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What should communities stipulate in their (macro)social contract with business? Updated CSR commandments for corporations

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Abstract

This article relies on two major business ethics books to propose a decalogue of corporate behavior. Notably, both Donaldson and Dunfee's *Ties That Bind* (1999) and Kerr et al.'s *CSR: A Legal Analysis* (2009) tried to avoid the sinuous and inconclusive normative quest for hypernorms of business social responsibility: the former proposed an integrated social contract between business and community, while the latter adopted a positivist approach, looking at existing law of all sorts, national and international, to decant eight principles of CSR. Using a methodological tool from the first book, namely, the macrosocial contract between business and communities, this article updates the list proposed in the second book. As societal expectations evolve in time, emerging principles are included in the amended list, such as meeting tax obligations, refraining from taking advantage of disaster-struck communities, and prioritizing the human in the age of artificial intelligence. The mixed approach (ethical, contractarian, and positivist) allows introducing the 10 principles as "commandments": initial reasonable content of a macrosocial for business, informed by undisputed ethical principles (hypernorms) and potentially implemented through positive law.

KEYWORDS

business ethics, corporate social responsibility, CSR commandment, CSR principle, integrated social contract theory

1 | INTRODUCTION

This essay means to contribute to the debate on the contemporary contours of corporate social responsibility (CSR). An elusive and contested concept, CSR went in one century from denial (the firm's only responsibility is to make profit for their shareholders) to recognition (the firm has responsibilities to other stakeholders and, in general, to society and the environment), but recognition has not come with a universally accepted definition. The absence of universal acceptance was mainly because corporations insisted, with strong arguments, that what socio-oenvironmental responsibilities they have, and how these should be fulfilled, is a matter for themselves to decide, whereas societies demanded state regulation to ensure CSR, with equally strong arguments. As a result, it is now accepted that CSR is a combination of voluntary action by the corporation, and command and control regulation.

To shed light on the path to be followed by a responsible corporation, principles of CSR have been proposed in both academia and the business environment since the 1990s: the corporation must be transparent, it must engage the local communities where it operates, and so on. The principles of CSR are important because they transcend the debate on voluntarism versus regulation, permeating the whole regulatory continuum, from *no regulation* at one end, to *self-regulation* (corporate voluntary codes), to *co-regulation* (or "principle-based" regulation, focused on outcome and leaving the choice of process to the corporation), and finally to rule-based *regulation* (on the regulatory continuum and types of regulation; Kaplow, 2000; Sama & Shoaf, 2005). But as society evolves, its expectations from the corporation evolve as well. The last comprehensive attempt at identifying the operational principles of CSR (Kerr et al., 2009) is thus in need of an update.

The purpose of this paper is to provide this update, within the word space constraints of a journal article. First, for contextualization, Section 2 traces the notion of CSR principle through recent decades. Section 3 then explains the paper's endeavor: why the list of principles proposed by Kerr et al. (2009) was adopted as a departure point, why it needs updated, and how the update was conceived methodologically. This section also introduces the amended list of 10 CSR commandments and rebuts possible contentions regarding its content and terminology. Section 4 then details each principle.

2 | THE QUEST FOR CSR PRINCIPLES: ETHICAL, CONTACTARIAN, AND POSITIVIST ENDEAVORS

2.1 | CSR and its principles: an ethics approach to CSR

Given the complexity of the social, environmental, and ethical challenges, and the multitude of stakeholders with sometimes diverging interests, finding a unanimously agreed upon definition of CSR is impossible, as noted inter alia by Matten and Moon (2008, p. 405), Crane et al. (2014, p. 5), and Wickert and Risi (2019, p. 21).

However, most scholars are able to decant sets of core characteristics of CSR. For Crane et al. (2014) for instance, the common denominator of the definitions examined is that CSR is voluntary, requires multiple stakeholder orientation, is about balancing social and economic responsibilities and interests, requires a set of values that underpin practice, and is more than mere philanthropy. Analyzing definitions of CSR proposed in more than two decades, Dahlsrud (2008, p. 5) found the most frequent dimensions of the concept to be stakeholder orientation, social, economic and environmental integration, and voluntariness. Kerr et al. (2009, p. 9) also noted that common to the numerous definitions they examined is the element of integration of economic considerations—the traditional focus of the corporation—with environmental and social concerns. Similarly, Wickert and Risi (2019, p. 22) see CSR as "an umbrella term to describe how business firms, small and large, integrate social, environmental and ethical responsibilities (...) into their core business strategies, structures and procedures (...)."

The minimal understanding of CSR as integrating economic, social, and environmental concerns is unchallenged in the CSR literature. However, defining the concept in such a broad manner does not take us too far in terms of its operationalization in corporate practice. The limits of this umbrella definition are referred to as follows in the seminal study of Matten and Moon (2008, p. 405): "[CSR consists of] policies and practices of corporations that reflect business responsibility for some of the wider good. Yet the precise manifestation and direction of the responsibility lie at the discretion of the corporation."

Accordingly, more specific guidelines intended to operationalize the above minimal, definitional, umbrella principle were proposed in academia and policy making circles. An early list of normative guidelines was published by Frederick (1991) based on common requirements for corporations identified by the author in intergovernmental compacts such as the UN Universal Declaration on Human Rights, the European Convention on Human Rights, and the OECD Guidelines for Multinational Enterprises. The guidelines refer to responsible behavior in the areas of consumer protection, corruption, employment, environment, and basic human rights. At around the same time—the early days of the current wave of globalization—de George (1993) focused his ethical guidelines for corporations specifically on their operations in developing countries, with a weak rule of law at best. As "[b]ackground institutions are essential to corporate integrity" (de George, 1993, p. 192), transnational corporations should encourage the creation of strong institutions in the developing world and in the meantime should stay socially and environmentally responsible by following a set of self-imposed guidelines among which respecting the rights of employees, respecting local culture and custom as long as these do not violate human rights, pay their taxes, and make sure to contribute to the host country's development. Some of these are reflected in the seven Caux Principles for Business adopted in 1994 and in the 10 principles of the Global Compact proposed in 2000 by the UN.

The discussion on principles of business ethics in the 1990s was largely informed by moral precepts. For Frederick (1991, p. 169), "[b]y far the most fundamental, comprehensive, widely acknowledged, and pervasive source of moral authority for the corporate guidelines is human rights and fundamental freedoms." The inherent dignity and worth of the human person have roots in natural law, the higher-than-man-made "law"—for Frederick, in the Kantian concepts of reason and universality as fundaments for moral authority. In de George's (1993) argument, there are elements of virtue ethics—the normative theory focusing more on the person's virtues (here, the manager) than on abstract moral dicta. Concerned with the firm's responsibility when acting in an environment lacking strong institutions, de George places particular emphasis on the manager's "moral courage." As for the above mentioned Caux principles, they were launched specifically under the banner of "moral capitalism" by a group of senior executives of major firms.

