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"Corporate Social Responsibility in the Legal Framework of Global Value Chains"

Talya Ucaryilmaz*

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*Dr. Talya Ucaryilmaz is a visiting post-doctoral fellow at the UvA Center for Transformative Private Law and researcher at the Bilkent University Faculty of Law e-mail: talya@bilkent.edu.tr

Corporate Social Responsibility in the Legal Framework of Global Value Chains

Talya Ucaryilmaz

What is the place of voluntary self-regulation in today's international trade? Can we continue to understand the contract in its relation to the historical unity of state and law considering the massive transformation of the closely related dichotomies between national and international, public and private, hard law and soft law? What is the role of Corporate Social Responsibility (CSR) in the contemporary debate over Global Value Chains (GVCs)? This paper addresses on the role of law in societal challenges arising from the kaleidoscopic view of globalization. GVCs operate through interdependent contracts and in relation to multiple normative that each order impose moral, economic and legal obligations. This paper seeks to re-evaluate the role of contract law in its relation to sustainable and ethical global trade. The perspective it develops prioritizes the interaction between extra-legal considerations in contract law and the momentum of CSR as well as a the historical dynamic of law, economics and politics.

Keywords: corporate social responsibility, global value chains, law and development, lex mercatoria, sustainability

1. Introduction

Today, international trade is dominated by complex and multidimensional forms of production organizations among different firms which are horizontally linked through contracts as legal tools. Such hybrid forms, namely Global Value Chains (GVCs) operate through networks of contracts, creating worldwide economic, political and legal relations. GVCs create a heterocephaly in terms of how contractual interdependencies are created and assume a political character. GVCs started to blur the line of public-private spheres and soft law-hard law mechanisms, presenting us with a plethora of legal problems. The private norm-creating ability of the lead firms located in developed countries is well reflected through their corporate social responsibility (CSR) policies.

As a reflection of economically and socially driven self-governance, CSR refers to the voluntary commitments of the business actors about a wide range of concerns including protection of environment, sustainability, fair labor conditions, social accountability and so on.[1] Yet, there is no consensus about the legal characteristics of CSR and its effects on the economic and social development in the new world trade society. Accordingly, this article focuses on this question: What is the place of CSR in the legal governance of GVCs from the perspective of law and development?

Essentially GVCs are the children of Athena and Vulcan: Politics and technology.[2] The exponential increase in production and communication technologies, reduction of trade barriers and economic modernization has led to drastic alterations in the prevailing political and economic paradigm. For example lead firms concentrate on high value creating elements such as Research and Development (ReDe) or intellectual property and outsource the rest, seeking to reap the benefits of extensive co-operation across multiple geographical regions without a need for vertical integration.[3]

Accordingly GVCs, unlike supply chains with national characteristics, operate under multiple normative orders that create legal pluralism in their governance. The effects of such a legal vacuum is especially visible in their CSR commitments. Generally, these voluntary commitments are concertized in corporate codes of ethics, codes of conduct or private standards and they are often incorporated in bilateral contracts. In that case, the soft-law nature of CSR initiatives takes the form of hard-law while at other times CSR is primarily articulated through interactional processes between different stakeholder groups.

Although the global sphere often remains state-centric, voluntary CSR gives firms the opportunity to impose moral obligations and to create economic incentives to comply

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[1]Steve R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 The Yale Law Journal, no. 3 (2001), 443-545, at 531.

[2]Talya Ucaryilmaz, "Iuris Vinculum" ve Küresel Değer Zincirleri Modelinde Sözleşme Hukukunun Gözden Geçirilmesi, paper given at the Bilkent University Law Faculty Young Legal Scholars Symposium, (Ankara, 2019).

[3]According to the Coase theorem, the consolidated firm is necessary when the transaction costs of efficient coordination of independent economic actors through contracts are too high. Ronald H. Coase, *The Nature of the Firm*, 4 Economica, (1937), 386-405, Kevin Sobel-Read, Glen Anderson and Jaakko Salminen, *Recalibrating Contract Law: Choses in Action, Global Value Chains, and The Enforcement of Obligations Outside of Privity*, 93 Tulane Law Review, no. 1 (2018),1-46, at 3 *et seq.*

with them. Such power asymmetries co-exist with state-centric character of the international system as the interdependent contractual relationships in international trade made non-state laws more efficient and CSR became a mode for the delegation of political powers to private entities. While CSR creates economic, moral and legal responsibilities, it remains driven by competitiveness in that CSR has been generally adopted for instrumental reasons and long-term profit concerns.[4] The argument of instrumentality is what makes CSR functional despite the dangers of selective compliance.

Therefore, the interdependencies created by globalization are not just cause for shared interests that cut across the political, economic and legal spheres of the society; it also implies a structural change in how we should understand CSR. Rather than seeing CSR in terms of individual 'business cases', we should be aware of an inherently interdisciplinary problem. Understanding the effects of CSR on development (and vice versa) requires us to re-visit law and economics, philosophy, sociology and private law theories.

Optimistic scholarship on law and development focuses on the legal system's ability and causal role in a particular society to promote development.[5] Instead this paper stresses the global role of informal governance mechanisms such as CSR and their relationship with extra-legal considerations and their effects on the momentum of their development. Accordingly, the paper suggests to understand CSR as a learning process that is only successful if firms freely and genuinely abide by the soft-law that CSR revolves around, especially in developed countries. It is argued that such a perspective will prioritize patterns of thought that motivate business actors to cooperate not only because of the transaction costs of abandoning a cooperative regime but also as a drive to internalize business ethics. Such a structural change in CSR policies need to be as a synergy of regulatory pressures, market incentives, NGO pressures and litigation. These factors are essential for a sustainable future of international trade as they are affected by each other and shape each other simultaneously. As such, the paper focuses on the interconnected causal dynamic of law, economy and sociology to demonstrate what is required for a functioning CSR system as an essential characteristic for the regulatory framework of international trade.

2. Chains, Value and Law

'Man is born free, but he is everywhere in chains' said Jean-Jacques Rousseau in his famous work *'Du Contrat Social'.* Today's global value chains fall under this powerful sentiment in that we face a new type of chains in the chaotic atmosphere of international

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[4]Jukka Mäkinen, *Pluralism in Political Corporate Social Responsibility*, 22 Business Ethics Quarterly, no. 4 (2012) 649–678, at 650-651.

[5]Kevin E. Davis and Michael J. Trebilcock, *The Relationship between Law and Development: Optimists versus Skeptics*, 56 The American Journal of Comparative Law, no. 4 (2008) 895-946, at 897, Kenneth Dam, *The Law-Growth Nexus: The Rule of Law and Economic Development* (Washington: Brookings Institution Press, 2006), p. 13 *et seq.*, David M. Trubek and Alvaro Santos (eds.), *The New Law and Economic Development: A Critical Appraisal*, (New York: Cambridge University Press, 2006), pp. 1-18.

relations and political economy. GVCs refer to the networks of multilayered contracts that create worldwide economic, political and legal relations among international parties in the historical continuum of international trade. The intersection of legal, political, social and economic ties on which they operate results in the hybridity of its contractual relationships. Such hybridity should be understood in terms of a "theoretical limbo", considering the role of contract law in the governance of GVCs and its evolution in relation to such "new international trade".

