

CHEAP LABOR

Corporate Social Responsibility and the Low-Wage Workforce

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INTRODUCTION

Large, publicly held corporations engage in all types of behavior. In some way or another, they affect the daily lives of almost every person on Earth. Corporate Social Responsibility (CSR) focuses on how corporations interact with and aim to improve the communities in which they operate even when that behavior does not clearly and directly maximize value for corporate shareholders. Specifically, this paper will consider companies' policies that affect their low-skilled, low-wage employees as stakeholders. How do corporate officers and directors balance the interests of stakeholders with those of its shareholders, who in some sense can be seen as owning the company? There are those who argue that CSR can benefit both groups. Others not only disagree, but also believe that it is a betrayal of a corporate officer's duties to do so.

Corporations have not always taken into account the externalities of their profit-producing activity, so this paper will also include a brief history of corporate responsibility and how it evolved from philanthropy. Although corporations have given to particular causes or institutions for a good deal of time, the concept of CSR must be distinguished from the closely related topics of philanthropy or corporate accountability. The primary purpose of this paper, however, is to investigate how large, multinational companies respond to the externalities created by their profit-producing activity and how they interact with the communities in which they operate, specifically their labor force. Examples will be drawn from different industries, but specifically oil as the industry is subject to heightened scrutiny from outsiders and large oil companies operate all over the globe.

CORPORATE PURPOSE

Historically, society has licensed corporations to operate because it believed that they serve the public interest.¹ In fact, the British East India Company, which existed from 1600 until 1874, served the most public of functions when it served as the effective government of India for decades.² Ultimately, however, corporations are private organizations. In recent years, the debate for CSR and business legitimacy has revolved around two central questions: To whom, and for what, is the modern corporation responsible? Since the mid-nineteenth century there have been two viewpoints: (1) the shareholder or stockholder ideal that holds that corporations and their officers are only responsible to company shareholders and (2) the stakeholder ideal that holds that companies are responsible to a wide range of social groups, particularly those who are directly affected by their operations like local communities and employees.³ Arising out of this debate is the legal question of whether a corporation even has the right to act in the public interest given the fiduciary obligations of corporate officers to shareholders.⁴

Clearly business corporations are not charitable institutions nor are they intended to be. Corporate officers must make it a priority to earn profit. If their primary purpose is doing good as opposed to doing well (i.e., making profit), they could find themselves out of business altogether.⁵ Therefore, the traditional view of the role of corporations (referred to as the “shareholder ideal,” “stockholder ideal,” or “shareholder supremacy”)

¹ See STEVEN LYDENBERG, CORPORATIONS AND THE PUBLIC INTEREST 11 (2005).

² See *id.* at 12.

³ See R. Edward Freeman, *Strategic Management: A Stakeholder Approach* vi (1984) (defining a stakeholder as “any group or individual who can affect, or is affected by, the achievement of a corporation’s purpose”).

⁴ See LYDENBERG, *supra* note 1, 9.

⁵ See ARCHIE B. CARROLL, CORPORATE RESPONSIBILITY: THE AMERICAN EXPERIENCE 223 (2012).

is to maximize value for the shareholder. Economist Milton Friedman expressed this ideal in a widely cited 1970 *New York Times* article, in which he argued that the focus of the corporation should be

to use its resources and engage in activities designed to increase its profits so long as it [obeys the law], which is to say, engages in open and free competition without deception or fraud.⁶

This traditional view reflects the general legal rule although it has exceptions. American courts have generally supported the position that directors have an obligation to maximize value for the shareholders as owners of the company.⁷ Corporate officers agree and usually make profitability the top priority. Even when well-established firms are doing well, executives are highly unlikely to place social factors ahead of or even on the same level as profitability.⁸

Judge Richard Posner argues that engaging in CSR activities without unanimous shareholder approval “not only [breaks] faith with [a corporation’s] shareholders . . . but also [weakens the corporation] in competition with profit-maximizing firms.”⁹ Additionally, Yale law professor Eugene Rostow argues that if firms were allowed to wide latitude to take socially responsible actions, then nothing would really hold them in check.¹⁰ For example, corporate directors could attribute business failures (e.g., missing

⁶ Milton Friedman, “The Social Responsibility of Business Is to Increase its Profits,” *The New York Times*, September 13, 1970.

⁷ WALTER A. EFFROSS, CORPORATE GOVERNANCE 398 (2010).

⁸ See CARROLL, *supra* note 5, 223. See also Lisa H. Newton, *Environmental Ethics and Business*, in THE OXFORD HANDBOOK OF BUSINESS ETHICS 657, 663 (George G. Brenkert & Tom L. Beauchamp eds., 2010) (“Businesses cannot be expected to undertake initiatives for the public good without being able to make an adequate business case They may be public-spirited citizens in their private lives, and in the use of corporate assets dedicated to public use, but by the role they have accepted in the economic organization that hires them, they are obligated to do nothing that will harm the economic interests of the corporation.”).

⁹ Richard Posner, *Why Creative Capitalism Would Make Things Worse*, in *Creative Capitalism*, 63, at 64.

¹⁰ See CARROLL, *supra* note 5, 223.

an earnings target) to the company's social mission.¹¹ Likewise, social failures could be attributed to the company's profit maximizing activities.¹² Thus, the anti-CSR argument holds to the position that CSR does more harm than good by forcing efficient corporations, which are socially beneficial, to invest in extraneous activities instead of innovation.¹³

The second viewpoint of corporate purpose is premised on the idea that corporations have responsibilities to a variety of "stakeholders," including customers, employees, suppliers, communities, and society at large.¹⁴ This viewpoint is largely concerned with externalities and the negative effects that a corporation's profit producing activities has on employees, consumers, and communities.¹⁵ Proponents of the CSR movement argue that, at minimum, it has forced corporations to adopt better practices.¹⁶

According to sociologist C. Wright Mills, the old "corporation vs. the people" or "business vs. government" dichotomies are the wrong issues.¹⁷ General Motor's Charles Wilson noted that, "What's good for the country was good for GM and vice versa . . ." ¹⁸ More recently, Microsoft co-founder, chairman, and former CEO Bill Gates called this new system, "creative capitalism" and described it as "an approach where governments, businesses, and nonprofits work together to stretch the reach of market forces so that

¹¹ See Lawrence Summers, *You Want Creative Capitalism? Try This*, in *Creative Capitalism*, 195, at 196.