All of these business codes and scholarly contributions however, adopted at a time when CSR was seen as a voluntary endeavor by the corporation, have been unsuccessful in curbing corporate abuse. With growing societal pressure for regulation, the discussion on the CSR principles acquired new dimensions and significance. In the remaining subsections of this section, this article looks at two other modes of conceiving the source of corporate codes of behavior: a contractarian and a positivist one. Introducing them is necessary because the purpose of this article is to update the latter, using the former's methodology.

2.2 | The role of community expectations: a contractarian approach to CSR

Donaldson and Dunfee (1999, p. 25) aimed to "unravel the potential of social contracts as a foundation for an adequate ethical framework for economic activity." They call their social contract theory "integrated" as it explains the boundaries of permissible corporate behavior by integrating two levels: a micro-level, reflecting the actual agreement with each community, and a macro-level, reflecting a broad, hypothetical agreement between a hypothetical community consisting of rational members, and the business.

For Donaldson and Dunfee, the macrosocial contract has three main clauses: (1) local economic communities have moral free space in which they may generate ethical norms for their members through microsocial contracts; (2) norm-generating microsocial contracts must be grounded in consent, buttressed by the rights of individual members to exercise voice and exit; and (3) in order to become obligatory, a microsocial contract norm must be compatible with hypernorms.

The macrosocial contract therefore points in clause (1) to the more specific level of local communities, who, in the moral free space available, can decide what is best for them and ask for specific rules to be included in the microsocial contract. The contours of the moral free space left to the parties to the microsocial contract are set by hypernorms—the object of clause (3).

With hypernorms, defined as "norms sufficiently fundamental to serve as a source of evaluation and criticism of community-generated norms" (Donaldson & Dunfee, 1999, p. 50), we are back to the field of ethics and to the problem of identifying a moral code universal enough to apply to corporate behavior anywhere in the world. But Donaldson and Dunfee refuse to propose a list of hypernorms, or even to indicate their source, beyond the general observation that "reaching to the root at what is ethical for humanity, ... hypernorms should be discernible in a convergence of religious, political, and philosophical thought" (Donaldson & Dunfee, 1999, p. 44). The authors do not believe that pinpointing the origin of a specific hypernorm is necessary: "Whatever the final answer to the question of whether hypernorms have sources in nature as immutable verities, or instead reflect the common humanity of global citizens as similar solutions are found to shared problems across the world, that answer is not critical to their value (...)" (Donaldson & Dunfee, 1999, p. 52, citations omitted).

While not providing a list of hypernorms, the authors put forward a checklist of "evidence" for assisting in hypernorm recognition. If two or more requirements on the evidence checklist are met, there is a rebuttable presumption that a hypernorm exists. Among the evidence in the checklist are items like widespread consensus that the principle is universal; its presence in global industry standards; support given to the principle by prominent governmental and nongovernmental organizations; its consistency with precepts of major religions; and its

incorporation in the laws of many different countries (Donaldson & Dunfee, 1999, p. 60). Further, the authors believe that if a hypernorm identified following the mechanism above is contested, the burden of proof is with the critics, rather than the proponents of hypernorm status.

While Donaldson and Dunfee's work has received praise and recognition, being dubbed "magisterial" (Freeman & Harris, 2009, p. 685), it has elicited constructive criticism as well, from authors suggesting improvement rather than rejecting the theory altogether (Boatright, 2000; Freeman & Harris, 2009; Windsor, 2018). Since this article imports the notion of macrosocial contract only to build a list of CSR commandments, the critique, generally focused on the role of hypernorms, is not a hindrance.

2.3 | The role of the law: A positivist approach to CSR

By the end of the first decade of the new millennium, it was noted that "CSR, until recently sighted only off in the misty horizon of ethical slogans, has now taken on sharp enough normative contours in law (...)" (Kerr et al., 2009, p. 3). The discretion of the corporation over whether and how to apply the CSR umbrella principle—that is, CSR as a voluntary undertaking—has since the turn of the millennium been seriously weakened. A review of the debate on CSR and regulation in the early years of the millennium found that when governments felt like intervening in the CSR project, their actions were undertaken explicitly as "pro-CSR initiatives" rather than (legal) CSR (Petkoski & Twose, 2003). However, soon afterwards, growing social inequalities exacerbated by corporate social and environmental wrongdoing led to an increasing interest in legal CSR: CSR as *mandated* by law, as opposed to self-regulation and voluntary codes of conduct merely *supported* by government action.

The hardening and legalization of CSR are an ongoing process (Berger-Walliser & Scott, 2018). Accordingly, numerous academic works have in the last two decades endeavored to elucidate what role the law can play in the CSR project (e.g., Berger-Walliser & Scott, 2018; Buhmann, 2006; Kerr et al., 2009; Knudsen & Moon, 2017; McBarnet, 2009; Tamvada, 2020). Since CSR and law are not mutually exclusive but are in fact intrinsically interrelated concepts (McBarnet, 2009), complementing voluntarism with legally mandated action is now accepted as the only viable path. The role of government in CSR can be anything from endorsing, stimulating, facilitating, partnering, and mandating relevant corporate action and mediating when necessary (Dentchev et al., 2017; Fox et al., 2002).

So, at this stage, business ethics scholars seem to agree on (1) the meaning of CSR as being related to the expectation that corporate decision making integrates social and environmental concerns alongside the main concern of making a profit and (2) the fact that CSR is a combination of mandatory and voluntary elements. Concurrence on these two points is still hardly enough to delineate the precise manifestation and direction of the responsibility, so the quest for the identification of the principles of CSR is ongoing: how to operationalize the umbrella definition, telling the corporation what it can and cannot do if there is to stay socially and environmentally responsible?