Traditional theory of contracts dates back to Roman law of obligations. Historically obligations (both with contractual and extra-contractual nature) have been referred as legal chains, *'vincula iuris'*, binding two parties together.[6] The Latin root of the word *obligatio* is *–lig* (to tie) sustains the analogy with the concept of the chain. This idea comes from a pre-classical Roman act called *nexum* that is the primitive version of a sales contract. Contracts are private agreements between parties that require state recognition. The state recognition may be achieved slowly as in 12th century England or swiftly as in pre-classical Rome.[7]

According to the classical Roman position, an agreement was enforceable only if it came within a substantive category. A formal contract had to be either *verbalis* (verbal), *litteris* (written) or *realis* (real). The contract was such a strong bond between two parties, the expansion of the contractual relations towards third parties was unjustifiable. The maxims of *res inter alios acta, neque nocere, neque prodesse potest* (the acts between others may neither harm nor benefit another), *alteri stipulari nemo potest* (no one may agree *in lieu of* another) and *per extraneam personam nihil adquiri posse* (nothing shall be acquired through an extraneous person) focused around the idea of the iron chain.[8] This view was not specific to Continental law tradition. It revolved around the privity of contract, as a fundamental principle of English law.

Yet, the pragmatic elasticity of Roman private law created several exceptions to the strict understanding of the iron chain. One of the great Roman inventions was the emergence of consensual contracts as a reaction to formality, for which there were no other foreign models.[9] Case law sometimes allowed third parties to sue, expanding the *iuris vinculum* for the contracts governed by good faith.[10] The evolution of *contracti ex consensu* was a result of economic and social pressures of foreign trade via the growing awareness of the value of ethical principles in commerce.

Historical studies of antiquity and medieval legal scholarship show us that the elasticity and pragmatism in international trade sustained the economic growth of that time. Roman *iuris vinculum* started to be elasticized already earlier due to foreign business

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[6]*Ins. 3.13.pr"….obligatio est iuris vinculum",* Reinhard Zimmermann, T*he Law of Obligations: Roman Foundations of the Civilian Tradition* (Oxford University Press, Oxford, 1996), p. 1,

[7]Tommasso dalla Massara, "Can Roman Legal Tradition Play a Role of Identity Factor Towards a New Europe?" in Nada Bodiroga-Vukobrat, Siniša Rodin and Gerald G. Sander (eds.), *New Europe - Old Values?:Reform and Perseverance,*(Cham: Springer, 2016), p. 8, Alan Watson, *The Evolution of Law: The Roman System of Contracts,* 2 Law and History Review, no. 1 (1984), 1-20, at 1.

[8]See *Ins.*2.9.5, *Ins.*3.19.19.

[9]Watson (1984), *supra* note 7, at 8.

[10]Zimmermann (1996), *supra* note 3, at 39 *et seq.*

practices and the gradual judicial response to them. Such judicial and social responsiveness is what we are witnessing again today in the governance of GVCs. Multinational dependencies and value oriented nature of the GVCs require us to learn from history and re-evaluate our legal perspectives.

2.1. The New Face of International Trade

Global supply chains have become more dominant in international trade for at least 50 years. The neo-classical idea of a global supply chain refers to the chain of contracts suggesting one-on-one relationships that focus on production. They are chains involving people, information, processes and resources; organized around the production, handling and distribution of materials and finished products or providing a service to the final customer. Early scholarship on GVCs was indeed focused on the design of supply contracts in order to enhance efficiency. Yet, neither the traditional contract law mechanisms, nor the international business rules applied to global supply chains are fully suitable for the governance of GVCs.

There is no sharp line between simple chains and networks, rather the level of integration of the contracts create this spectrum. This integration is also sustained by the perception of 'value' in new global contractual networks. GVCs operate on modular governance idea.[11] Value is the concept that differentiates GVCs from other fragmented series of multiple commercial transactions. The term value presents serious challenges and theoretical tensions since legal scholars are generally interested in the distribution of the value. However, from a law and development perspective the production of the value is as important. Law should be considered as a means of production and distribution of value within and between organizational terrains.[12]

One classical theory of capitalism suggests that contract law is a market-facilitating institution, providing necessary tools to correct informational and other asymmetries in the market. On the other hand, Marxist legal thought defines the relationship between capital and law as symbiotic. Marx's theory of value supports that today GVC structures reinforce global inequalities between firms, countries, classes and genders.[13] In both cases, hard law and soft law mechanisms are crucial for how power is exercised in global commercial spheres.[14] For example, the breach of a contract in a global value link results in an accordion effect in the sense that all the other links are invariably effected, changing power relations and the distribution of value.

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[11]Sobel-Read, Anderson and Salminen (2018), *supra* note 3, at 9, Jaakko Salminen, *From Product Liability to Production Liability: Modelling a Response to the Liability Deficit of Global Value Chains on Historical Transformations of Production*, 23 Competition and Change, no. 4 (2019), 420-438, at 426.

[12]The IGLP Law & Global Production Working Group, *The Role of Law in Global Value Chains: A Research Manifesto*, 4 London Review of International Law (2016), 57-79, at 58.

[13]Guido Starosta, *The Outsourcing of Manufacturing and the Rise of Giant Global Contractors: A Marxian Approach to Some Recent Transformations of Global Value Chain*s, 15 New Political Economy, no. 4 (2010), 543-563, at. 560.

[14]The IGLP Law and Global Production Working Group (2016) *supra* note 12, at 60.

The creation of innovative efficiency in GVCs requires the generation of added value at successive stages in the chain. Of course, the amount of added value may change from link to link and the benefits generated from the participation in the chain are generally unevenly distributed.[15] For example, the value added by the workers in a link of chain is directly related to the labor law regulations of that developing region. Similarly, studies show that national legal regulations dealing with the production chains in the area of food and agriculture have played a major role in creating or sustaining food shortages.[16] The reason is simple: Laws affect the behavior of firms. In the context of GVCs, the domestic laws of the potential host countries affect the behavior of the lead firms. The difficulty of harmonization and uniform application of different national normative systems creates burdens in the assessment of the role of law in development in isolation from other dynamics.

Accordingly the place of universal ethical standards and soft-law mechanisms has to be re-evaluated from the perspective of contract law in the national and transnational scale. Such standards and mechanism would have to be readjusted to fit the global scale of GVCs in order to maintain a harmonized distribution of value and power between different actors. As such classical legal remedies might have to be adjusted. For example, the Netherlands started to hold domestic firms jointly liable for their overseas contractors' and suppliers' labor law violations based on their established duty of care.[17]

While there are such examples, the difficulty of a drastic harmonization or reform increases the need for self-governance as a primary means whereby to increase global social wealth. Such social aspects of the value generated in the GVCs mostly revolve around regulations on environmental concerns, sustainability, food safety and labor conditions. Many global firms are trying to expand their involvement in the sustainability of the raw materials such as cocoa, coffee and sugar.[18] CSR sets an example of ethical self-governance that is necessary for social cooperation to contribute the equitable generation and distribution of value in GVCs.

2.2. Interdependencies, Law and Development

The "general theory of law and development" explains the mechanisms by which law affects or contributes to development.[19] Law and economics scholarship demonstrates

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[15]*Ibid.* at 67.

[16]The IGLP Law and Global Production Working Group (2016) *supra* note 12, at 72, Tomaso Ferrando, *Financialisation of the Transnational Food Chain: From Threat to Leverage Point?,* 9 Transnational Legal Theory, no. 3-4 (2018), 316-342.

