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Towards a Discourse Analysis of the Corporate Social Responsibility/Accountability Debate

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Towards a Discourse Analysis of the Corporate Social Responsibility/Accountability Debate

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1. Introduction

The purpose of this paper is to present a strategy for applying discourse analysis to the debate concerning the legal status of Corporate Social Responsibility ("CSR"). In the 1990s activists concerned with corporate involvement in activities that harm workers and the environment encouraged corporations to adopt voluntary initiatives, which have come to be known as CSR policies or corporate codes of conduct. Roughly ten years later NGOs like Christian Aid, which at first was a strong proponent of voluntary corporate codes of conduct, have begun calling for a greater emphasis on law and accountability mechanisms.[1] Trade unions especially have expressed deep scepticism of the idea of CSR initiatives and the attendant industry that has grown up around them.[2] The trade union movement criticises CSR initiatives for being a strategy to avoid regulation and trade unions.[3]

The debate appears to involve the opposition of a business oriented discourse, which I will call the CSR discourse, and a legal discourse that incorporates elements from international environmental and human rights law. At the centre of the debate is the question of how to ensure the protection of the environment and human rights from the activities of corporations that operate across national boundaries. This question arises because of assumptions we make about the nature of the corporation and the nature of national and international law.

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[1] See Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press 2006) at 195.
[2] Id. at 196. See text accompanying notes 26 and 27 below regarding the CSR industry.
[3] Id. at 196-7.

Given the collision of CSR and international legal discourse, discourse analysis based on the ideas of Michel Foucault presents itself as a potentially fruitful way of unpacking the assumptions that contribute to this ongoing debate. Foucault and other postmodern philosophers developed the idea that all knowledge consists of subjective interpretations of the world around us that are conditioned by our social surroundings and the dominant discourse of the time.[4] From a postmodern perspective, the debate about the nature of CSR can be seen as a confrontation between competing discourses that reflect different subjective interpretations of the nature and activities of corporations and their effects on human beings and the physical environment.

In the following paper I hope to present a strategy for applying discourse analysis to this debate drawing on the ideas of Michel Foucault and the English linguist Norman Fairclough. I first present my understanding of discourse and the elements of Foucault's and Fairclough's theories that I believe can be usefully applied to this project in section 2. In section 3 I show how I would approach the analysis of the discourses that appear in the debate about the nature of CSR. I conclude the paper in section 4 with my thoughts on what this discourse analysis CSR can contribute to our understanding of the corporate social responsibility movement and the debates surrounding it.

2. Discourse analysis based on Foucault and Fairclough

In linguistics "discourses" are linguistic units composed of several sentences, such as conversations, arguments or speeches. In the social sciences "discourse" has acquired another meaning that has its roots in the work of Michel Foucault. Foucault understood discourse "as

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[4] Postmodernism is the term used to describe the break from previous periods of intellectual history (Renaissance, Enlightenment, and Modernism) that consisted in rejecting the view that it is possible to construct a true and meaningful interpretation of the world. Postmodern theories are based on the view that the world is inherently fragmented and heterogeneous, and that all meaning and knowledge is merely subjective interpretation conditioned by social surroundings and the dominant discourse of the time.

consisting of a set of strategies which are part of social practices."[5] Foucault focused his analysis

of discourse on what makes speech acts meaningful.[6] He was not interested in interpreting texts or

determining the meaning of texts, but rather in the conditions necessary for the existence of

meaning. In Foucault's view meaning is created through relations of power in society. A discourse

develops in the context of power relations, which serve to define the realm of meaningful speech

acts about a specific topic.

Especially social science scholars working in linguistics, anthropology, sociology, cognitive

psychology, social psychology and communication studies began to use discourse analysis more or

less at the same time and in relation with other new disciplines, such as semiotics,

psycholinguistics, and sociolinguistics. Social scientists working with discourse analysis appear to

agree that qualitative social research, which would include discourse analysis, "needs concepts and

criteria to assess the quality of its findings, but that the classical concepts of validity and reliability

used in quantitative research cannot be applied without modification."[7] Here the agreement appears

to end, as social scientists working from different theoretical positions inevitably disagree about the

validity of each others' assumptions and the methodologies derived from them.[8]

Social scientists' preoccupation with linguistics, methodological issues and the criteria for

assessing the quality of their findings can be viewed as a departure from the basic idea of discourse

analysis developed by Foucault and other postmodern philosophers. These philosophers were not

so concerned with developing a particular method of analysing discourse as they were focused on

questioning the basic assumptions of quantitative and qualitative research methods. Michel

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[5] Michel Foucault, *Power: Essential Works of Foucault, 1954-1984, vol 3*, edited by James D. Faubion, (London, Penguin Books, 2002).