¹² See *id.*

¹³ See GEORGE LODGE & CRAIG WILSON, *A CORPORATE SOLUTION TO GLOBAL POVERTY* 73 (2006).

¹⁴ See GEOFFREY HEAL, *WHEN PRINCIPLES PAY: CORPORATE SOCIAL RESPONSIBILITY AND THE BOTTOM LINE 2* (2008).

¹⁵ See Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 U.C. DAVIS L. REV. 705, 721 (2002).

¹⁶ See LODGE & WILSON 73.

¹⁷ See CARROLL 225.

¹⁸ Senate Armed Services Committee Hearings (1953, 8).

more people can make a profit, or gain recognition, doing work that eases the world's inequities.”¹⁹ This suggests that CSR does not harm, and in fact may benefit, corporations.

The fact that Bill Gates may believe that it is ultimately good for shareholders, however, does not insulate the decision from criticism and law suits. It is a difficult, if not impossible, task to prove that CSR benefits shareholders. Despite that difficulty, a shareholder who challenges the right of the corporation to engage in CSR is unlikely to succeed. One of the leading cases that addresses whether a corporation has a duty to maximize profits is *Dodge v. Ford Motor Company*. In that case, Henry Ford announced that the company would stop paying special dividends after five years of making payments to shareholders. He expressed that he wanted lower prices to make the cars more affordable even though it caused the company to be less profitable. The Dodge brothers, who were in the process of starting their own company, challenged the action on the grounds that it did not maximize shareholder profit. The court agreed and overturned the Board of Directors' decision because it created a less profitable business and diminished the value of shares and returns to shareholders.²⁰ The decision suggests that any corporate activity that does not benefit the shareholder can be successfully challenged, but that does not necessarily end the debate.

Despite upholding shareholder primacy, courts have allowed and encouraged charitable donations even when they appear to reduce earnings in the short term.²¹ In fact, Delaware and other states grant legal authority to corporations allowing them to “[m]ake

¹⁹ Bill Gates, *A New Approach to Capitalism*, in *Creative Capitalism: A Conversation with Bill Gates, Warren Buffett, and Other Economic Leaders* (Michael Kinsley & Conor Clarke, eds.) (2008), 7, at 10.

²⁰ See generally *Dodge v. Ford*, 170 N.W. 668 (Mich. 1918).

²¹ See EFFROSS 398.

donations for the public welfare or for charitable, scientific or educational purposes”²² The exemplary case comes from the New Jersey Supreme Court in 1953, which dismissed a shareholders’ challenge to the directors’ decision to have the corporation contribute \$1,500 to Princeton University noting that “Congress and state legislatures have enacted laws which encourage corporate contributions, and [indicate the need and adequate legal basis for them].”²³ While the law suggests that there is a limit to CSR as corporate directors typically link these efforts to some long-term business objective, general principles of Delaware corporate law suggest that a challenging shareholder would need to show actual harm to corporation resulting from the activity in question.²⁴ It is unlikely that a shareholder could meet this burden and, therefore, it is highly unlikely for a shareholder to ever successfully challenge CSR decisions; he must simply sell his shares if he disagrees with the decision of corporate officers.

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THE EVOLUTION OF CORPORATE RESPONSIBILITY

In the early history of the United States, the New England idea of the corporation as a benevolent organization can be traced back to the Puritans in the seventeenth century.²⁵ In contrast, the Southern approach to business has always been much more about individual opportunity and acquiring wealth and less about addressing the externalities produced by business activities.²⁶ Moving forward, businesses began

²² DEL. CODE ANN. tit. 8, § 122(9) (West 2013).

²³ *A.P. Smith Mfg. Co. v. Barlow*, 98 A.2d 581, 586 (N.J. 1953).

²⁴ *See generally Sohland v. Baker*, 15 Del.Ch. 431 (Del. 1927) (holding that the right of stockholder to litigate corporate rights is solely for purpose of preventing injustice).

²⁵ *See* CARROLL 224.

²⁶ *See id.*

practices like contributing financially to private educational institutions.²⁷ The contributions were justified as having a direct benefit to the firm by providing a well-educated workforce.²⁸ The most obvious criticism of that line of reasoning is that not every graduate of a recipient university will work for the donor corporation; in fact many may work for its competitors. Philanthropy, however, evolved into more than just giving money and became what we now refer to as CSR.

Beginning in the 1970s and 1980s, however, corporations began to expand giving efforts and created committees to help identify, develop, and implement social policy initiatives.²⁹ The committees that were appointed to carry out the initiatives, and still exist today, lack clear purpose, process, or practices.³⁰ Common focuses include issues like: identifying appropriate charitable organizations and initiatives, environmental issues, and labor issues.³¹ With the arrival of this kind of corporate activity, “philanthropy” was no longer adequate to describe the behavior; what was simply making donations to universities and nonprofit organizations evolved into CSR. Unlike philanthropy, CSR involves affirmative obligations to stakeholders in addition to those toward shareholders.

²⁷ *See id.* at 218.

²⁸ *See id.* at 219.

²⁹ *See* Francesco Cantarella, *The Growth of Corporate Responsibility Committees*, Corporate Board, Nov.-Dec. 1996, p. 16, at 16.