[17]The IGLP Law and Global Production Working Group (2016) *supra* note 12, at 76, Cees van Dam, *Statutory Human Rights Due Diligence Duties in the Netherlands,* Research Notes, RSM (Rotterdam, 2016), 1 *et seq.*

[18]Sobel-Read, Anderson and Salminen (2018) *supra* note 3, at 23.

[19]David M. Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development,* 82 The Yale Law Journal, no. 1 (1972),1-50, at 2 *et seq.*, Yong-Shik Lee, *General Theory of Law and Development,* 50 Cornell International Law Journal, no. 3 (2017), 415–472, Yong-Shik Lee, Gary Horlick, Won-Mog Choi,

that law is essential to economic development since it changes market incentives and provides the infrastructure for a functioning market system.[20] Nevertheless there is no apparent consensus on which legal institutions are more important and how to optimize the design of legal institutions to increase development in the national and transnational level.[21] Another major point to consider is the role of the informal substitutes and their simultaneous existence as law/non-law. As necessary as law is, it is not sufficient for economic and social development. Studies show that the CSR policy for the working conditions in the South Asia brought little changes for workers because they were not able to change the already existing commercial practices.[22] As such, visiting the interrelated dynamic of legal rules and extra-legal measures is crucial to evaluate the legal problems arising from the legal vacuum in which GVCs operate.

One reason of this governance deficit are the interdepencies whereby GVCs function. The contractual relationships in GVCs are generally interdependent and they form an economic unity. GVCs operate with contractual relationships with a high level of social and economic connection, clustered around the same global economic objectives. Such contracts are linked to the extent that they show mutual references to one another, either explicitly or within contractual practice and they are directed to a common purpose as a cooperative relationship.[23] In other words, actors are interdependent when the outcome of an interaction for each depends on the choices of others.[24] The performance and breach of bilateral contracts may change the power relations and value distribution for the whole network.[25]

Contract law in its wider sense, is a mean of production and distribution of value between multiple nodes. Each link's effect on the chain creates a synergetic result, making the efficiency of the GVC higher than the individual sum created by the contractual decisions of each firm. Because of such economic proximity, individual nodes are organized in such a way that third parties are no longer third parties to the contractual relationship.[26] The close connection of different contracts and the constant need for cooperation and coordination between them give the GVCs their 4D

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and Tomer Broude (eds.), *Law and Development Perspectives on International Trade Law* (New York: Cambridge University Press, 2011), pp. 356–375.

[20]Trubek (1972) *supra* note 19, at 7.

[21]Davis and Trebilcock (2008) *supra* note 5, at 945.

[22]Francesca Scamardella, *Law, Globalisation, Governance: Emerging Alternative Legal Techniques,* 47 The Journal of Legal Pluralism and Unofficial Law, no. 1 (2015), 76-95, at 87.

[23]Günther Teubner, "Coincidentia Oppositorum: Hybrid Networks Beyond Contract and Organisation", in Robert Gordon and Mort Horwitz (eds.) *Festschrift in Honour of Lawrence Friedman* (Stanford: Stanford University Press, 2006), 1-22.

[24]Alexander Wendt, *The Social Theory of Law*, (6th edition, Cambridge Cambridge University Press, 2003), p. 341 *et seq.*

[25]Marina Wellenhofer, "Third Party Effects of Bilateral Contracts Within the Network", in Marc Amstuz and Günther Teubner (eds.), *Networks: Legal Issues of Multilateral Cooperation* (Hart Publishing, Oxford: 2009) 119-137, pp. 119-120, Hugh Collins, "The Weakest Link: Legal Implications of the Network Architecture of Supply Chains", in Marc Amstuz and Günther Teubner (eds), *Networks: Legal Issues of Multilateral Cooperation* (Hart Publishing, Oxford: 2009)187-210, at 188 *et seq.*

[26]Sobel-Read, Anderson and Salminen (2018) *supra* note 3, at 15.

character. This interdependent nature also creates synergies of risks which are especially visible in environmental law or labor law. As a result the morality of the contractual practices and ethical safeguards such as CSR become essential not only for the execution of one single contract but also for the protection of the aggregated economic and social value of the whole chain.

2.3. Globalism v. State-Centrism

In the post-Westphalian world, the interaction of state and economy is not limited to the national scale. The transnational characteristic of GVCs come from their ability to transcendent every national interest in global sphere. That is why they are identified with globalism instead of internationalism. According to the leading theorists in the scholarship of global governance such as Günther Teubner, Friedrich Kratochwil and John Gerard Ruggie, globalization broke the unity of state/law and led to the self-deconstruction of the hierarchy of legal norms. Norms do not need to "exist" at all in a formal sense in order to be valid.[27] Ethical behavioral standards are key factors in the absence of a centralized legal and political authority.

Social constructivist Alexander Wendt takes this state of 'nonexistence' in globalism narrative as a reflection of the 'anarchical' nature of international law. In contemporary international system political authority is organized vertically within states as in hierarchy and horizontally within between states as in anarchy.[28] Anarchy in this sense shall be understood as a self-help system as opposed to hierarchy, a lack rather than a presence. In his book 'Social Theory of International Politics', Wendt presents us with three different cultures of anarchy in international order: Hobbesian, Lockean and Kantian logics.

While Hobbesian anarchy presents a *sauve qui peut* egoism, Lockean anarchy reflects a rivalry relationship aimed at increased utility. Hobbesian anarchy argument is used by the materialist-realist tradition to explain local production due to high costs of moving goods and people. Yet, Wendt argues that international trade in parallel to the neo-classical contract theory is a reflection of the Lockean logic.[29] Legal rules aim at decreasing transaction costs created by bounded rationality and opportunism in order to provide more social wealth and to protect legitimate interests in the international sphere. Opportunism is nothing but the conceptual antonym of trust/good faith in the legal sphere.[30] On the contrary, Kantian culture refers to an ideationally ethical approach

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[27]Günther Teubner, *Breaking the Frames: Economic Globalisation and the Emergence of Lex Mercatoria*, 5 European Journal of Social Theory (2002) 199-217, at 205 *et seq*, Friedrich Kratochwil and John Gerard Ruggie, *International Organization: A State of the Art on an Art of the State*, 40 International Organization, no. 4 (1986), 753-775, at 768.

[28]Wendt (2003) *supra* note 24, at

[29]*ibid.*, at 241 *et seq.*

[30]Coase (1937) *supra* note 3, at 4 386, Harold Demsetz, *The Theory of the Firm Revisited*, 4 Journal of Law, Economics & Organization (1988), 141-161, at 144. Oliver E. Williamson, *Markets and Hierarchies: Analysis and Antitrust Implications* (New York, Free Press, 1975) at 25, Oliver E. Williamson, *The*

directed to protect collective security interests in the absence of a time/threat specific alliance.

CSR policies and voluntary commitments of the lead firms based in developed countries affect the momentum of this logic of 'anarchy' and increase the Kantian elements in the international order. International structure is simultaneously a social and a material phenomenon, whereby the sociality revolves around shared knowledge.[31] This is why taking CSR as a way of learning contributes to a structural change from instrumental self-help towards the protection of collective interests under a *de facto* rule of law and to accelerate development. Yet, for CSR to have a chance of long-term success, legal mechanisms should be adjusted to support its development.