[6] Foucault presented his theory of discourse in The Archaeology of Meaning. The following is a very general summary of his approach to analyzing discourse.

[7] Michael Meyer, "Between theory, method, and politics: positioning of the approaches to CDA" in Ruth Wodak and Michael Meyer, editors, *Methods of Critical Discourse Analysis* (London, SAGE publications, 2001) (hereinafter referred to as "Wodak and Meyer") pages 14-31, at 29.

[8] See, e.g., id., at 16-17 (describing the debates between Norman Fairclough, who is a proponent of "critical discourse analysis", which has a very specific meaning within a certain network of European social scientists, and proponents of other approaches to discourse analysis).

Foucault in particular was not interested in the linguistic features of texts, but rather in the way our "knowledge" of the world is socially constructed through "a discourse understood as consisting of a set of strategies which are part of social practices."[9] From this perspective, social scientists' concerns with methodology and validity are themselves conditioned by and inscribed within a given discourse, and is conditioned by the power relations existing within the social practices of the various disciplines of the social sciences.

In order to explore the possibilities for applying discourse analysis to the CSR debate, I will adopt the postmodern theoretical position that meaning is created through interpretations of our perceptions of the world that are conditioned by our social surroundings and the dominant discourse(s) of our time.   While the purpose of discourse analysis from Foucault's point of view is not to provide definite answers or provide a specific methodology that assures the validity of one's conclusions but rather to alert us to unacknowledged relations of power that determine how we understand the world, he did not eschew all considerations of methodology nor do I. In order for my deconstructive reading and interpretation of the CSR debate to have any meaning, I must explain what I mean by discourse, how I identify the discourses I want to analyse and what the analysis actually consists of.

I rely heavily on Norman Fairclough's approach to discourse analysis for the construction of my methodology. Norman Fairclough's identifies himself as belonging to a network of social scientists that use critical discourse analysis (CDA) in their work. These scholars do not see CDA as constituting "a well-defined empirical method but rather a cluster of approaches with a similar theoretical base and similar research questions."[10] Fairclough's approach to discourse analysis is inspired by Foucault's although he acknowledges that he departs slightly from this tradition by focusing his attention on the linguistic features of texts. As indicated above, I believe that

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[9] Foucault, supra note 5, at 2-4.
[10] Meyer, supra note 7, at 23.

Fairclough's attention to the linguistic features of texts is inconsistent with Foucault's approach to discourse analysis. Indeed, I believe focusing on linguistic features of texts can complicate the analysis by importing linguistic assumptions that can push the analysis in a predetermined direction. Accordingly, I disregard those aspects of Fairclough's approach that require analysis of linguistic features of texts. On the other hand, Fairclough's understanding of discourse appears to be substantially consistent with Foucault's views and I believe it is helpful to present Fairclough's views here as part of my construction of a method of discourse analysis.

Fairclough's approach to discourse analysis proceeds from the view that semiosis, i.e. all forms of meaning making, including visual images, body language, as well as language, is an irreducible part of social processes.[11] According to Fairclough, all practices are practices of production. That is, they are the arenas within which all aspects of social life—economic, political, cultural or everyday life—are produced.[12] Fairclough sees social life as consisting of interconnected networks of social practices. Every social practice includes a number of elements, which are dialectically related: productive activity, means of production, social relations, social identities, cultural values, consciousness, and semiosis.[13] Fairclough sees semiosis as figuring broadly in three ways in social practices[14]:

1. It figures as a part of the social activity within a practice. Doing a job is a social practice, and using language in a particular way is part of that social practice.

2. Semiosis figures in the representations produced by social actors of their own and other social practices. Representations enter and shape social processes and practices.