³⁰ *See* EFFROSS 411-12.

³¹ *See* EFFROSS 411-12.

CORPORATE SOCIAL RESPONSIBILITY AND ITS EFFECTIVENESS

CSR as a general concept can be very broad compared to “corporate accountability” or “philanthropy.” The World Bank defines CSR as: “[t]he commitment of business to contribute to sustainable economic development working with employees, their families, the local community and society at large to improve their quality of life, in ways that are both good for business and good for development.”³² Corporate accountability simply suggests that companies have a duty to provide society with information about its operations.³³ CSR, on the other hand, implies more affirmative obligations.³⁴ Essentially, CSR is completely voluntary,³⁵ business-led movement and is an attempt by corporations to address the impacts of their activities³⁶ on society, including employees, and the environments in which they operate.³⁷ It includes creating new policies in labor, women’s rights, and the environment among other issues.³⁸

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³² Danish Institute for Human Rights, “Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains,” World Bank Group, October 2003.

³³ See Williams 708-09 (discussing the difference between corporate accountability and corporate responsibility).

³⁴ See Williams 309.

³⁵ See David Monsma, *Equal Rights, Governance, and the Environment: Integrating Environmental Justice Principles in Corporate Social Responsibility*, 33 *ECOLOGY L.Q.* 443, 449 (2006).

³⁶ See Christopher McMahon, *The Public Authority of the Managers of Private Corporations*, in *THE OXFORD HANDBOOK OF BUSINESS ETHICS* 100, 100 (George G. Brenkert & Tom L. Beauchamp eds., 2010) (“The managers of private corporations occupy positions of authority in societies where their corporations operate . . . Managerial decisions can have effects throughout society, and in deed the world . . . , in the first instance, managerial authority is exercised *over employees.*”) (emphasis added).

³⁷ See Monsma 448. See also C.A. Harwell Wells, *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-First Century*, 51 *KAN. L. REV.* 77, 139-40 (2002) (“Corporations remain today, as they were in the 1920s, the most powerful nongovernmental institutions in America. In innumerable ways they shape the nation’s politics and culture, and the lives of their employees and consumers. They create great wealth opportunities, but often deliver them unevenly; they frequently use their power in ways that benefit shareholders and managers, but harm the rest of us.”).

³⁸ See Monsma 474.

CSR began as a business-led movement by which corporations address the externalities of their profit producing activity. The debate surrounding CSR is a debate over how the corporation as an institution should behave and to whom it is responsible. Not only must corporate officers who wish to engage in CSR put forth an argument that such behavior is beneficial in the long run to their organizations, but some argue further that they should be required to put forth evidence of their activities and their effectiveness.³⁹ The two positions may be reconciled for a third way. Many proponents of the stakeholder ideal argue that the two are in fact compatible and refer to this third way as the “business case” for CSR. ExxonMobil’s philosophy suggests that its policies are driven, at least in part, by the business case. In its 2011 Corporate Citizenship Report, the company asserts that “[p]overty, restricted access to education, insufficient business and technical skills, [and] lack of employment opportunities . . . will not be eliminated through aid alone, but through the creation of business frameworks that enable the development of local economies through skills development, job creation, and opportunities for investment.”⁴⁰

From the discussion above, it is clear that shareholders are unlikely to successfully challenge CSR decisions by corporate officers. It is at least debatable that such behavior is beneficial to the corporations themselves. The primary focus here, however, is how corporations engage their low-wage employees and how that behavior affects them. Some reports on the CSR movement have come to the conclusion that it

³⁹ See generally Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency* 112 HARV. L. REV. 1197 (arguing that the U.S. Securities and Exchange Commission has the statutory authority to mandate disclosure on management’s policies and practices with respect to social and environmental issues and that such disclosure promotes transparency for investors)

⁴⁰ EXXONMOBIL, 2011 CORPORATE CITIZENSHIP REPORT 39 (2012)

remains a work in progress. At its best, it promises a corporate decisionmaking process in which managers think and talk openly about social and environmental issues and then tell the world what they did and why. At its worst, it is nothing more than an elaborate public relations charade in which companies perform certain prescribed rituals but continue to do business as usual. But it may be even worse than business as usual, as the effect of the rituals may be to co-opt critics, mislead consumers, and preempt regulation [O]ur research leaves us still hopeful, but increasingly skeptical.⁴¹

Others, like Christian-Aid, a non-governmental organization (NGO) in the United Kingdom states that CSR “is unable to deliver on its grand promises . . . [and that it] is a completely inadequate response to the sometimes devastating impact that multinational companies can have in an ever-more globalized world – and that it is actually used to mask the impact.”⁴²

It is difficult to prove that responsible corporate action addresses the real needs of low-wage, low-skilled employees, but it appears to address some of the concerns of those communities by considering the effects of corporate activity on these stakeholders. CSR’s effectiveness varies depending on the type of CSR. The most certain way to reduce or alleviate poverty is to create direct income through jobs;⁴³ thus ensuring company growth under the shareholder ideal would be *per se* beneficial to local communities. Other options, however, are open to businesses.⁴⁴ In addition to improving the working

⁴¹ John M. Conley & Cynthia A. Williams, *Engage, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement*, 31 J. CORP. L. 1, 38 (2005).

⁴² CHRISTIAN AID, BEHIND THE MASK: THE REAL FACE OF CORPORATE SOCIAL RESPONSIBILITY 2 (2004), available at http://www.christianaid.org.uk/indepth/0401csr/csr_behindthemask.pdf (connecting, in principle, CSR to environmental justice: “Those who suffer the most as a result are the poor and vulnerable people in developing countries and the environments in which they live.”).

⁴³ See LODGE & WILSON 147.