Within this context CSR reflects social contract theory as the basic principle of the global business relations.[32] Switching to a law and development perspective such self-regulation implies that forms of 'soft law' best address the problem and provide the necessary flexibility in the face of a constant changing and developing technology. Both show different sides of a paradigmatic shift in the legal relations between states and non-state actors, centered on the importance of self-governance within the context of transnational social relations and economic activities.[33] From this it does not follow that globalization undermines the effectiveness of national legal norms. Rather, it should be interpreted as creating a form of society that exists within a much less state-centric order.

States remain as the primary medium in international life, even though certain multinational corporations have become stronger than most states. What this implies is that GVCs operate dynamically under multiple, sometimes overlapping and sometimes conflicting national and transnational legal regimes and soft law normative orders.[34] They reflect the tension between the territoriality of national laws and transnationality of the global production mechanisms.[35] The society centrist approach of the GVCs is the post-modern reflection of the historical continuity of the global legal pluralism. The decentralized authority in GVC governance is visible in their multinational dependencies and their private norm-creating effects: CSR.

Economic Institutions of Capitalism-Firms, Markets, Relational Contracting (New York, The Free Press, 1985) at 47.

[31]Wendt (2003) *supra* note 24, at 20.

[32]Thomas Donaldson and Thomas W. Dunfee developed the 'integrative social contracts theory', focusing on trans-cultural norms in a system of layered social contracts. Thomas Donaldson and Thomas W. Dunfee, *Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory*, 19 Academy of Management Review(1994), 252–284.

[33]John Gerard Ruggie, *Multinationals as Global Institution: Power, Authority and Relative Autonomy: Multinationals as Global Institution*, 12 Regulation and Governance, no. 3 (2018), 317-333, at 330.

[34]Günther Teubner, "Global Bukowina: Legal Pluralism in the World Society" in Günther Teubner (ed.), *Global Law Without a State* (Brookfield: Dartmouth 1997) at 10, Brian Z. Tamanaha, *A Non-Essentialist Version of Legal Pluralism*, 27 Journal of Law and Society, no. 2 (2000), 296-321, at 317.

[35]Claire Cutler, *Legal Pluralism as the 'Common Sense' of Transnational Capitalism*, 3 Oñati Socio-Legal Series, no. 4 (2013), 719-740, at 726.

3. Corporate Social Responsibility

Following Caroll's model CSR can be imagined as a pyramid.[36] This theory basically differentiates between four different layers of responsibility: Economic, legal, ethical and philanthropic. Ethical duties include recognizing business integrity beyond mere compliance of laws while corporate philanthropy refers to being a 'good corporate citizen', engaging in activities desired by the society. The duties are not separate from each other and ethics infiltrate towards different components of the pyramid. Yet, long term profit goals are key especially for economic, legal and ethical responsibility.

The mechanisms whereby CSR policies are to be implemented are 'standards' and 'codes of conduct/ethics'. Industry standards generally have a private and voluntary nature and they are adopted by a formal process involving the consensus of key stakeholders such as consumers or different participants in the production line. GVCs work alongside consumer groups, NGOs and trade unions to establish common standards and monitoring mechanisms also referred as "voluntary monitoring initiatives."[37]

Standards are self-developed and self-monitored by individual enterprises. Yet, many of them are *de facto* mandatory such as Social Accountability International's (SAI) SA8000 (on socially acceptable practices in the workplace such as the prevention of child labor, forced labor, discrimination; securing health and safety, compensation, reasonable working hours, freedom of association and the right to bargain collectively) Fair trade (on sustainable and equitable trade relationships especially used for cocoa and coffee), Utz Kapeh (on sustainable farming of cocoa and coffee), Rainforest Alliance (on the protection of human rights and environment especially in the face of the climate crisis) and so on.

Codes of conduct/ethics are voluntary commitments of the business actors for the conduct of business activities in the market, as forms of self-imposed obligations. All fortune 500 companies have codes of conduct.[38] The tendency of globally operating corporations to self-bind themselves with soft law normative orders can be explained with different theories. First, the instrumental model focuses on the corporate social performance. CSR deserves as much attention as it creates extra

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[36]Archie B. Carroll, *A Three-Dimensional Conceptual Model of Corporate Social Performance,* 4 Academy of Management Review, no. 4 (1979), 497–505, 499 *et seq*.. Archie B. Carroll, *The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders,* 34 Business Horizons, no. 4 (1991), 39–48, at 42, Archie B. Carroll, *Corporate Social Responsibility: Evolution of a Definitional Construct,* 38 Business and Society,(1999), 268–295, at 288 *et seq.*

[37]Adelle Blackett, *Global Governance Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct*, 8 Indiana Journal of Global Legal Studies, no. 2 (2001), 401-447, at. 407, John J. Kirton and Michael J. Trebilcock (ed.), Hard Choices, Soft Law Voluntary Standards in Global Trade, Environment and Social Governance (London: Routledge, 2004), at 3 *et seq*.

[38]Doreen McBarnet, *CSR Beyond Law Through Law For Law*, 3 Edinburgh University Working Papers, (2009), 1-63, at 3.

revenue for the firm. In other words, the purely egoistic and instrumental use of CSR requires the adoption of social standards and codes of conduct as long as they increase the long term financial benefit.[39] For a long time corporate actors adopted CSR policies instrumentally as a continuum of the Lockean trajectory of international trade.

On the other hand, stakeholder approach proposes to take the individuals or groups with a 'stake' into account: Employees, local communities, distributors and other groups and individuals who benefit from or are harmed by corporate actions.[40] This model assumes that the interests of all stakeholders are intrinsically valuable. Yet, it is also generally focused on the business case and as a result global trade faces the risk of halfhearted CSR clauses and creative/selective compliance. Today as GVCs created a new form of global society, CSR policies are also explained via political theory. The model of corporate citizenship is focused on the tension between globalized economy and national politics that results with non-state actors assuming political powers.[41] Accordingly, the political role of GVCs becomes essential to analyze the relationship between law and development.

3.1. CSR as Private Norm Making

CSR is sometimes taken as an example of the 'governance without government'.[42] Rather, it is a demonstration of the norm-making power of 'private governments' assuming a highly public character. Accordingly Wendt's social theory

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[39]Peter Seele and Irina Lock, *Instrumental and/or Deliberative? A Typology of CSR Communication Tools*, 131 Journal of Business Ethics, no. 2 (2015), 401–414, at 402. Mäkinen (2012) *supra* note 4, at 651.

[40]J. Scott Armstrong and Kesten C. Green, *Effects of Corporate Social Responsibility and Irresponsibility Policies*, 66 Journal of Business Research, no. 10 (2013), 1922-1927, at 1925, Micheal C. Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function*, 14 Journal of Applied Corporate Finance, vol. 3 (2001), 8-21, at 11, Thomas Donaldson and Lee E. Preston, *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*, 20 The Academy of Management Review, no. 1 (1995), 65-91, James W. Child and Alexei M. Marcoux, *Freeman and Evan: Stakeholder Theory in the Original Position*, 9 Business Ethics Quarterly, no. 2 (1999), 207-223, Mäkinen (2012), *supra* note 4, at 663.