3. Semiosis also figures in the "performances" of particular positions within social practices. That is, people who differ in social class, in gender, in nationality, in ethnic or cultural membership,

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[11] Norman Fairclough, "CDA as a Method in Social Scientific Research" in Wodak and Meyer, 121-138, at 122.
[12] Id.
[13] Id.
[14] Id. at 123.

and in life experience, produce different "performances" of a particular position within social practices.

Fairclough's conception of a discourse is based on his view of the role of semiosis in social practices. He says, "Semiosis in the representation and self-representation of social practices constitutes discourses. Discourses are diverse representations of social life which are inherently positioned—differently positioned social actors 'see' and represent social life in different ways, different discourses."[15]

Fairclough then builds upon his theory of the role of semiosis in social practice to arrive at the concept of dominant discourse. First, he explains, "Social practices networked in a particular way constitute a social order,…for instance the social order of education in a particular society at a particular time."[16] The semiotic aspect of a social order is what Fairclough calls an order of discourse. An order of discourse is a social structuring of different ways of making meaning within the social order.[17] "One aspect of this structuring is dominance: some ways of making meaning are dominant or mainstream in a particular order of discourse; others are marginal, or oppositional, or 'alternative'."[18]

Based on the foregoing theoretical considerations, Fairclough proposes the following analytic framework to follow in analysing discourse[19]:

Step 1: Identification of a social problem which has a semiotic aspect. Here Fairclough argues that CDA is a social science that has "emancipatory objectives, and is focused upon the problems confronting what we can loosely refer to as the 'losers' within particular forms of social life—the poor, the socially excluded, those subject to oppressive gender or race relations, and so

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[15] Id., at 123.
[16] Id., at 124.
[17] Id.
[18] Id.
[19] Id., at 125. Fairclough acknowledges that this framework is modelled upon the critical theorist Roy Bhaskar's concept of "explanatory critique", in R. Bhaskar (1986) *Scientific Realism and Human Emancipation*, London: Verso. The following summary of the analytical framework promoted by Fairclough is based on his presentation at pages 125-7.

forth." I submit that it is not necessary to focus on problems confronting the "losers" in order to use CDA. It is enough to identify a social problem which has a semiotic aspect. I will return to this argument in the next section of this paper.

Step 2: This part of the analysis is directed toward determining the causes of the social problem. The basic question underlying this stage is, in Fairclough's words, "what is it about the way in which social life is structured and organized that makes this a problem which is resistant to easy resolution?" Here the analysis must take account of the way social practices are networked together, the way semiosis relates to other elements of social practices and the features of discourse itself. At this stage of the analysis Fairclough feels it necessary to incorporate both linguistic and social analysis.

Step 3: At this point the analysis turns toward considering whether the social order generates the problem in order to sustain itself, i.e. whether the problem contributes to sustaining the order of discourse, which itself sustains particular relations of power and domination which characterise the social order under consideration.

There are two more steps in Fairclough's analytic framework. They are a positive critique, the aim of which is to identify unrealized possibilities for change within the way things are, and a reflexive analysis of the discourse analysis which seeks to evaluate the effectiveness of the analysis as a critique. These two stages reflect Fairclough's commitment to a Leftist political agenda. I do not consider these steps as being crucial to my analysis of the CSR-debate.

3. **Application of the Foucault/Fairclough-inspired analytical framework in a discourse analysis of the CSR-debate**

In this section I hope to show how the Foucault/Fairclough-inspired analytical framework developed above could be used to direct a discourse analysis of the CSR-debate. Rather than

choosing specific texts, I refer to the discourses of CSR, international human rights, and traditional international law. A more thorough discourse analysis would trace the development of CSR and critical responses to it through media reports and articles in business and law journals. I have also left out any explicit analysis of the different elements of social practice their dialectical relationship with semiosis. The following is therefore merely an indication of possible avenues for further investigation.