⁴⁴ See LODGE & WILSON 148 (“[D]ata on the value of taxes and salaries paid by businesses” are often used as a bargaining chip in dealings with host governments. In addition, however, big companies that have the data available have the ability to estimate the effect of their investments and transactions on the per capita wealth of the people in their communities. This can be

conditions of these employees, corporations have benefited from better political support and higher profit where they have taken measures to improve the environment, improve organizational health and safety, and improved cultural and heritage protections.⁴⁵

THE BUSINESS CASE FOR CORPORATE SOCIAL RESPONSIBILITY

It is clear that corporations can engage in CSR and that shareholders have little ability to challenge those kinds of decisions; but are these two interests mutually exclusive or are they compatible? A firm's social performance can affect its financial outcomes but the question is whether the effects are positive, or negative.⁴⁶ Some argue that CSR efforts "increase [a company's] name recognition among consumers, boost employee productivity, reduce R&D costs, overcome regulatory obstacles, and foster synergy among business units. In short, this line of reasoning suggests that the strategic use of [CSR] gives companies a power competitive edge" even if it does not directly make the business more profitable.⁴⁷ But such positive effects are difficult, if not impossible to prove. Even staunch advocates of CSR cannot be sure of its positive effects. According to economist Robert Reich,

[f]or many years I have preached that social responsibility and profitability converge over the long term. That's because a firm that respects and values employees, the community, and the environment eventually earns the respect and gratitude of employees, the community, and the larger

compared against extant poverty thresholds in that country or territory and so an assessment can be made of the difference in poverty levels that is attributable to the business's presence.")

⁴⁵ See LODGE & WILSON 153.

⁴⁶ See HEAL 19.

⁴⁷ Craig Smith, *The New Corporate Philanthropy*, Harv. Bus. Rev., May-June 1994, p. 105, 105. See also CARROLL 369 ("In a PricewaterhouseCoopers survey of corporate executives, companies reported becoming more socially responsible for the following ten reasons, which clearly highlighted "business case" motives: enhanced reputation; competitive advantage; cost savings; industry trends; CEO/board commitment; customer demand; SRI demand; top-line growth; shareholder demand; and access to capital.")

society—which eventually helps the bottom line. But I’ve never been able to prove this proposition nor find a study that confirms it.⁴⁸

At minimum, this is a subject on which reasonable minds can differ, but at least some business leaders believe that CSR is good for society and for their shareholders. In contrast, the negative effects of irresponsible behavior are easier to understand and demonstrate. Large companies risk bad press, consumer boycotts, or lawsuits when they are involved in controversial industries, like oil and mining, or are accused of being involved in human rights abuses.⁴⁹ George Merck suggested that the pharmaceutical industry, due to its unique role, must put patient welfare above profits and must be doing so publicly; otherwise it will lose public support, which will cost the corporations and their shareholders.⁵⁰ Therefore, as a practical matter, corporate officers must go beyond profit and contribute to the communities in which their companies operate.⁵¹

Despite the fact that it is difficult to conclude that CSR causes improvements to a company’s profitability, there is a correlation between CSR and strong economic performance.⁵² Customers are aware of the social implications of their decisions and those implications influence customer choices.⁵³ For example, the Calphalon Corporation co-branded itself with a nonprofit organization and donated \$5 for each pan that it sold; sales of the pans increase 250 percent.⁵⁴ Likewise, Evian supported a nonprofit

⁴⁸ Robert B. Reich, *Supercapitalism* 171 (2007). *See also id.* at 178 (noting that “[e]vidence suggests consumers, like investors, do not care enough about social responsibility to make financial sacrifices for it”).

⁴⁹ *See* HEAL 20.

⁵⁰ *See id.* at 112.

⁵¹ *See* LODGE & WILSON 72 (noting that corporate managers contribute to local communities and effect them while paying special attention to image, employee satisfaction, and general acceptability).

⁵² *See* HEAL 28.

⁵³ *See id.* at 39.

⁵⁴ *See* HEAL 38.

organization by donating the proceeds from sales of cases of one-liter glass bottles and sales for that product increased 20 percent during the promotion period.⁵⁵ Therefore, “poverty-reducing efforts should add considerable value to big companies in the form of lessened political risk, strengthened markets, cheaper or easier finance, and improved corporate reputation. This should increase profits as well as political support”⁵⁶ It seems intuitive that if consumers choose one product over another based on a corporation’s CSR efforts, that corporation will ultimately be more successful. Therefore, in some instances socially conscious consumers seek to make CSR efforts more profitable than profit seeking itself.

As one example of what corporations do through CSR, the ExxonMobil Foundation community investing focuses on women’s economic participation, education and disease prevention in poor countries in which it operates.⁵⁷ Much of the company’s CSR engagement is directed toward recruitment and job training in those countries. The company also contributed \$124 million to communities in the United States in 2011.⁵⁸ The Corporate Citizenship Report does not, however, explore the effectiveness of these programs and inquiries to the ExxonMobil Foundation on this point did not receive a response.⁵⁹ Likewise, Chevron claims that its social investments focus on development through jobs and education but fails to explore the effectiveness of such programs in improving the lives of impoverished peoples.⁶⁰ By addressing issues like gender

⁵⁵ *See id.*

⁵⁶ LODGE & WILSON 149.

⁵⁷ *See* EXXONMOBIL 42.

⁵⁸ *See id.* at 43.

⁵⁹ *See* E-mail from Chrishon McManus to ExxonMobil Foundation (Mar. 21, 2013) (on file with Chrishon McManus).

⁶⁰ *See generally* CHEVRON CORPORATION, 2011 CORPORATE RESPONSIBILITY REPORT (2012).

inequality and environmental justice (discussed below), corporations can indirectly accomplish these goals.