[41] Dirk Matten and Andrew Crane, *Corporate Citizenship: Toward an Extended Theoretical Conceptualization*, 30 Academy of Management Review, no. 1, (2005), 166-179, pp. 166-167, Marc T. Jones and Matthew Haigh, *The Transnational Corporation and New Corporate Citizenship Theory: A Critical Analysis*, The Journal of Corporate Citizenship, no. 27 (2007), 51-59, 52 *et seq*.

[42]Tanja A. Börzel and Thomas Risse, *Governance Without a State: Can it Work?* 4 Regulation and Governance (2010)113–134, at 124, Cutler (2013) *supra* note 35 at 724. For the attempts of creating a normative framework of hard law at the global level that clarifies and imposes duties and responsibilities on private enterprises see "UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003); available at http://hrlibrary.umn.edu/links/commentary-Aug2003.html (last accessed: 25.09.2020) also see "Guiding Principles on Business and Human Rights: Implementin the United Nations "Protect, Respect and Remedy" Framework" that was unanimously endorsed by the UN HR Council on 17 June 2011, available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (last accessed: 25.09.2020)

explains that GVCs are good examples of the Lockean logic of anarchy in international sphere. They are governed without a centralized authority in the global scale. As such voluntary self-regulation exist in paralell to the traditional governmental tasks of political and social regulation, creating *erga omnes* obligations as opposed to the *inter partes* obligations created by the contracts.[43]

Global trade actors operate as the new providers of citizenship rights and public goods as a result of the globalized economy. The political theory behind CSR has contractarian foundations. The need of a unanimous agreement to create a central authority in global trade aims at disincentive opportunistic behavior. This 'new social contract' is created under the Rawlsian veil of ignorance.[44] That is, it helps corporate actors and other stakeholders to evaluate the *ex-post* situation in the light of the Pareto efficient contract selected on the basis of the status-quo.[45]

CSR operate through one macro-social contract and several micro-social contracts such as corporate codes of conducts or standards.[46] Such a Rousseauian macro social contract aims to achieve mutually beneficial cooperative relationships, creating a new form of "world society" transforming moral duties into legal ones. The will of this new civil society is the component that gives its legitimacy to this social contract in international trade.[47] The social contract theory explains the compliance with the CSR instruments with a more participatory form of democracy, creating a tripartite-plus dialogue that includes different stakeholder groups.[48] To illustrate, CCC (Clean Clothes Campaign) presents a multi-stakeholder initiative that assists companies in preparing and implementing codes of conduct, engaging in fair contractual practices and informing end consumers about the labour conditions in the sector. From a law and development perspective, democracy is essential to sustain growth.

Soft law initiatives present us with individuals sharing political authority and responsibility as its extension. International business law is based on CSR in terms of preventing the human rights abuses and maintaining the equitable balance between

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[43]Cutler (2013), *supra* note 35 at 723.

[44]Child and Marcoux (1999) *supra* note 41 at 209, 211. Lorenzo Sacconi, "A Rawlsian View of CSR and the Game Theory of its Implementation (Part I): the Multi-stakeholder Model of Corporate Governance" in Lorenzo Sacconi, Margaret Blair, Edward R. Freeman and Alessandro Vercelli A. (eds), *Corporate Social Responsibility and Corporate Governance*, (London: Palgrave Macmillan, 2011), pp. 157-193.

[45]Lorenzo Sacconi, *A Social Contract Account for CSR as an Extended Model of Corporate Governance (I): Rational Bargaining and Justification,* 68 Journal of Business Ethics (2006), 259–281, at 271.

[46]The fairness among all of the stakeholders is provided by imagining them behind a hypothetical veil of ignorance. This requires stakeholders having no idea which particular stake they have beforehand. John Rawls, *A Theory of Justice*, (Revised ed., Cambridge, MA: Belknap Press, 1999), pp. 118-123, John Douglas Bishop, *For-Profit Corporations in a Just Society: A Social Contract Argument Concerning the Rights and Responsibilities of Corporations,* 18 Business Ethics Quarterly, no. 2 (2008), 191-212, at 208.

[47]Lon L. Fuller, *Law as an Instrument of Social Control and Law as a Facilitation of Human Interaction, 89* BYU Law Review (1975), 89-96, at 94.

[48]In addition to the classical tripartite model that encompasses state, industry and work force involvement in the social dialogue, the tripartite-plus model refers to the multi-stakeholder partnerships to provide a more democratic participation. See https://www.ilo.org/global/about-the-ilo/who-we-are/tripartite-constituents/lang--en/index.htm (last accessed: 25.09.2020)

different social systems. While theorizing social contract as the basis of CSR, the 'state of nature' should not be taken as a mythical pre-political state. Rather it should be seen as the relative relationship between individuals. Parties -either natural or legal persons- from different political orders may conclude contracts while remaining in the state of nature relative to each other. Since Grotius, human-like characteristics are used to describe the international order via social theory.[49] Such analogy can also be used for states or for corporate persons because their ontology is anthropocentric. They all have interests and identities such as survival, autonomy, economic well-being and collective self esteem as motivational dispositions.

The discourse of globalism accepts that law is constituted by the sovereign authority, albeit with global agendas.[50] GVCs reflect such tension by shifting the sovereignty to private entities, whereby CSR reflects the amalgam of private and public norm making powers. The idea of creating a new world society is visible in the CSR policies in GVCs as the new forms of spontaneous laws applicable to trade relations, that emerged outside of the state. In other words, CSR is a part of the evolution of law in relation and response to the change of economic mentality. It is also the manifestation of the development of a new societal forms.[51] The current world, shows us that international commerce is again capable of creating efficient legal norms outside the state to sustain development.[52]

3.2. CSR as Ancillary to Contract Law

Today international business shows us that public/private and national/international should be re-interpreted for each other. As globalization shifted the existing boundaries between these areas, CSR as a fundamentally social and economic concept entered into legal sphere. By definition, CSR tools reflect voluntary commitments through codes of conduct or industry standards for a more ethical global trade. Yet, the legal framework of CSR instruments and whereby they affect the development is often open to discussion. In the legal sphere, CSR can be seen as an agent of legal pluralism, promoting heterogeneity over homogeneity.[53] It is a widely used mechanism in the governance of GVCs today as a result of the need for informality in legal relations. It blurs the lines between hard and soft law.

One cannot overlook the problem of drawing the line between social/ethical norms and law to analyze CSR from a legal standpoint. On the contrary to the institutionalist scholars like Weber or Hart who see law as institutional norm enforcement, legal pluralists

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[49]Wendt (2003), *supra* note 24, at 41, Talya Ucaryilmaz, *The Principle of Good Faith in Public International Law*, 68 Deusto Law Journal, no. 1 (2020) 43-59 at 57 *et seq.*

[50]Wendt (2003), *supra* note 24, pp. 41-43.

[51]Richard Swedberg, *The Case for an Economic Sociology of Law*, 32 Theory and Society, no. 1 (2003), 1-37, at 13.

[52]Ralf Michaels, *The True Lex Mercatoria: Law Beyond the State*, 14 Indiana Journal of Global Legal Studies, no. 2, (2007) 447-468, at 461.

[53]Scamardella (2015), *supra* note 22, at 77 *et seq*.

suggest different types of normative orders to be considered as 'law'.[54] Teubner's approach to legal pluralism is based on the famous autopoiesis theory of Niklas Luhmann.[55] The autopoietic theory suggests that law is an autonomous, differentiated, self-reproducing sub-system.[56] An autopoeitic system produces and reproduces its own elements by their interactions.[57] Accordingly it suggests that law is the discourse that invokes the binary code of legal/illegal. This requires legal pluralism not be a set of conflicting social norms, rather it refers to the holistic approach towards different communicative processes.[58] It is the tension between the aim at deparadoxification vs. hybridity.