Step 1: Identification of a problem with a semiotic aspect. Newspaper coverage of the development of CSR generally locate the origins of the current CSR movement to the problems Nike had in the 1990s when its use of sweatshops in Asia for production of its shoes attracted the attention of various NGOs and aroused the indignation of a broad range of society. For example, in the Financial Times on Jan. 27 2005 contained a commentary that included the following statement: "Since Nike got into trouble for allowing the exploitation of workers in Asian factories, corporate social responsibility has become all the rage."[20] Others have noted that the impetus toward CSR started with the disclosure of transnational corporations' (TNCs) involvement (with the U.S. government) in the overthrow of Chile's Marxist government in the early 1970s and a series of other highly publicized misadventures by TNCs involving corruption and interference in local politics.[21] These accounts of the origins of CSR indicate that CSR is a response to the view that TNCs participate, if not instigate, human rights abuses. The debate about whether corporations should be encouraged to adopt voluntary initiatives or be held accountable under binding legal norms is a debate about what is the best way to get TNCs to stop this kind of activity. The semiotic aspect of the problem is seen in the debate—which is a straightforward example of semiosis as it

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[20] John Gapper, "The pint of taking responsibility", *Financial Times*, London, Jan 27, 2005, page 19.
[21] Larry Catá Backer, "Multinational Corporations, Transnational Law: The United Nations' Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law", 37 Colum. Hum. Rts. L. Rev. 287, 313. (2006).

involves the production of texts—about whether CSR actually being used by corporations to avoid binding obligations to negotiate with trade unions and respect human rights.

Step 2: The causes of the problem, i.e. what is it about the way in which social life is structured and organized that makes this a problem which is resistant to easy resolution? The CSR debate can be understood as a conflict between different legal paradigms, which organise the way in which we think about human rights and transnational corporations.

The basic idea underlying the CSR movement is that a corporation's responsibility extends beyond the objective of providing financial returns to its shareholders. This view is at odds with an older view of the nature of a corporation. Since the mid-20th century the dominant view of the primary purpose of corporations was that it existed to serve the holders of capital interests in the enterprise by maximizing the value of the capital amalgamated in the corporation.[22]

On the other hand, the idea that corporations should adopt voluntary CSR initiatives is fully consistent with the dominant view of the corporation. Corporations are created by laws that regulate how they are created and various regulations establish their legal obligations to shareholders. Laws governing corporations generally assume that the ultimate object of corporate existence is maximizing shareholder wealth, as evidenced by rules allowing corporations to distribute corporate property for charitable purposes within certain clearly defined limits.[23] In general the state can be seen as defining the parameters within which the corporation can itself determine how to maximise shareholder value, while the market is to provide the mechanism for regulating most corporate activity.[24]

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[22] See id., at pages 298-300. One could argue that this view of the purpose of the corporation is primarily Anglo-American. In Europe stakeholder, as opposed to shareholder, interests have enjoyed greater recognition. See John M. Conley, Cynthia A. Williams, "Engage, Embed, and Embellish: Theory versus Practice in the Corporate Social Responsibility Movement", 31 Journal of Corporation Law 1, at page 2. (2005). The extent to which the Anglo-American view of the corporation influences the CSR debate in Europe and other parts of the world should be considered in a complete analysis of the CSR debate.

[23] See Backer, note 21 above, at 296-7.

[24] Id., at 298.

Evidence that CSR does not appear to pose pose much of a challenge for the dominant corporate discourse is the growth of CSR activities since the 1990s. Between 1999 and 2002, the percentage of Fortune Global Top 250 companies that produced a separate social, environmental, or sustainability report in addition to their required financial reports increased from 35 to 45.[25] In 1993 only 10% of the Global 500 produced such reports.[26] Many of the same companies that produce social and environmental reports have also changed the way they interact with environmental, labour, human rights and other NGOs. Instead of purely adversarial relationships, in which the corporation defends its interests against issue-advocacy NGOs, many of these companies enlist NGOS to help them identify issues, produce and audit reports, and to conduct "dialogues" with diverse "stakeholders" around the world.[27]

In addition to the changed reporting and public relations practices of corporations, the expansion of CSR-thinking is seen in a new class of CSR professionals. These are professionals who occupy themselves solely or primarily with CSR issues. They include professionals employed within for-profit companies, outsiders who consult with companies and audit their non-financial reports, executives at pension funds, insurance companies and other institutional investment organizations who believe in socially responsible investing, those who work for and on behalf of NGOs, and a new class of academics at business and professional schools whose central research interest is CSR.

