI-report-08-09.pdf">www.tatamotors.com/our_world/csr-pdf/GRI-report-08-09.pdf</a>
Social Responsibility Annual Report 2008-2009	<a href="http://www.tatamotors.com/CSR-09/content.php">www.tatamotors.com/CSR-09/content.php</a>
Global Compact — Communication on Progress 2008-2009	<a href="http://www.tatamotors.com/cop/pdf/COP-2008-2009.pdf">www.tatamotors.com/cop/pdf/COP-2008-2009.pdf</a>

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