For Boaventura de Sousa Santos, law reflects regularized procedures and normative standards that contribute the creation and settlement of disputes through argumentative discourse.[59] He differentiates between different types of law: Domestic law, production law, exchange law, community law, territorial law and systemic (international) law. While production law refers to the body of norms that regulate wage labour relations such as codes of conduct for employees, exchange law refers to trade customs and normative standards among different nodes of the GVC.[60] Accordingly, CSR tools as soft-law instruments operate in between production, exchange and systemic law clusters. They create an efficient heterocephaly in the governance of GVCs.

Both formal state law and customary law are taken into consideration in law and development scholarship.[61] Customary law is often expressed as the law that owes its force to the direct expression in the conduct of men, arising from the social interaction. In this sense, custom refers to the pattern of interactions of the general public that turns into legitimate expectations.[62] It is also a common basis of for interpreting the behavior in a given society. In this regard, CSR policies of the globally operating firms have customary law characteristics. GVCs operate with customary norms deriving tacitly from interaction. Recognizing CSR as global corporate customary law facilitates to assign accountability to

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[54]Tamanaha (2000), *supra* note 34 at 298

[55]The concept of autopoiesis is originally developed by two Chilean biologists Humberto Maturana and Francisco Varela. Autopoiesis means self-(re)production in ancient Greek. Niklas Luhmann, "The Unity of the Legal System" in Günther Teubner (ed.), *Autopoietic Law: A New Approach to Law and Society* (Berlin: de Gruyter, 1988), at 18.

[56]Tamanaha (2000), *supra* note 34 at 308.

[57]Günther Teubner, "Introduction to Autopoeitic Law" in Günther Teubner (ed.), *Autopoietic Law: A New Approach to Law and Society* (Berlin: de Gruyter, 1988), pp.1-11.

[58]Both Tamanaha and Teubner takes law in a non-essentialist way. Yet, Tamanaha has a predominant reliance on social practices. Tamanaha (2000), *supra* note 34 at 307 and 319. Teubner (2002) *supra* note 27 at 204, Günther Teubner, *The Two Faces of Janus: Rethinking Legal Pluralism*, 13 Cardozo Law Review (1992), 1443-1462, at 1451.

[59] Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (1st edition, London: Routledge, 1995), Tamanaha (2000), *supra* note 34 at 303.

[60]Brian Z. Tamanaha *A General Jurisprudence of Law and Society*, Oxford: Oxford University Press, 2001), at 184.

[61]Lee (2017), *supra* note 19 at 424.

[62]Lon L. Fuller, *Law and Interaction*, 13th Annual Meeting of the of the Board of Editors of The American Journal of Jurisprudence, (USA, 1969). 59-89 at 60.

the multinational firms for their environmental law and human rights violations.[63] The general acceptance of CSR via learning contributes to the sense of compulsion that lies behind customary law, creating a quasi-collective consciousness in the new world society.[64] This also represents, the tacit will of the civil society as a *persona ficta*.[65] Accountability of the lead firms from their labor law and environmental law infringements requires a broader understanding of law.

Fuller argues that the interactional foundations of contract law makes customary law its close cousin. Customary law creates a code of conduct between contracting parties, that are reflected in their voluntary CSR policies. The corporate codes of conduct and industry standards present us a complementary relationship with individual contracts within a GVC. In other words, the ancillary nature of voluntary CSR tools to contracts lies in the relationship between customary law and contract law. The contract sets the framework for an ongoing relationship. Yet one has to look to the behavioral patterns of the two-party interactions that are implicit in the parties' actions to understand and to define it.[66] In this sense, whether or not the CSR tools are seen as the valid parts of the existing contracts in GVCs, they affect the legal relationship between parties.

This view is also supported by the relational contract theory as a sociological tool. Neoclassical contract doctrine does not take relational aspects into consideration. On the other hand relational contract theory sees the behavior of the parties as a series of prisoners dilemmas and emphasizes the importance of extra-legal infrastructure for performance and cooperation.[67] In this regard, the contract is not a one shot bargain that creates a simple *iuris vinculum.* Rather, it is a complex relationship and this interpersonal relationship creates ethical duties.

Relational contract theory suggests sufficiently flexible mechanisms to be effective for the GVCs while not contradicting with the classic promise-centrist model. In GVCs, the mutual expectations between the parties and other links that are proximate are not restricted to the short-term contract. The contractual chain contains wider responsibilities and mutual social expectations. The information flow among parties is significantly different. Therefore the legal framework of the contracts in the different nodes in the chain should be altered to fit the relational nature of the relationships. As Eisenberg argues, *"the principles of contract law should be based on considerations of fairness, as determined principally by conventional morality, and of policy, as determined principally by*

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[63]Kirsten Stefanik, *Rise of the Corporation and Corporate Social Responsibility: The Case for Corporate Customary International Law*, 54 Canadian Yearbook of International Law (2016), 276-308 at 278.

[64]The two main elements of binding customary law are *opinio iuris sive necessitatis* and state/non-state practice. Customary law is binding as long as it arises out of repetitive actions when such actions are motivated by a sense of duty. Fuller (1969), *supra* note 63 at 60.

[65]Swedberg (2003), *supra* note 52 at 21.

[66]Fuller (1969), *supra* note 63 at 64.

[67]Ian R. Macneil, *Reflections on Relational Contract*, 141 Journal of Institutional and Theoretical Economics, no. 4 (1985), 541-546, 542 *et seq.*, Ian R. Macneil, *Relational Contract: What We Do and Do Not Know*, Wisconsin Law Review, (1985), 483-526,pp. 485-487, Moshe Gelbard and Yehuda Adar, *The Role of Remedies in The Relational Theory of Contract – A Preliminary Inquiry*, 7 European Review of Contract Law, no. 3 (2011), 399-424 at 410.

efficiency and administrability."[68] Recognizing ethical duties in international business or re-calibrating classical contract law remedies helps to find a better balance for the governance of GVCs.

Today there is lack of effective institutional means for the governance of GVCs. Private tort litigation is usually not uniformly effective and contractual protection and its impact is limited.[69]Although the research on what kind of legal reform concerning GVCs would affect the different stages of development is not clear enough, studies show that self-governance is efficient in regulating international business relations. First, they reduce costs of negotiation, specification, implementation and dispute resolution.[70] Second, regulatory pressures are more likely to be effective if the production complexity is low.[71] The production complexity of GVCs makes CSR initiatives more effective then other regulatory means. Third, as firms can circumvent regulatory control extra-legal commitments are needed for a better compliance. Legal rules mimicking the non-legal norms, helps informality to enhance the ability of hard law to contribute development.[72]

Institutional conditions are catalytic for the social goals such as sustainability and fair trade/labor conditions. CSR tools are the reactions to the need of such social goals. Contract and tort law provide additional protection to the CSR compliance in the private sphere, supporting voluntary commitments by their coercive nature. As tort law extends the legal enforceability of the duties arising from CSR, contract law has the ability to give the codes of conducts or standards the weigh of valid legal obligations. [73] The legal theory of economic growth requires effective contract law mechanisms.[74]