In line with the evolution summarized above, Kerr et al. (2009) thought that the answer should be found by an examination of the law. By law, the authors were referring to public law in its domestic and international manifestations (criminal law, administrative law, etc., as well as public international law), but also to private law, concerned with individuals, corporations, and their relationships in a domestic or international setting. So with Kerr et al., a positivist approach is complementing the deontological one that had prevailed before in the quest for

guidelines giving practical meaning to the CSR concept: complementing, not replacing, because morality and law are indissolubly related in complex societies: morality is a guide to behavior but an incomplete one; and an outline, the details of which are filled by laws and conventions (Honoré, 1993). This mosaic of moral principle, law, and convention is reflected in what Kerr et al. (2009, p. 91) call their "study of the law": their inquiry does not end with the letter of the law but looks at the companies' voluntary ethic as well. To understand the principles of CSR, "one must look both to how the law formulate the social licence that companies have been given as well at how companies themselves formulate their voluntary ethic" (Kerr et al., 2009, p. 17).

This complex and mainly positivist inquiry led the authors to the identification of the following principles of legal CSR: Principle 1, "Integrated, Sustainable Decision-Making"; Principle 2, "Stakeholder Engagement"; Principle 3, "Transparency"; Principle 4, "Consistent Best Practices"; Principle 5, "Precautionary Principle"; Principle 6, "Accountability"; and Principle 7, "Community Investment." The authors look at how each of these principles is reflected in various jurisdictions: the United States, Canada, Australia, and others.

This article builds on Kerr et al.'s work to complete and update their list of CSR principles. The next section explains the approach: why an update is necessary, what theoretical framework was used to design the updated list, and why the terminology has changed from "CSR principles" to "CSR commandments."

3 | KERR ET AL. (2009): CSR PRINCIPLES IN NEED OF AN UPDATE

3.1 | Why an update is necessary

Kerr et al.'s solid, comprehensive work has been used as a textbook in CSR courses at law schools, yet it has areas susceptible to criticism. First, the cocktail of ingredients (law, ethics, and convention) justifying their CSR principles can be confusing to the reader. Assembling the principles in a more coherent manner and placing them on a more solid conceptual foundation is necessary.

The second critique refers to Kerr et al.'s (2009) views on what is and what is not a principle of CSR. On the one hand, they amalgamate the principle of integrated, sustainable decision making with the other principles. As explained above, this umbrella concept is the very definition—albeit minimalist—of CSR. On the other hand, anticorruption is conspicuously omitted from Kerr et al.'s list, although, by the time of the book's publication, corruption had already been listed as one of the 10 principles of the UN Global Compact.

Third, their conclusion that the discussion on voluntary versus regulatory approaches to CSR has become "a futile debate" (Kerr et al., 2009, p. 103) seems rushed. The authors provide abundant examples of both legal rules and voluntary ethical codes as backing up what they find to be the CSR principles, and for the voluntary side, they explain the process of hardening of soft (discretionary) commitments, which brings them in the "shadow of the law" (Kerr et al., 2009, pp. 476–493). But the fact that the line between regulation and voluntarism has blurred does not mean that the debate has become futile; it has only moved from the general (the idea that social and environmental concerns must be integrated into corporate decision making) to the specific (i.e., to the principles that operationalize this umbrella definition: do not bribe, be transparent, and so on). In these specific areas, there is still a fierce confrontation between the societal demand for regulation and the corporate claims for self-regulation.

Fourth, regrettably, there is no second edition of Kerr et al.'s CSR principles. CSR is a dynamic concept, as new problems emerge constantly (Wickert & Risi, 2019, p. 22). In addition to the already mentioned anticorruption principle, this article proposes that three more candidates to the title of CSR principle that have emerged since Kerr et al.: "pay your taxes," "do not take advantage of disaster-hit communities," and "prioritise the human in the AI age." Their presence on the updated list is supported by changed global circumstances and by specific hypernorms, as detailed in Section 4.

3.2 | The approach: Adapting integrated social contract theory

Donaldson and Dunfee's Integrated Social Contract Theory (ISCT), briefly introduced above, can be seen as a pyramid consisting of three major blocks. The base are the hypernorms, fundamental universal ethical principles identifiable with the use of the evidence checklist provided by the authors. The next building block is the macrosocial contract, a construct similar to Rawl's well known version of the social contract, but with the contractors in conditions less stringent than Rawls's veil of ignorance: in the ISCT, the macrosocial contract represents the agreement that would be made by rational contractors who want to cooperate via microsocial contracts (the third building block and the tip of the pyramid) for the purpose of productive economic activity. The contractors set a general moral framework for this cooperation consisting of hypernorms, plus local, specific agreements in the moral space not covered by hypernorms.

Looking at the median segment of the pyramid, nothing prevents us from making it more specific. The macrosocial contract can be more than an agreement to respect ethical boundaries when micro-contracting: specific rules of behavior can be agreed there as well, if rooted in specific and uncontested hypernorms. The hypothetical contractors may agree to not resort to corruption, and this "provision" of the macrosocial contract would be rooted in ethical norms like honesty and fairness. Donaldson and Dunfee themselves look at bribery, explaining that corrupt deals cannot be included in microsocial contracts because they breach a hypernorm—that of necessary social efficiency. Their reasoning bypasses the macrosocial social contract because the authors designed this median block as just an agreement to not breach hypernorms during specific business-community dealings, merely a link between the base and the tip of the pyramid. But why not populate the macrosocial contract with several specific rules of behavior emerging from specific hypernorms, among which, the rule against corruption? The decalogue proposed in this article is just that—ethics turned practical, rules of behavior stemming from undisputed moral norms that the community side of the macrosocial contract with business (middle segment of the pyramid) would want enshrined therein. More specific than the hypernorms they originate in (base of the pyramid), yet still general enough to leave space for microcontracting (tip of the pyramid).

The other side, business, would not necessarily agree with everything in the decalogue. CSR in general is an ongoing conversation and so would be the 10 macro-rules of business/community interaction: a conversation, moderated by the state, about how business and society are going to live together. Indeed, as per traditional social contract theory, humans gave up their pre-statal freedom in exchange for security; if the state created the corporate citizen and gave it power, then the state must protect the human citizens when this power is not used in accordance with the interests of the society.

Accordingly, when necessary, the state brings under its prerogatives areas of CSR that were traditionally at the latitude of the corporation. State intervention occurs in various degrees, depending on the area of regulation. The key to understanding the process is the concept of legalization—a multidimensional continuum between command-and-control regulation by the state, and self-regulation by corporation. The concept of legalization has been applied to CSR to show that the binary understanding of CSR as either mandatory or voluntary is an oversimplification. Numerous scholars speak, in the CSR context, of the "regulatory continuum" (e.g., Munilla & Miles, 2005; Schwartz & Saiia, 2012), while Berger-Walliser & Scott (2018, p. 169) explain that the "trend to impose formerly voluntary CSR engagement on companies leads to what we call legalisation of CSR."