The call for CSR initiatives can be understood as deriving from the discourse of human rights, which is based on a legal paradigm of individual rights. NGOs calling for CSR initiatives in the 1990s invoked the international legal discourse of human rights, which began to achieve prominence, if not dominance, with the UN General Assembly's adoption of the Universal

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[25] See Conley and Williams, note 22 above, at page 4-5, citing KPMG Int'l, International Survey of Corporate Sustainability Reporting 2002 9 (2002).
[26] Id.
[27] Id. at 5.

Declaration of Human Rights in 1948, which emphasizes the rights of individuals rather than who has the duty to respect those rights.[28] Indeed, the well-known international law scholar Lou Henkin argues on this basis that the Universal Declaration addresses multinationals among other organs of society:

> The Universal Declaration is not addressed only to governments. It is a 'common standard for all peoples and all nations.' It means that '*every individual and every organ of society* shall strive—by progressive measures…to secure their universal and effective recognition and observance among the people of the member states.' *Every individual* includes juridical persons. *Every individual* and *every organ of society* excludes no one, no company, no market, no cyberspace. The Universal Declaration applies to them all.[29]

Voluntary CSR initiatives are at odds with this view of human rights. Limiting corporate social responsibility to voluntary initiatives suggests that they have no legal obligation to respect human rights—that it is an option corporations may choose if they are persuaded by business and moral arguments.

The human rights discourse described above is also at odds with the dominant state-centred view of international law. This view of international law asserts that states are the main actors in the international system and the only bearers of human rights obligations under international law. According to this approach, human rights problems are viewed through the lens of state responsibility, which demands that human rights problems concerning non-state actors, such as corporations, be dealt with as questions of the state's obligation to ensure respect for human rights.[30] Human rights law is nothing more than a requirement that governments protect everyone from those who might undermine those rights. Human rights are made completely consistent with the traditional view of international law through the device of state responsibility.

Step 3: whether the problem contributes to sustaining the order of discourse. Based on the foregoing descriptions of CSR, human rights, and international law discourses, CSR and

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[28] For discussion of the significance of the Universal Declaration's focus on individual rights, see Clapham, supra note 1, at 227-8.
[29] L. Henkin, "The Universal Declaration at 50 and the Challenge of Global Markets' 25 Brooklyn Journal of International Law (1999) 24-25 (emphasis in the original).
[30] See Clapham, note 1 above, at 25.

international law discourses may be understood as belonging to a dominant discourse that places the state at the centre of efforts to protect individual rights and corporations squarely in the private sector, which by definition does not have any legal obligations to respect individual rights other than those imposed by the governments that have jurisdiction over the corporations. The "accountability" position of NGOs may be seen as drawing on an alternative human rights discourse that sees corporations and other non-state actors as bearers of human rights obligations. Alternatively, it may also be understood as standing squarely in the dominant international legal discourse of state responsibility when it calls for binding legal rules. While Lou Henkin and others have begun arguing that corporations and other non-state actors are bearers of human rights obligations, it is overshadowed by the CSR movement's emphasis on voluntary initiatives and the dominant legal discourse of state responsibility. To the extent the debate is framed in terms of voluntary initiatives versus States' adoption of binding and directly enforceable legal obligations, the debate actually seems to reinforce the existing discourse of state responsibility to protect human rights. Other ways of protecting individuals' human rights are being developed,[31] but they are overshadowed by the current responsibility vs. accountability debate.

4. Conclusions

The foregoing sketch of a discourse analysis of the CSR debate indicates that participants in the debate invoke a number of legal discourses to frame and inform the debate. A complete analysis would have to look more closely at the paths of development followed by each legal discourse and take into account more social practices than what is evident from legal texts and literature. The human rights discourse itself has a long history that includes not just legal discourse but also moral and political philosophy. The dominant international legal discourse also has a long history and its emergence as the dominant discourse is in itself a complex subject. Discourse

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[31] See, e.g., Clapham, note 1 above.

analysis may be helpful in arriving at a more sophisticated understanding of the interests involved in the various positions taken in the CSR debate. Whether a more sophisticated understanding of the debate will lead to any change depends on the persuasiveness of the analysis and all the social factors that determine how scholarship eventually becomes incorporated into social life.