Lead firms in the GVCs tend to incorporate CSR instruments into the contracts they concluded with their suppliers. They impose Supplier Codes of Conduct (SCC) on their suppliers in developing countries whereby they manage and monitor their suppliers' ethical and socially responsible practices. This results with the contractualization of the ethical obligations, making CSR tools binding.[75] Still the courts are generally reluctant to find corporate codes of conduct to be enforceable

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[68]Macneil (1985), *supra* note 68 at 544, Melvin Aron Eisenberg, The Responsive Model of Contract Law, 36 Stanford Law Review, no. 5 (1984), 1107-1167 at 1111, Steve Macaulay, Non-contractual Relations in Business, A Preliminary Study, 28 American Sociological Review, (1963) 1–19 at 13.
[69]McBarnet (2009), *supra* note 39 at 47.
[70]Ratner (2001), *supra* note 1 at 531.
[71]Bin Jiang, *Implementing Supplier Codes of Conduct in Global Supply Chains: Process Explanations from Theoretic and Empirical Perspectives*, 85 Journal of Business Ethics, (2009), 77–92., 78 *et seq*.
[72]Robert D. Cooter, *The Rule of State Law and the Rule of Law State: Economic Analysis of the Legal Foundations of Development*, Berkeley Law Journal, From the Selected Works of Robert Cotter, (1997), 191-217 at 212.
[73]McBarnet (2009), *supra* note 39 at 31.
[74]Robert D. Cooter and Hans-Bernd Schäfer, *Solomon's Knot: How Law Can End the Poverty of Nations*, (Princeton: Princeton University Press, 2012), at 82 *et seq.*
[75]Child and Marcoux (1999), *supra* note 41 at 213.

contracts. Relating to their incorporation, we face several contract law problems such as the problem of validity of the clauses and its applicability to 3rd parties in the chain.[76] The principle of privity suggests the *iuris vinculum* to be binding only for the relevant parties whereas customary law has a wider application towards other stakeholders.

Institutional development is path-dependent considering the history of trade and technology. International economic activity is following a Lockean trajectory since Roman trade law. Yet today, collective security interests such as human rights and environmental concerns in international business create a tendency towards the Kantian culture. The reason is because international economic activity is also a social phenomenon and international trade is a specific type of social interaction. International actors interact when they take each other into account in making their choices. Both the rationalist discourse and interactionism agree on that where the relationships are based on trust a flexible contract law where ethical principles are the key is more efficient. Trust in international business can be sustained by genuine compliance with CSR instruments, ancillary to contract law.

3.3. CSR as a Competitive Drive

The objective of a firm is to maximize its profits over the long term by maximizing the gap between revenues and relevant costs. As such, CSR deserves more attention if they could expect CSR actions to help increase that gap. In a study in UK, 86% of respondents said they would be more likely to purchase from a company associated with a 'good' cause like biodegradable, sustainable or fairly traded products.[77] The economic value of corporate social performance creates incentives on the firms to comply with CSR for halfhearted reasons and 'green-wash' their products and services to gain more attention. Assuming ethical and social duties if and if only they create long-term financial

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[76]Many firms incorporate standards and codes of conduct into their supply contracts and promise to do business exclusively with suppliers who are in compliance with them while reserving the right to inspect foreign suppliers to ensure compliance. In one case concerning Wal-Mart, the U.S. court decided that the 'Standards' did not constitute a promise clear enough to be an offer even though the suppliers had to sign the 'Standards' acknowledging they have read and understood and that any failure to comply may end in termination of the business relationship. Still, they were seen as non-contractual guidelines about the business conduct. The foreign suppliers were also obligated to post a copy in their factories in different languages that the employees could understand. Overseas employees (as third party beneficiaries) alleged that Wal-Mart failed to enforce its Standards which required foreign suppliers to adhere to local laws and industry standards about working conditions. The third party beneficiary claim was *a fortiori* rejected. The right to monitor was seen as for the benefit of Wal-Mart, not for the benefit of the suppliers or the employees. However, by translating the Standards in the local languages and putting them in various visible places in the factory Wal-Mart created a legitimate expectation of trust on the employees who relied on them. Doe v. Wal-Mart Stores, Inc. 2007 U.S. Dist. LEXIS 98102, (C.D. Cal. Dec. 28, 2005), Katherine E Kenny, *Code or Conduct: Whether Wal-Mart's Code of Conduct Creates Contractual Obligation Between Wal-Mart and the Employees of its Foreign Suppliers*, 27 Northwestern Journal of International Law & Business, no. 2 (2007), 453-474.

[77]Armstrong and Green (2013), *supra* note 41 at 1925.

gain is too pessimistic to explain CSR today. Yet, CSR as a competitive drive plays a major role especially in the industries with high customer awareness such as global garment or food sectors.

The corporate value of the 'governance without government' is not novel. It was visible in medieval *lex mercatoria* as a continuum of Roman legal tradition. *Lex mercatoria* referred to the supra-local mixture of official laws and established mercantile customs and institutions. It was applied by official courts and quasi-private local tribunals. In medieval era western economy experienced a very rapid growth in agricultural productivity and trade, new cities were founded and the number of merchants grew rapidly. As such, merchants as a social class -*societas mercatorum*- developed their own law: Coherent, flexible and equity based set of rules, directed to reduce transaction costs that arose from the diversity of existing normative orders. The relevance of *lex mercatoria* today lies on the success of the merchants' courts in enforcing their verdicts, even though they had no state or similar political institution to support them. The main reason behind this success rate is explained as the reputational risk that the merchants were not willing to afford.[78]

Although medieval *lex mercatoria* momentarily died after the emergence of the nation states, it was resurrected in 20th century. Informal and private law making became efficient again for global trade which is highly technology oriented. The medieval law merchant was a status-based law for merchants, reflecting a stratified society that distinguished between different classes. The modern law merchant, by contrast, reflects the functional differentiation of the new world society. It is the law for the commerce, not for the merchants.[79] Yet, the effectiveness of the CSR initiatives in today's new corporate society is a reflection of the reputational risk of non-compliance.

Reputational risk changes the value generation, influences future income and affects the dynamics of the market. GVCs are more vulnerable to adverse policy especially in outsourcing and branding.[80] Use of child labour, poor working conditions, worker rights abuses and other forms of unethical behaviour in the GVC may harm the public image and the brand value of the lead firm. On the other hand, small or medium sized suppliers in the developing countries concern themselves about the added costs required by CSR compliance.[81] Therefore some firms compensate the suppliers with the costs associated with code compliance in the form of joint investments. Another measure is rewarding the compliance as positive reinforcement.[82] CSR initiatives also provide a first mover's advantage in the market.

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[78]Michaels (2007), *supra* note 53, pp. 453 457, Swedberg (2003), *supra* note 52 at 37

[79]Michaels (2007), *supra* note 53 at 466.

[80]McBarnet (2009), *supra* note 39 at 10.

[81]Peter Lund-Thomsen and Khalid Nadvi, *Clusters, Chains and Compliance: Corporate Social Responsibility and Governance in Football Manufacturing in South Asia*, 93 Journal of Business Ethics, no. 2 (2010), 201-222, at 204.

[82]Esben Rahbek Pedersen and Mette Andersen, *Safeguarding Corporate Social Responsibility (CSR) in Global Supply Chains: How Codes of Conduct are Managed in Buyer-Supplier Relationships*, 6 Journal of Public Affairs, no. 3 (2006), 228–240 at 230.