Legalization is variable in time, decreasing in some areas while increasing in others (Abbott et al., 2000). This is well illustrated in the proposed list of CSR commandments. Foreign bribery for example was not under the regulators' radar until the 1970s, when the United States passed the *Foreign Corrupt Practices Act* (1977), but now, a large number of countries have specific provisions prohibiting their corporations from bribing foreign officials. More recently, corporate transparency went through a similar process of state regulatory intervention, although, here, states often opted for softer intervention. Even more recently, some corporate practices of tax avoidance were the target of legalization. On the other hand, the corporate enthusiasm towards letting artificial intelligence (AI) displace the human from numerous areas of socioeconomic activity seems to not have—for now—triggered any type of legalization. Similarly, no legislation has been enacted to temper profiteering under what has been termed (Klein, 2008) "disaster capitalism," but things can change.

The degree of legalization of the 10 areas of CSR proposed as commandments is the organizing principle of Table 1. Importantly, the 10 commandments are not ordered by priority, but simply by whether legalized, partly legalized, or not legalized at all. Within each of these three categories, the commandments are listed simply by author's preference; a higher number on the list does not mean a higher order of importance. Further justification on each commandment is provided in the final section of this article.

3.3 | Possible contentions regarding the list

Three possible contentions need addressed at this stage. The first refers to the absence, from the list of commandments, of major projects of humanity such as human rights, the sustainable development goals, and the fight against climate change. Human rights, after all, feature in the United Nations Global Compact, the global organization's list of 10 principles for corporations. The reason human rights do not feature among the proposed commandments is twofold. First, a central problem of the numerous universal standards for corporations proposed by scholars, policy makers, and civil society organizations is their inability to insulate non-controversial standards from controversial ones and to provide a coherent justification to the former. As the Special Representative of the UN Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises noted, "claims and counterclaims proliferate, initiatives abound, and yet no effort reaches significant scale" (Ruggie, 2008, Section 5). If, navigating among various moral standards, we hope to achieve some agreement and derive guidance from it, human rights *as such* should not be on the list of CSR commandments, as the matter is still divisive in the international community of states. Besides—the second argument against listing human rights as such—human rights are already on the list, just that not

TABLE 1 Proposed 10 CSR commandments for the 21st century in relationship to the seven CSR principles of Kerr et al. (2009)

		Ten CSR commandments for the 21st century	Legal CSR principles (Kerr et al., 2009)
Foundational Principle 0 (definitional)	Mandatory (100%)	Legalized prohibitions ("do not")	
		1 DO NOT get involved in corruption	
		2 DO NOT avoid accountability	(6)
Kerr et al.'s Principle (1)		Partly legalized desirable virtues ("do")	
		3 DO pay your taxes	
		4 DO act transparently	(3)
		5 DO apply best standards consistently	(4)
		6 DO act with precaution	(5)
		7 DO engage with stakeholders	(2)
		8 DO invest in the community	(7)
	Voluntary (100%)	Desirable virtues without legalization presently	
		9 DO NOT take advantage of disasters hit communities	
		10 DO prioritize the human in the AI age	

Note: Principle 0 is a foundational (or definitional) principle rather than a specific CSR commandment. Principle 0 is equivalent to Kerr et al.'s Principle 1. The remaining Kerr et al.'s CSR principles (2 through 7) are placed in relationship to the 10 CSR commandments. An evolutionary perspective would expect all 10 commandments to become more fully legalized in future, together with additional commandments that may become widely accepted.

directly. The principle of applying best standards consistently is mainly about upholding human rights when operating in countries with a weaker performance in this area.

As for the SDGs and climate action not featuring on the proposed list, these are grand universal projects certainly relevant to both parties to the macro-social contract, but they do not belong in this rather topical and confined hypothetical agreement between community and business, on corporate rules of behavior.

Second, moving from global policy to scholarly work, a question may arise regarding the preference given to Kerr et al. (2009) as a starting point for the updated list, over a more recent elaboration of contemporary CSR contours: that published a few years ago in this journal by one of the most authoritative voices in business ethics, R. Edward Freeman. Deconstructing the "old story" of capitalism, one built around centrality of profit and shareholders' primacy, Freeman (2017, p. 457) identifies "six new ideas that undergird the new story of business that is emerging." As summarized by Freeman, these are "(1) The unit of analysis is stakeholder relationships; (2) stakeholders are interdependent; (3) tradeoffs are managerial failures of creative imagination; (4) purpose, values, and ethics must be embedded in organizations; (5) business exists in the physical world; and (6) people are complicated" (Freeman, 2017, p. 457). While the elliptic nature of this enumeration does not do justice to Freeman's powerful text, the list above

suggests the reason Kerr et al. (2009) was preferred here over Freeman (2017) as departure point for the updated list of CSR commandments: the level of precision as to what counts as responsible behavior. Besides, some of Freeman's "new ideas" overlap with or are embedded in Kerr et al.'s principles: stakeholder engagement, transparency, and (re)investing in the community.

The third possible contention refers to terminology: why commandments, and not principles? Collins Dictionary online defines commandment as "an authoritative command or order; mandate; precept; specifically, any of the Ten Commandments." The inclusion of rules not (yet) touched by the process of legalization, like prioritizing the human over Artificial Intelligence, may make the term "commandment" sound pompous or at least unjustified. But considering the discussion above, things can change. Imagine state intervention in the CSR areas like a cursor moving from no intervention to full regulation; the cursor is at the "no regulation" end for now, but if the community insists on demanding regulation to protect it from excessive reliance on AI, and the state as an arbitrator will find the claim justified (as supported by the hypernorm of human dignity, for example), the cursor will move.

While generally evocative of the biblical Ten Commandments, the noun "commandment" has an existence of its own: something that is commanded. CSR commandments are something that is reasonably (as in justified by hypernorms) "commanded" by society, and potentially further "commanded" by the state via legislation, as it happened with anticorruption, transparency, etc. A helpful similitude can be observed with Yahweh's conditions delivered via prophet Moses to the community of Israel at Mount Sinai. These, too, were a proposed social contract with moral underpinnings. These, too, became commandments once accepted by the community of Israel, and most were further posited in legislation. The degree of legalization, just as in the case of the CSR commandments, varies, as not all of the Ten Commandments are, at least in modern society, state-sanctioned law. "Thou shalt not commit adultery" remains a Commandment even though adultery is not criminalized; "thou shalt not put the machine before the human" is, similarly, a commandment that may take legal form at some point, like refraining from adultery took in the past. The whole construct proposed here—a list of reasonable demands by the community to be enshrined in the (macro)social with business, and potentially implemented over time through positive law enactments—is similar to the Ten Commandments construct.