CORPORATE SOCIAL RESPONSIBILITY AND LOW-WAGE EMPLOYEES

The broad concept of CSR is a little more specific in the labor context. Here, the issues to be considered will be (1) freedom of association and wages, (2) women's advancement, (3) human rights, (4) environmental justice, (5) employee healthcare, and (6) lobbying and political activity.

Freedom of Association and Wages

Maximizing profit means charging the most that consumers are willing to pay and spending the least amount to provide adequate goods and services. A company that pays its employees more than the market value for their labor can be said to be engaging in

CSR as employees are the quintessential stakeholders in a corporation.⁶¹ Companies like Trader Joes or Costco operate in sectors that traditionally rely on low-wage labor, but they have found that paying more than the industry average has led to increased sales and productivity.⁶² According to Lance Compa,

CSR can enhance . . . labor rights . . . in the workplace by joining consumer power and socially responsible business leadership—not just leadership like in Nike headquarters in Oregon or Levi Strauss headquarters in California, but leadership in trading house headquarters in

⁶¹ See Wesley Cragg, *Business and Human Rights: A Principle and Value-Based Analysis*, in THE OXFORD HANDBOOK OF BUSINESS ETHICS 267, 289 (George G. Brenkert & Tom L. Beauchamp eds., 2010) (“[W]here the law establishes adequate minimum wages . . . a corporation will not need to address the human rights issues and standards involved beyond understanding its obligations as set out by law.”)

⁶² See Sophie Quinton, *The Trader Joe's Lesson: How to Pay a Living Wage and Still Make Money in Retail*, THE ATLANTIC (Mar. 25, 2013 11:27 AM), <http://www.theatlantic.com/business/archive/2013/03/the-trader-joes-lesson-how-to-pay-a-living-wage-and-still-make-money-in-retail/274322/> (arguing that companies that invest in higher salaries for low-level employees find success in a competitive market)

Taiwan and Hong Kong, and leadership at the factory level in Dongguan and Shenzhen.⁶³

ExxonMobil's policy is to promote the right to freedom of association and collective bargaining.⁶⁴ CSR, as it relates to labor, includes the freedom of association, the right to organize, and the right to collective bargaining; therefore, this is something with which all CSR-conscious corporate officers should be concerned.⁶⁵

CSR does not just include labor, but also the kind of labor and to whom it is offered. After the BP oil spill, for example, many of the fisherman were from poor areas and were either illiterate or did not speak English; however, BP initially only advertised the compensation programs in English, which prevented some from applying for aid.⁶⁶ Even for those who found jobs, "cleaning up oil spill waste is risky work, and the people needing to take such work may not have adequate options and protection."⁶⁷ This raises the issue of exploitative wages, which arise when one takes unfair advantage of a person.⁶⁸ The problem is that it is not always clear what constitutes "exploitative," even leaving aside issues of child labor. For example, Nike suppliers in Asia pay \$5 a day, which, although low by North American standards, is more than the \$2 a day that they paid previous to that when, employed by domestic employers.⁶⁹ Thus even when a

⁶³ Lance Compa, *Corporate Social Responsibility and Workers' Rights*, 30 COMP. LAB. L. & POL'Y J 1, 1 (2008).

⁶⁴ See EXXONMOBIL 45.

⁶⁵ See Compa 7.

⁶⁶ See Hari M. Osofsky, Kate Baxter-Kauf, Bradley Hammer, Ann Mailander, Brett Mares, Amy Pikovsky, Andrew Whitney, & Laura Wilson, *Environmental Justice and the BP Deepwater Horizon Oil Spill*, 20 N.Y.U. ENVTL. L.J. 99, 158-59 (2012).

⁶⁷ See Osofsky 167.

⁶⁸ See ALAN WERTHEIMER, EXPLOITATION 230 (1996).

⁶⁹ See HEAL 161-62.

corporation adopts CSR policies toward organized labor and low-wage employees, it is difficult to establish a standard by which to measure them in a globalized world.

Women's Advancement

Within the issue of wages is women's advancement. Rachel Anderson argues that within society, women as stakeholders require special attention.⁷⁰ CSR requires corporations to not only pay a living wage, but also focus on addressing discrimination in employee hiring and promotion within their companies and within the supply chain.⁷¹ Social, historical, and cultural factors like lack of access to education, training and new technologies has clearly contributed to inequality,⁷² which falls disproportionately on women.⁷³ To demonstrate, despite making up half the world's population, women earn 10% of the world's income and own less than 1% of the world's property.⁷⁴ In the United States, 60% of those who earn the federal minimum wage are women⁷⁵ and around the world, women make up 70% of the "very poor" that live on a dollar or less a day.⁷⁶

Therefore, it is difficult or impossible to address poverty without considering how inequality based on gender contributes to the problem. Companies can improve their

⁷⁰ See Rachel Anderson, *Promoting Distributional Equality for Women*, 32 WOMEN'S RTS. L. REP. 1, 21 (2010) (arguing that identifying women as stakeholders would increase the responsibilities of transnational corporations to consider the effects of their acts on women stakeholders).

⁷¹ See Monsma 449.

⁷² See United Nations Conference on Trade and Development, *Gender and Trade: A Conceptual Note* 4 (July 15, 2003), http://www.unctad.org/sections/wcmu/docs/EDM_UNCTAD_XI_0003_en.pdf.

⁷³ See Carol C. Gould, *Moral Issues in Globalization*, in THE OXFORD HANDBOOK OF BUSINESS ETHICS 305, 309 (George G. Brenkert & Tom L. Beauchamp eds., 2010).