High compliance rates increase the demand, especially in the paradigm of conscious consumption.[83] The reputation is the biggest asset and the biggest business risk for the GVCs.

The social aspects of the value generated in the GVCs revolve around environmental concerns, sustainability and labour regulations. UN defines sustainability as economic prosperity, environmental quality and social equity. Standards and codes of ethics present the consumer with market-driven ethical consumption. However CSR initiatives also aim at improving the global market economy. They are directed to the well-being of small producers by improving their market access and providing continuity in global trade.[84] Transnational norms on sustainability and chain-wide corporate codes as customary rules of business practice shape the behavior of each link in the value chain and provide the necessary added value to the links. Yet, CSR revolves around inter-generational duties and interactions. It is about future than it is about today, which makes the economic analysis of the value even harder.

Even though CSR instruments do not take the form of valid contractual obligations, the prospective future relationship between the supplier and the buyer creates necessary incentives to comply with the social/ethical requirements. In other words, the continuing business relation and the possible economic gains create incentives to cooperate without the necessity of a coercive mechanism. This presents us with a clear example of relational exchange theory: To prescribe commitment and proscribe opportunism certain behaviors in exchange relationships is controlled not through threats but through a system of mutual- and self-regulation.[85]

CSR as a competitive drive demonstrates how can wealth maximization concerns be combined with social goals. In the context of GVCs, efficiency and equity go hand in hand.[86] The governance of GVCs aim to minimize the abuse of corporate power while sustaining the functionality of the global market. In other words, the aim is to find the balance between seeing externally imposed contraints from a perspective of the cost-benefit calculi and as a set of normative ideals. Whereby to do this, CSR momentum (both as hard law and soft-law) should be supported with other factors in the transnational scale. Civil society pressures, market pressures, reputational risk management and effective monitoring in addition to the legal infrastructure will create a synergetic effect for the effective CSR compliance.

4. Conclusion: Lessons For a Sustainable Future

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[83]Matthew Haigh and Marc T. Jones, *The Drivers of Corporate Social Responsibility: a Critical Review*, 12 Electronic Journal of Business Ethics and Organization Studies, no. 1 (2007), 16-28 at 18.

[84]Tim Bartley, *Institutional Emergence in an Era of Globalization: the Rise of Transnational Private Regulation of Labor and Environmental Conditions*, 13 The American Journal of Sociology, no. 2 (2007), 297–351 at 298 *et seq.*

[85]Bin Jiang (2009), *supra* note 72, at 80.

[86] Ugo Mattei, *Efficiency as Equity: Insights from Comparative Law and Economics*, 18 Hastings International and Comparative Law Review, no. 1 (1994), 157-173 at 170 *et seq.*

GVCs are essential components of international trade. More than 70% of international trade is revolving around exchanges of raw materials and intermediary goods used by firms to produce and serve their final customers. From a law and development perspective, GVCs presents us with many benefits by allowing firms to outsource more efficiently, to access knowledge easily, to operate beyond the national economy and to expand their activities into new markets. Hereby they play a key role in generating wealth and reducing poverty, presenting the opportunity for developing countries to grow. Yet, they are also capable of reinforcing inequalities in the global world order. Therefore CSR as the ethical safeguard of international trade today plays a major role in GVC governance.

GVCs are composed of interdependent firms that enter into a pattern of interrelated contracts which do not fit into traditional legal concepts. The plethora of legal problems arising from their interactions can be solved with proactive national legislation, contract law mechanisms, tort law remedies and extra-legal measures as their ancillaries. There are lessons to be drawn from many past events such as the Tazreen Fashion Plant fire in 2012 and the Rana Plaza garment factory collapse in 2013 in Bangladesh. The drawbacks of the Covid-19 pandemic in the developing world showed that even the up-to-date CSR approach can fail in its ability to compel the firms to act ethically. Such events demonstrate us that the GVC management may lead to precarius human rights violations in terms of access to health care, food insecurity, unemployment and gender inequalities. They also show us that reconciliation of profitability and morality is more important than ever.

The interconnected causal dynamic of history, law, economy and sociology demonstrates that contract law is crucial in the governance of GVCs as it deals with the protection of legitimate interests in commercial dealings. GVCs changed the paradigm of contract law, adding a new aim to the neo-classical efficiency without contradicting it: Securing the cooperation and trust not only between contracting parties but also between all stakeholders directly involved in the contractual web. GVCs are not ordinary webs of contracts. They have broader global societal and environmental effects that should be regulated by both legal and extra-legal mechanisms.

CSR instruments are often created and adopted in developed countries, yet their effects are amplified in the developing countries. Like the cellular fluid that gives the cell its dynamism, GVCs need social cooperation as an essential substance to function. CSR which was a former unorthodox soft law mechanism became a general component of international business today. The experience to gain from GVCs is simple. Law is essential but not enough for economic and social development. The dynamic of CSR as both hard law and soft law, the judicial response, civil society initiatives and market motives contribute each other's sphere of influence.

Moral, social, and economic rationales affect the behavior of corporations. Therefore the interplay between legal compliance and the broader social dynamics that can contribute to positive change needs to be carefully calibrated. International economic relations are not only affected by socio-cultural factors, they often influence the socio-

cultural features of the communities involved. Taking CSR as a way of learning stems from the idea that a new culture has to be created as a self-fulfilling prophecy.[87] That is to say, actors act on the basis of beliefs they have about the environment and others, which tend to reproduce those beliefs. This shared knowledge constitutes agents with interests and identities, such as 'the good corporate citizenship'. Lead firms in the value chain have this discursive power to influence outcomes through promoting ideas, setting social norms and shaping identities.[88] Developed countries are expected to be the pioneer in this trajectory with their strong financial and technological infrastructures and their well-established legal traditions. Taking CSR as a way of learning means to acknowledge its ability to constantly change in relation to existing business practices.

CSR assumes the role of multilateralism in stabilizing the consequences of rapid international change.[89] Not everything in contracts are contractual by nature. Contract law norms can only be effective if there is suitable social structure to back them up. Even in the case of contractualization of the CSR, extra-legal drives are required for proper implementation of the contracts. From a Rousseauian view, GVCs are the corporate reflections of how we chain ourselves in society. In other words, GVCs are no longer operating with definable one-on-one legal chains with clear power structures in a linear stream of contracts. Although the chains still exist between each link, they are all entangled. Such state requires the hybridity of legal and extra-legal mechanisms to increase compliance to CSR.

CSR is a key factor in the assessment of the impact of law to development from the perspective of GVCs. The emphasis of this paper was focused on the more positive aspects of CSR. Yet, the scope and depth of legal problems require further empirical research. Especially an industry-sensitive analysis for the effectiveness of formal and informal institutions on development is crucial. The next step of this research agenda on GVCs is to pragmatically simplify and objectify the legal requirements to achieve a more harmonious commercial system. Global harmonization and social cooperation pioneered by the developed nations is essential in a world wherein the relations between actors are becoming ever more complex and diverse.

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[87]Wendt (2003) *supra* note 24, at 108.

[88]Ruggie (2018) supra note 33 at 5.

[89] John Gerard Ruggie, *What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge,* 52 International Organization, no. 4 (1998), 855-885 at 867.

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