What follows in the next section is an introduction of the proposed CSR commandments for the 21st century. Three areas may be distinguished, in line with the discussion above, on the degree of legalization being the organizing criterion in the list. The first two principles are termed as prohibitions, and legalization is strong in these areas. The following six are termed as desired virtues; here, incomplete legalization leaves a leeway for the corporation to choose a more or less moral path, depending on the importance it attaches to the fundamental principle of CSR, that of integrating environmental and social concerns in managerial decisions. Finally, in the last two areas listed, legalization is virtually absent, but as shown below, there are arguments for listing these areas as CSR commandments.

4 | TEN CSR COMMANDMENTS FOR THE 21ST CENTURY

4.1 | Commandment 1: Do not get involved in corruption

Literature on CSR traditionally paid less attention to corruption—the misuse of entrusted power for private gain—than it has to areas such as environmental protection, human rights,

and labor rights (Arafa, 2011). As mentioned above, the most comprehensive analysis of law and CSR to date, published in 2009, did not include anti-corruption among its fundamental CSR principles. Similarly, the initial United Nation's Global Compact platform of nine principles (2000) did not address corruption—that was added as the tenth principle in 2004.

This initial reluctance cannot be explained with recourse to moral principle, since bribery is inconsistent with utilitarian and rights-based theory alike and is condemned in the holy writings of all major religions (Nichols, 1997). Rather, it may have reflected the fact that most forms of corruption are anyway illegal around much of the world, making the need for using voluntary CSR practice to stem out graft redundant. Now, it is however accepted that a phenomenon with potentially devastating social and environmental (let alone economic) effects cannot be overlooked by CSR, since the concept is defined as integrating social and environmental concerns in corporate decision making.

While legalization in the area of anticorruption is high, there is still space for voluntary action by the corporation. Provisions outlawing and punishing corruption are often not sufficiently enforced, for objective reasons such as difficulties in proving and prosecuting corruption. This creates the need for the state to enlist the cooperation of corporations to prevent and detect corruption, and this is done by requiring corporations to build a culture of non-corruption and to ensure adherence to this culture among their business partners and in the communities where they operate (Visser et al., 2007, p. 142). In other words, the CSR principle of anti-corruption operates via rule-based regulation (e.g., the prohibition of bribing), but also via principle-based regulation, focused on the outcome—that corporations put in place a strong anticorruption system—without prescribing the details. If a corporation has made credible efforts to avoid corrupted acts, this will help it mitigate the legal consequences of corruption, if this occurs nonetheless. In the United Kingdom, for instance, having reasonable preventative procedures is a defense to the charge of failing to prevent bribery under the *Bribery Act 2010*. In France, since 2017, the anti-corruption law referred to as *Loi Sapin II* has required large companies—including their subsidiaries—to have an anti-corruption code of conduct, a risk-mapping that considers the company's industry focus and geographic coverage, and third-party due diligence procedures, among other measures.

4.2 | Commandment 2: Do not avoid accountability

Accountability is about power: the way it is exercised, and the consequences of it being exercised improperly. An accountability relationship is one within which "an individual, group or other entity makes demands on an agent to report on his or her activities, and has the ability to impose costs on the agent" (Keohane, 2003, p. 139). As this definition emphasizes, accountability demands the power holder to ensure a flow of information to those impacted by the exercise of power, to submit itself to sanctions, and when the misuse of power hurts others, to make good for the loss and accept the consequences.

Corporate accountability thus requires a corporation, as holder of economic and social power, to be answerable to those potentially affected by its actions: its stakeholders, such as shareholders, investors, employees, customers, and local communities. The capacity of the stakeholders to hold the corporation accountable derives from the state through legislation; however, as in the case of all CSR principles, a gray area exists where expected corporate voluntarism and legislative (or judicial) action overlap. This makes accountability a CSR commandment, something more than just a law to be obeyed by the firm acting as a corporate person.

The first aspect of accountability, the expectation that the power holder will report on their activities, is well illustrated by the operation of the commandment of transparency, discussed below. As for the second aspect—not hiding from sanctions, and making good for losses incurred – problems most often arise when multinational enterprises (MNEs) misuse their power occurs in developing countries. For the corporate operations in developed countries, statutes (corporate law, criminal law, labor law, antidiscrimination law, consumer protection law, etc.) and strong and independent judiciaries ensure corporate accountability.

To close this accountability gap, in recent years, courts in the corporations' home countries are increasingly willing to hear cases where the plaintiffs were abused by their subsidiaries in developing countries. Often, the corporations would try to settle the claims to avoid going through highly publicized trials that will inevitably damage their reputation. For example, after the UK Supreme Court Supreme ruled in 2019 that the Zambian villagers' case against UK-based mining giant Vedanta Resources could be heard in English courts, Vedanta settled the claim in January 2021. Similarly, BHP, after being sued in 1995 in the Supreme Court of Victoria (the company's Australian home state), settled with 40,000 plaintiffs allegedly affected by the pollution of the Ok Tedi River and adjacent lands in Papua New Guinea.

Criminal law is also increasingly used to hold corporations to account, especially with the advent of the concept of corporate criminal responsibility, long established in the United States but now gaining traction in numerous other jurisdictions. While more difficult to achieve than civil liability from the victim's perspective, criminal liability carries a much higher stigma for the corporation, thus functioning as an even stronger deterrent from wrongdoing and incentive for fixing it when it occurs, and before the mechanisms of law are set in motion.

In sum, a process of legalization is ongoing to provide more judicial and nonjudicial paths to victims to seek justice. The state responds to the legitimate societal expectation that those who polluted the river or abused the workers will pay for it and moves the legalization cursor towards tighter regulation. Like in the anticorruption commandment, however, there remains a space for de corporation to decide whether to act responsibly or not. MNEs can pressure or lobby host country governments to turn a blind eye to corporate wrongdoing, can hide information that may lead to prosecution, can disengage for certain business activities, cut ties with suppliers, or go into insolvency to insulate themselves from liability. Refraining from taking these paths of accountability avoidance and accepting responsibility for wrongdoing would have beneficial reparatory and deterrent effects. Some of these accountability avoidance actions are not against the law, but the community is entitled to expect their prohibition stipulated in the macro-social contract with business, as a CSR commandment operationalizing the umbrella principle of integrating societal concerns into corporate decision-making.