⁷⁴ See *Women and Poverty*, THE GLOBAL POVERTY PROJECT (accessed Apr. 1, 2013 4:27 PM), <http://www.globalpovertyproject.com/infobank/women>

⁷⁵ See Latifa Lyles & Mary Beth Maxwell, *Minimum Wage is a Women's Issue*, WORK IN PROGRESS: THE OFFICIAL BLOG OF THE U.S. DEPARTMENT OF LABOR (Mar. 8, 2013), <http://social.dol.gov/blog/minimum-wage-is-a-womens-issue/>

⁷⁶ See DAVID HELD, GLOBAL COVENANT 37 (2004).

bottom lines by taking advantage of this reality “when they combine low wages for women with a shift from hiring more men to hiring more women to reduce costs”⁷⁷

Corporations operating in the United States and around the world aim to fashion their employment practices to ensure that men and women receive equal pay and training,⁷⁸ thereby reducing poverty. In 2011, ExxonMobil has expressed a desire to improve gender balance and its female management and professional new hires represented 44% of the workforce worldwide and, notably 52% in Asia and 42% in Africa and the Middle East.⁷⁹ In contrast, Marathon Oil’s women professionals make up 27% of the workforce worldwide and 18% of its supervisors and managers, although that number increased between 2010 and 2011.⁸⁰ Therefore, companies in the oil industry are addressing gender inequality, which should eventually help reduce poverty although it is difficult to prove that such CSR efforts are effective to that end.

Even companies that recruit and employ women, fail to make adequate accommodations for female employees. Women continue to make up the majority of childcare and homemaking responsibilities.⁸¹ Many companies operating in countries in which the labor market is cheap make accommodations for male employees (including brothels), but fail to provide services like childcare to ease the burden on low-income, unskilled female workers.⁸² Therefore, an effective CSR policy would require companies to not only employ women and allow them to advance within the structure of local operations, but to also address the concerns and problems that cause women to leave the

⁷⁷ Anderson 20.

⁷⁸ See Anderson 11.

⁷⁹ See EXXONMOBIL 30.

⁸⁰ See MARATHON OIL CORPORATION, 2011 CORPORATE SOCIAL RESPONSIBILITY REPORT 30 (2012).

⁸¹ See Anderson 23

⁸² See *id.* at 24.

workforce or remain outside of it altogether. Although many multinational corporations have made advances in this area, many fewer advances have been made with regard to low-wage, low-skilled women employees.

Human Rights

Human rights can be viewed as the values, principles, or standards that define what counts as being worthy of treated with dignity and respect.⁸³ The goal of CSR as related to human rights is to create an environment where “the dignity, equality, and freedom of people are respected.”⁸⁴ Companies like ExxonMobil or Chevron operate in other countries around the world because that is where the raw materials must be extracted. Others carry out manufacturing in low-wage countries directly and through subsidiaries.⁸⁵ The fact that these companies operate all around the world means that even the most CSR-oriented company cannot completely safeguard against labor abuses against low-income workers.⁸⁶ For example, ExxonMobil (1) provides human rights training for its employees internationally and (2) adopts policies to eliminate child labor, forced labor, and workplace discrimination,⁸⁷ but unfortunately abuses still occur. Some fear that this globalization leads to a race to the bottom in terms of how corporations engage their local workforce, especially where poor countries are unwilling to forgo capital investments by insisting on additional protections for workers.⁸⁸ Workers

⁸³ See Cragg 270.

⁸⁴ *Id.* at 289.

⁸⁵ See Heal 152.

⁸⁶ See Compa 4 (“Critics [can] always find supplier plants with child labor, unsafe conditions, workers fired for trade union action, and even worse abuses.”)

⁸⁷ See EXXONMOBIL 45.

⁸⁸ See Carol C. Gould, *Moral Issues in Globalization*, in *THE OXFORD HANDBOOK OF BUSINESS ETHICS* 305, 309 (George G. Brenkert & Tom L. Beauchamp eds., 2010).

themselves are unlikely to challenge conditions because they may see the situation as better than it was before the corporation employed them.⁸⁹

Wesley Cragg discusses three “models” of corporations and human rights. The first is the legal model, which echoes Milton Friedman and states that the corporation’s human rights obligations are limited to what the law requires.⁹⁰ Complicating the legal model are corporations that exercise government-like power and operate in countries where governments have a diminished capacity or will to protect human rights. The second model is the self-regulatory model, under which corporations write their own, voluntary codes of ethics.⁹¹ This model endorses the view that corporations have human rights obligations and creates universal obligations whereas national governments can only craft obligations in a piecemeal fashion.⁹² Finally, the draft norms model, takes the opposite view of the legal model and asserts that when a corporation acquires government-like powers, it assumes the human rights obligations parallel and similar to those of governments.⁹³

Regardless of which model is applied, the corporation must determine what human rights obligations it has that are not defined by law by open and informed participation of stakeholders and consideration of its impact to mitigate negative impacts and maximize positive impacts.⁹⁴ The reality is that “poor countries will always beat [countries like the United States because poverty] gives a huge competitive advantage in

⁸⁹ *See id.* at 309.

⁹⁰ *See Cragg 277* (noting that under the legal model the moral obligation to respect and promote human rights is indirect and circumscribed by a corporation’s legal and moral obligation to obey the law).

⁹¹ *See id.* at 283.

⁹² *See id.*

⁹³ *See id.* at 284.