The high degree of legalization of the first two commandments makes somewhat redundant the discussion on their underlying hypernorms, since Donaldson and Dunfee (1999) saw presence in laws and multilateral treaties among the tools for hypernorm identification. But both commandments have roots in widely accepted moral principles, as well. Corruption is ultimately theft, a moral wrong. Escaping accountability is circumventing retributive and reparatory justice, again based in millennia old moral precepts. Both commandments are also connected to maximizing social goals like harmony and welfare.

The remaining commandments though, given their lower degree of legalization (or absence thereof, for the last two in the list), need the corresponding norm identified with precision.

4.3 | Commandment 3: Pay your taxes

The CSR commandment to pay taxes is similar in some respects to the commandments prohibiting corruption and the avoidance of accountability, in the sense that it presents one area of hard legalization, and a space where it is up to the corporation whether to integrate societal concerns in their managerial action. But the non-legalized space is much broader: the space where the corporation can legally avoid taxes. Breaching the law means tax evasion, while taking advantage of the interstices of law—to the detriment of communities who are the ultimate beneficiary of taxes—is referred to as tax avoidance. Tax avoidance is defined as "(1) payment of less tax than might be required by a reasonable interpretation of a country's laws; (2) payment of a tax on profits declared in a country other than where they were earned; or (3) payments somewhat later than the profits were earned" (Palan et al., 2010, p. 10).

Importantly, tax avoidance is mostly achieved by legal, albeit morally questionable, processes such as offshore tax sheltering (using artificial transactions to shift revenue to low-tax countries), account manipulation (e.g., short-term loans between headquarters and subsidiaries to minimize taxable profit), and legal obfuscation (overwhelming the authorities with complicated paperwork) (Dowling, 2014). Tax avoidance is therefore situated in a gray area between tax compliance and tax evasion, with the latter deemed an illegal process that occurs when "a taxpayer fails to declare all or part of his or her income or makes a claim to offset an expense against taxable income that he or she did not incur or was not allowed to claim for tax purposes" (Palan et al., 2010, p. 9).

Unlike many of the Ten Commandments, the commitment to refrain from tax avoidance is not to be found in the CSR codes of companies or industries; neither is this moral imperative listed among the 10 principles of the UN Global Compact or addressed in academic works on CSR. In fact, many corporate leaders see tax avoidance as an obligatory component of their fiduciary duties to shareholders. Some stakeholders may even benefit from tax avoidance, for example, consumers, who may pay lower prices, employees, who may get higher salaries, and investors, who may receive higher dividends. Furthermore, in some cases, tax avoidance may indirectly benefit "traditional" CSR, as companies engaged in this practice are keener to support social and environmental programs so as to deflect attention from or atone for the immorality of tax avoidance (Col & Patel, 2019; Goerke, 2018).

But this is just one side of the coin—the one that corporations promote. In reality, while tax avoidance benefits some stakeholders, it hurts others such as competitors, suppliers, and the public as a whole in all countries affected: the corporation's home state, the state where its operations are based, and that used as tax haven. The losses in tax revenues are astronomical, with around 100 billion US dollars written off from the US Treasury coffers every year (Clausing, 2016), and with annual losses to world governments' budget amounting to 500 billion US dollars (Cobham & Janský, 2018). The scale of the phenomenon and the fact that it is quietly practiced by firms who at the same time loudly sing the praises of their codes of conduct led one author to dub it "organized hypocrisy" (Sikka, 2010, p. 153).

On a closer look, not only society altogether and certain stakeholders suffer from tax avoidance, but even those stakeholders seen as benefiting from it: shareholders and investors. This is because tax avoidance helps yield higher profits only in the short term. With media increasingly keen on unveiling tax avoidance, and with corporate adherence to the rule of transparency increasingly scrutinized by the authorities, there is a high chance that companies engaging in aggressive tax avoidance practices will be exposed, with far-reaching consequences for their profitability in the longer term (Fisher, 2014; Freedman, 2006).

Tax avoidance is inconsistent with the moral principles of fairness and solidarity. The corporation is being elevated in many regards to the level of a 'spoiled citizen', with access to the resources – legal, financial, etc. – to fulfill its goals, but if we take the umbrella CSR principle seriously, one cannot at the same time be socially responsible, and deny governments large sums that could be otherwise used on infrastructure, hospitals, or education. All members of the community, corporate members included, have a moral obligation to contribute to the expense of meeting collective needs, and in a monetary economy, this means paying taxes (Honoré, 1993). This is why, in the last decade, the obligation of paying taxes is increasingly being discussed as a CSR principle (e.g., Col & Patel, 2019; Dowling, 2014; Fisher, 2014; Goerke, 2018).

Accordingly, academia, as a component of civil society, pressures corporations to accept including "refraining from tax avoidance" as a part of the macrosocial contract with society, by inserting relevant voluntary commitments in the companies' CSR and governance codes (Christensen & Murphy, 2004; Fisher, 2014; Freedman, 2006). Admittedly, the matter is still divisive, with the apple of discord being whether a CSR principle should target tax evasion or tax avoidance. Unlike the authors specified above, Schwieder (2016) for instance argues for the inclusion in the UN Global Compact of a principle proscribing tax evasion only, and not tax avoidance, because "it would be little use for the Compact to denounce what countries have purposefully allowed" (p. 2). This may be true, but it would be of equally little use for a CSR principle to denounce what countries have already denounced: tax evasion. One trait of CSR principles is, as explained above in this article, their extension along the whole regulatory continuum; to use Carroll's pyramid of social responsibilities as a visual aid, CSR principles operate in both the middle layers, the legal and the ethical one. Besides, rather than being "purposefully allowed" as Schwieder (2016) states, tax avoidance is merely not specifically prohibited.

And even the lack of specific prohibition is about to change. The CSR construct permeates the whole regulatory continuum and evolves in time, meaning that what is today not specifically prohibited may be prohibited tomorrow. In fact, some national legislatures are already coming up with legally binding measures targeting the main forms of tax avoidance undertaken by large multinationals. Such is the case of Australia, which, since 2017, has imposed a Diverted Profits Tax on multinationals that entered into financial arrangements with offshore companies without economic substance, mainly to avoid taxes.

4.4 | Commandment 4: Be transparent

The principle of transparency is a common thread connecting the aforesaid three CSR commandments. Indeed, a corporation that is allowed to engage in secretive activities and governed by opaque rules will likely breed corruption (Commandment 1), escape accountability (Commandment 2), and avoid paying taxes (Commandment 3). As such, the same hypernorms found at the roots of the first three commandments are the moral basis for Commandment 4.

Transparency as an aspect of legal CSR refers to the duty of the corporation to disclose both financial and non-financial results to its stakeholders. Whereas financial disclosure—to both the state and the shareholders—is central to the corporate function and, therefore, has been the subject of well-established regulatory standards for centuries, non-financial disclosure was until recently a matter of voluntary initiatives like the Global Reporting Initiative. As long as a corporation was honest about its budgets, profits, expenditure, and the like, it would not be

asked to fulfill additional transparency duties regarding, for instance, its impacts on the environment. But things are changing, and the law has begun to play an increasingly important role in the field of non-financial disclosure. In Canada, for example, the *Securities Acts* of the states and territories have been harmonized to mandate ongoing disclosure, to a national database, of any environmental and health risks related to business that could influence the decision of an investor to purchase securities. The corporate law in the United Kingdom went even further, requiring, since 2013, that directors' reports should include information on human rights issues alongside other non-financial information. From 2018, large EU companies have also been compelled to report, under the *2014 Non-Financial Reporting Directive*, on matters such as environmental protection, social responsibility, and treatment of employees, respect for human rights, anti-corruption, and bribery (Testarmata et al., 2020).

Another area where voluntarism may not suffice is that of pollutant and greenhouse gasses (GHG) emissions. Some countries have pollutant registries, for instance the National Pollutant Release Inventory in Canada, established by law to allow public access to information on the release of key pollutants in their communities. There is also a parallel National Greenhouse Gas Inventory, where companies that emitted more than 10 kt of carbon dioxide per year have to submit their data.

Mandatory requirements to increase non-financial transparency in critical areas like pollution, greenhouse gas emission, and the viability of financial instruments available to the public are backed by voluntary initiatives at the global, industry, country, and company levels. Platforms such as the Global Reporting Initiative, the Carbon Disclosure Project, and the Extractive Industries Transparency Initiative have achieved global reputation with their specific reporting procedures. The interplay between voluntarism and mandated action is thus well illustrated by the commandment of transparency.

4.5 | Commandment 5: Apply best standards consistently

The Bhopal disaster, which killed thousands in India in 1984, was only possible because the chemical factory that leaked the deadly gas, owned by Union Carbide, followed safety standards that were significantly lower than those governed its sister factory in the United States (Morehouse, 1993).

Corporations should apply consistent social and environmental standards across their business operations, whether such operations take place within or outside their home country. As a multiarea principle, Commandment 5 shares with the other commandments in this list their reliance on hypernorms such as solidarity, fairness, and social harmony. In addition, Commandment 5 has moral underpinnings in the concept of social connection developed by Young (2004): the responsibility of the multinational corporation derives from its position of power and privilege in a structure that crosses borders and nations, juxtaposed on the position of vulnerability of societies in developing countries.

The Bhopal disaster showed that the home states of multinationals—which are often in the developed world—must do more to ensure that their corporations operate responsibly in the Global South, where many of their factories and plants are located. Yet powerful countries have proven unwilling to impose consistent standards on their corporations, as illustrated by the failure, in the first decade of the millennium, of the CSR bills with extraterritorial application proposed in Australia in 2000, United States (2000), United Kingdom (2004), and Canada (2009) (see overview in Radavoi & Bian, 2014). There is, however, space for the law to mandate

the consistent application of best standards. First, more targeted—and less ambitious—statutes appeared to be more successful. Statutes banning foreign bribery, adopted by countries who are parties to the *1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, are one example. Also notable are statutes like the British *Modern Slavery Act 2015* and the French *Duty of Vigilance Law 2017*, which mandate large corporations to ensure that their subsidiaries and supply chains abide by the standards applicable in their home country. The French statute even allows affected parties to bring complaints against companies that failed to adopt and enforce "vigilance plans," and in certain circumstances to seek damages in French courts for negligence.

Given the inherent transnationality underlying the need for consistent standards, there is a role for international law in the promotion of this commandment. Bilateral investment treaties often incorporate the commitment to refrain from lowering environmental or labor standards, thereby supporting the principle by obliging developing countries to refrain from pandering to foreign investors. But the most powerful legal instruments to make corporations adopt and enforce the commandment of consistent standards are arguably the laws that lift the corporate veil and provide victims legal access to the courts of the corporations' home country. Confronted with the specter of being sued at home by victims of their subsidiaries' abuses in developing countries, large corporations will try to ensure high governance standards across their operational chain.

4.6 | Commandment 6: Apply the precautionary principle

The precautionary rule is already among the 10 principles of the Global Compact: "Businesses should support a precautionary approach to environmental challenges" (Principle 7). The operation of this principle as applied to business was discussed in the literature in the following terms: "An absence of conclusive scientific evidence that serious and irreversible environmental harm will occur within their sphere of influence must not deter corporations from taking cost-effective precautionary measures" (Kerr et al., 2009, p. 347). Notably, the application of the precautionary principle does not necessarily require abandoning any proposed projects but only mandates that all relevant parties engage in a meaningful analysis and weigh all alternatives, with the burden being on the party that proposes a certain path of action to demonstrate that the outcome is within the accepted margin of safety. The two central elements of the principle are that "we should be confident about predictions of future environmental effects of activities before allowing them and that we should not wait for conclusive proof of environmental harm before adopting appropriate remedial measures" (Gullett, 2000, p. 95).

The principle has arguably become a customary norm of international law (Trouwborst, 2002) and is even perceived by the most enthusiastic analysts as making its way towards becoming a peremptory, non-derogable norm (Orakhelashvili, 2006, p. 65). Admittedly, the principle's existence, application, and utility are contested in the academic literature (e.g., Sunstein, 2005), while institutions of international dispute resolution (the WTO Appellate Body, the International Court of Justice, the International Tribunal for the Law of the Sea) have so far not been keen to embrace it. However, despite the lack of clarity as to the precautionary principle's practical application and the cautious approach in international dispute resolution, its advance on other regulatory fronts is undeniable. The principle is now incorporated in many constitutions and statutes, mainly concerning the environment (generally on the application of the principle in various jurisdictions: De Sadeleer, 2007). There is an already rich collection

of court cases in a number of jurisdictions (e.g., Peel, 2009, for Australia; Gill, 2019, for India) generally resulting from corporations challenging the denial of permits by authorities concerned with the environmental or health consequences of their proposed projects.