⁹⁴ *See Tom Campbell, “Democratising Human Rights,” in Leiser and Campbell, Human Rights in Philosophy and Practice, 181.*

labor-intensive operations.”⁹⁵ These companies operate in countries with labor regulations, but subcontracting makes it difficult to track behavior and hold companies liable for abuses and negative externalities.⁹⁶ For example, a lawsuit by members of an Indonesian village tried to hold ExxonMobil accountable for the acts of Indonesian soldiers, acting as ExxonMobil security forces.⁹⁷ The UN Guiding Principles on Business and Human Rights define what companies should do to address possible negative human rights impacts by business.⁹⁸ Many of the codes of corporate conduct are voluntary and written by the corporation itself.⁹⁹ Companies like Chevron make human rights policies in areas like security providers and suppliers.¹⁰⁰ ExxonMobil tracks and investigates 100% of registered grievances reported in Papua New Guinea.¹⁰¹

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⁹⁵ Heal 155. See also Thomas L. Friedman, *The Lexus and the Olive Tree* (New York: Farrar, Straus, and Giroux, 1999), 7-8 (“[Globalization is] the inevitable integration of markets, nation-states and technologies . . . in a way that is enabling individuals, corporations and nation-states to reach around the world farther, faster, deeper, and cheaper . . . in a way that is enabling the world to reach individuals, corporations and nation-states farther, faster, and deeper, cheaper than ever before.”).

⁹⁶ See Osofsky 109.

⁹⁷ See Kendall.

⁹⁸ See *Business and human rights*, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (accessed Apr. 10, 2013 12:36 AM), <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>. See also Cragg 267-68 (“Under conditions of globalization, [] assumptions about the nature of the human rights obligations of business firms, but more particularly multinational corporations, are undergoing significant reevaluation. A reevaluation of the relation of business and human rights in a global economy is being fostered by the importance of the modern shareholder-owned, multi- or transnational corporation in shaping economic development worldwide, allegations of human rights abuses on the part of multinational corporations, and limitations in the capacity of nation states to control the international operations of corporations.”).

⁹⁹ See Wesley Cragg, *Business and Human Rights: A Principle and Value-Based Analysis*, in THE OXFORD HANDBOOK OF BUSINESS ETHICS 267, 268 (George G. Brenkert & Tom L. Beauchamp eds., 2010).

¹⁰⁰ See Chevron 17.

¹⁰¹ See ExxonMobil 44.

Even with ambitious corporate codes of ethics like that of ExxonMobil, human rights obligations vary depending on the settings in which corporations operate.¹⁰² The company must still, however, defend itself in litigation for human rights abuses.¹⁰³ Large companies like ExxonMobil adopt policies and codes of conduct for workers' rights that monitor suppliers and seek involvement from local business leaders, trade unions, and NGOs.¹⁰⁴ The purpose of these measures is to attempt to prevent such abuses before they occur as opposed to deal with the resulting aftermath of public embarrassment. Therefore, most companies have adopted Cragg's second model, the self-regulator model. Adopting their own codes of conduct to protect human rights also seems to fit the business case for CSR in that it allows companies to (1) avoid negative press and consumer backlash and (2) avoid costly government regulation and oversight.

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Environmental Justice

Environmental justice describes the disproportionate impact of environmental pollution on low-income communities and low-wage employees who work under such conditions.¹⁰⁵ These communities experience higher levels of exposure to environmental hazards, including illegal pollution and legal waste disposal.¹⁰⁶ While some argue that the

¹⁰² See Cragg 289.

¹⁰³ See Brent Kendall, *Exxon Hit by Reversal in Human-Rights Case*, THE WALL STREET JOURNAL (July 9, 2011), <http://online.wsj.com/article/SB10001424052702303544604576433842102845896.html> (describing the reinstatement of a lawsuit against ExxonMobil under the Alien Tort Statute by Indonesian villagers alleging killings and torture committed by Indonesian soldiers, serving as Exxon's security forces, guarding its natural-gas operations in the country's Aceh province).

¹⁰⁴ See Compa 5-6.

¹⁰⁵ See Monsma 444 (describing how unwanted land uses have followed the "path of least resistance," meaning that wealthy, predominantly white communities have prevented things like toxic dumping in their communities so the majority of such activities are concentrated in poor, predominantly ethnic minority communities).

¹⁰⁶ See *id.* at 451.

poor moved to these areas because the environmental impact diminished the value of the land,¹⁰⁷ corporations place heavy industrial activities in areas where resistance is low.¹⁰⁸ For this reason, not only is the pollution legal, but also are the negative and disproportionate impacts on the poor.¹⁰⁹ In addition to the exposure to environmental hazards, poor populations also lack access to outdoor parks and recreation.¹¹⁰ Unlike labor, women's advancement, and community investment, "businesses . . . have been less willing to adopt or incorporate explicit principles on environmental justice."¹¹¹

Some companies, however, do incorporate the possible impact on local communities into their decision-making processes. ExxonMobil, for example, conducts Environmental, Socioeconomic, and Health Impact Assessments (ESHIA) through independent consultants to study the impacts of its business and investment decisions on stakeholders and, if it cannot mitigate the effects of installing pipelines for example, it simply compensates them.¹¹² Likewise, BP's waste management plans include taking into account environmental justice concern into the decision-making process; specifically that planning include "analysis of socioeconomic demographic data within close proximity to operations, evaluation, of any potential impacts on sensitive populations, [and] evaluation

¹⁰⁷ See Ryan Holifield, *Defining Environmental Justice and Environmental Racism*, 22 URB. GEOGRAPHY 1, 78-90, 85 (2001) ("[S]uch studies assume that if minority populations moved into neighborhoods after the siting of toxic facilities or waste dumps, they can rule out discriminatory intent in siting and thus cast doubt on the possibility of environmental racism.")

¹⁰⁸ See Monsma 454-55.

¹⁰⁹ See *id.* at 469 ("[M]any environmental justice concerns involve the disproportionate impacts from lawful pollution attributable to private sector decisions or practices at facilities and in communities where companies operate. Fundamentally, environmental justice, as a set of ethical principles, is as much an issue of corporate social responsibility and sustainable development as it is a matter of equal protection of laws.")

¹¹⁰ See Osofsky 104.

¹¹¹ Monsma 494. See also Cragg 289 ("Where environment protection on the part of the state is weak or absent, a corporation is faced with the need to define its environmental responsibilities for itself.")

¹¹² See EXXONMOBIL 18.

of any pre-existing community concerns and regulatory enforcement history.”¹¹³ Although forward-looking plans address these problems, the response to crises like the BP oil spill has disproportionately negative effects on the poor.¹¹⁴ For example, two towns alone received close to half of the oil spill waste and both communities were made up mostly of low-income; Osofsky argues that this is a result of lack of awareness and organization in the communities to successfully challenge the decision.¹¹⁵ It would not be feasible to end things like oil exploration or mining for precious minerals and eliminate the externalities. Therefore, an effective CSR program with regard to environmental justice should seek to spread the burden of its activities equally.

Employee Healthcare & Workplace Safety

Access to healthcare and who should provide it to whom has been a controversial issue in the United States due to lack of a system of universal coverage.¹¹⁶ In the competing shareholder and stakeholder ideals, corporate officers could avoid insurance premiums and increase shareholder profits.¹¹⁷ Many large retail sectors like fast food and stores like Wal-Mart and Target typically provide, at best, slim coverage.¹¹⁸ It is not as difficult of an issue for corporations in countries, like France and Germany, are a part of the system that provides universal healthcare; but in countries like the United States,

¹¹³ BP, Houma Incident Command Waste Management Plan (2010), *available at* http://www.epa.gov/bpsill/waste/r6_waste_plan_kmr20100615_1524.pdf.

¹¹⁴ *See* Osofsky 110.

¹¹⁵ *See id.* at 120.

¹¹⁶ *See* Paul T. Menzel, *Just Access to Health Care and Pharmaceuticals*, in *THE OXFORD HANDBOOK OF BUSINESS ETHICS* 202, 202 (George G. Brenkert & Tom L. Beauchamp eds., 2010).

¹¹⁷ *See id.* at 220.

¹¹⁸ *See id.* at 221.

many employees will have no insurance at all except through their employer.¹¹⁹ In fact, more than half of the American population is covered by an employer-provided health insurance policy, although that number is shrinking.¹²⁰ In the context of the general public, “[p]harmaceutical and health insurance companies confront questions about just consumer access to their products.”¹²¹ The healthcare issue creates moral tension because it involves high stakes, lack of a competitive market, and high risks for companies and their shareholders.¹²² These issues apply equally and are just as controversial in the context of corporations providing—or failing to provide—healthcare to their employees.

Closely related to employer-provided health care is the issue of workplace safety. This includes injuries that occur as a result of violent events and diseases and injuries that are the result of exposure to toxic substances or repetitive motion.¹²³ There seems to be little debate over whether employers have obligations to protect workers from workplace hazards, the disagreement is as to the extent of that obligation.¹²⁴ One argument is that

the obligation entails two duties concerning safety:

First, when workplace hazards exist, an employer has an obligation to inform workers in advance regarding workplace hazards so that individual workers can make informed decisions about the work and the conditions they find acceptable. Second, employers have an obligation to ensure

¹¹⁹ See *id.* at 218. See also Cragg 289 (“In a country like Canada with its universal healthcare system, a corporation can leave any basic human rights related responsibilities for assuring adequate medical treatment to its employees to the state. In a country like the United States, what a company’s healthcare obligations are becomes a matter to be determined through deliberation and negotiation.”).

¹²⁰ See *id.* at 219.

¹²¹ *Id.* at 202.

¹²² See *id.* at 210.

¹²³ See Denis G. Arnold, *Working Conditions: Safety and Sweatshops*, in THE OXFORD HANDBOOK OF BUSINESS ETHICS 628, 628 (George G. Brenkert & Tom L. Beauchamp eds., 2010).

¹²⁴ See *id.* at 628 (noting that imposing these obligations requires ought be mitigated or modified by competing obligations or interests like property rights of the owners of capital, the health and safety of workers, employment opportunities, and the freedom of all parties to enter into contracts).

minimum health and safety conditions exist, especially when the cost of doing so, measured as a percentage of revenue, is small in comparison to profits as a percentage of revenue. Failure to do so violates the moral requirement that employers be concerned with the physical welfare of their employees.¹²⁵

There was an explosion at BP's Texas City oil refinery in 2005 that killed 15 people and injured another 170.¹²⁶ In West Virginia and other places, employees develop black lung disease as a result of decades of exposure.¹²⁷ Issues of workplace safety, employee healthcare, and environmental justice affect these employees. CSR policies can address the causes of these incidents and reduce the frequency with which they happen, even in cases where it is cheaper to respond to problems after they occur. Also, as previously mentioned, litigation avoidance is in the company's best interest. Companies spend decades litigating claims that arise from events like these. Therefore, CSR efforts, including spending in this area provides a more concrete example of the business case than does the decision to provide health insurance to low-wage employees.

CONCLUSION

Corporate Social Responsibility as a topic encompasses even more than just women's advancement, human rights, healthcare, workplace safety, and environmental justice. Even limiting the discussion to how corporate profit-producing activities to policies toward low-wage employees is an expansive topic that extends beyond the discussion here. Corporate officers can generally incorporate stakeholder interests into the decision-making process. When they do, CSR is typically correlated to superior

¹²⁵ *Id.* at 630.

¹²⁶ See Sam Hananel, *BP agrees to \$50.6 million fine for safety violations in Texas City explosion* WASHINGTON POST (Aug. 13, 2010) <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/12/AR2010081206713.html>.

¹²⁷ See Arnold 628.

financial performance. From the stakeholder perspective, the CSR movement has forced business corporations to consider they can minimize negative externalities that result from their profit-producing activity. Employees are the quintessential stakeholders in that the company's policies affect them more immediately and directly than outsiders. Finally, CSR efforts that aim to help low-wage, low-skilled employees appear to be effective in some aspects and the movement is likely to continue, but many ardent supporters acknowledge that its effectiveness is difficult to prove.

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