With this in mind, one may argue there is little scope for CSR, since corporations should simply respect the law and demonstrate to the authorities that the projects they proposed comply with environmental, health, and safety standards. However, just like in the case of the anti-corruption CSR commandment, it is desirable that the corporations adopt, so to speak, a precautionary approach to the precautionary principle: they should not rely on the lack of a universally agreed approach to the precautionary principle to engage in risky behavior in their pursuit of profit.

Communities would not want the corporation to take risks the eventuation of which will represent externalities paid by the community, not the corporation; hence, the addition of the precautionary approach as a CSR commandment in the contractarian approach. The hypernorms justifying the inclusion of this stipulation in the macrosocial contract are fairness, harmony, and the "no harm" principle foundational to civil and political rights in Western societies. They can also be found in the moral principle of compassion, explained in more detail in Commandment 9, below.

4.7 | Commandment 7: Engage with the stakeholders

If we understand CSR as requiring corporations to be guided not only by profit but also by obligations to society and the environment, it is only logical that corporations should actively engage with their stakeholders regarding those obligations. As engagement is a necessary condition for the realization of most other commandments, their hypernorms are operating here as well.

In its classical definition, a stakeholder is "any group or individual who can affect or is affected by the achievement of the organization's objectives" (Freeman, 1984, p. 46). If the interests of a stakeholder are aligned with those of the corporation, or if any misalignment is manageable, the stakeholder management theory is a proper framework to resolve any impasse. As early as the 1980s, stakeholder management was developed as a top-down tool to protect corporations from risks by addressing the needs of primary stakeholders with various criteria such as urgency and saliency: a theory designed to help managers prioritize (Mitchell et al., 1997).

After the 1990s, it became however accepted that stakeholders should be "engaged" rather than "managed," with dialog carried out "to gather important input and ideas, anticipate and managing conflicts, improving decision-making, harmonising diverse views, and strengthening the company's relationships and reputation" (Blowfield & Murray, 2019, p. 199). While stakeholder engagement is one step above stakeholder management in terms of integrating larger concerns in managerial action, it still treats stakeholders as means to the corporation's ends, which raises two important questions.

First, what happens when a corporation faces mutually exclusive social, ethical, or environmental responsibilities when entering a win-win relationship with one which will inevitably entail a win-lose relationship with another? The managers often tend to prioritize stakeholders with the loudest voice, ignoring those who may have more legitimate claims and a stronger need for the firm's attention. Law can intervene here with guidance as to how the firm can navigate through a complex web of interests, for instance setting priority orders among various interests, and provide support to those powerless stakeholders having legitimate claims, by backing their claims with the authority of the law.

Second, what if an important stakeholder's interests on a certain matter irreconcilably conflict with the corporation's, say, a local community opposes a noxious project proposed to develop in its vicinity? What if the process of engagement, although pursued in good faith, fails to deliver the so-called "social license to operate" to the corporation? Extant literature seldom addresses this eventuality, as if once engaged, one way or another, the stakeholder will end up agreeing with the corporation's views, or at least some compromise will be reached (Radavoi, 2015). The law is relevant to such cases: from granting participatory rights to the potentially affected public in environmental decision making, to enforcing those rights in court.

Legalization is low in this commandment. Among the few areas of socioeconomic activity where corporations have a legal obligation to engage their stakeholders are labor (where the duty to consult employees is stipulated in numerous documents throughout the Western liberal world), insolvency (with bankruptcy statutes detailing how creditor meetings are conducted), and certain corporate matters (where minority shareholders can make their voice heard via shareholder proposals) (Kerr et al., 2009). With engagement acknowledged as a CSR commandment, we may see legalization advancing beyond these limited areas, to provide a more satisfactory answers to the two questions above.

4.8 | Commandment 8: Invest in the community

Commandments 8 and 9, related to the spatial or occupational community where the corporation operates, are facets of the same coin: one positive and one negative. The corporation must support the community where/with which it does business by allocating resources and reinvesting profit (positive duty) and must refrain from taking advantage of vulnerable, disaster-hit communities (negative duty, discussed in the next section).

Corporations can add value to the communities where they operate, including philanthropic donations to local causes like educational groups, sporting organizations, and art clubs. In recent decades, the process has evolved into "strategic philanthropy," a deeper and more comprehensive approach based on a realization by corporations that business cannot survive in communities that fail (Crane & Matten, 2014, p. 294). This requires actions like removing barriers to local employment, engaging employees in community activities, reviewing local procurement opportunities, building local education links, and engaging in real dialog with communities (Visser et al., 2007, p. 88).

The above are examples of investing in the community, a process that in some areas is developing into a legal obligation that requires corporations to not exclude the community from the benefits of the industrial activities they undertake. Law intervenes to prevent, for example, corporations (often in the field of mining) from establishing their operations in an impoverished—often indigenous—community, using workforce and supplies from the outside, and extracting local mineral resources, which, after a decade or so, will leave the community even more impoverished (and polluted). The law sets the frame for corporations to avoid these scenarios by requiring corporations to sign binding agreements with the local community, which address the adverse environmental and social impacts of industrial activities. The agreements, sometimes called Impact and Benefit Agreements, address areas like employment, environment, and socio-cultural issues, and are a precondition for granting mining licenses (Cascadden et al., 2021). In Australia for instance, the *Aboriginal Land Rights Act 1976* (Northern Territory) stipulates that a mining exploration license is only issued if the applicant

has agreed with an Aboriginal "land council." Provisions of similar effects are found in the *Canada Oil and Operations Act 1985*.

Resource extraction is not the only area where the law is relevant to the principle of community investment. The *Community Reinvestment Act* in the United States, for example, requires financial federal authorities, when presented with applications for acquisitions or branch openings, to examine a bank's records in fulfilling obligations to local communities. In the area of public procurement, it is also common that the law requires the inclusion, in contracts, of quotas of local employment. Some jurisdictions even specify a precise percentage to be allocated to community investment by mega firms, for example, 1% as required in South Africa as per the *Broad-Based Black Economic Empowerment Act 2003*.

4.9 | Commandment 9: Do not take advantage of disaster-struck communities

The state remains the main bearer of obligations in disaster scenarios but is perceived as increasingly unable to respond properly to the task. This creates an expectation that the corporate "citizen" will lend a hand in reducing the suffering of affected communities. But corporations, like humans, react differently to calls for disaster solidarity. Some humans display altruism and even heroism, while others seize the opportunity by looting and trashing temporarily abandoned shops or homes. Corporations should not be expected to be different—to display, that is, a uniform degree of highly ethical response to calls from disaster-struck communities. The problem therefore is not that there are heroes and villains among corporations just as there are among humans; the problem is that looting-like corporate behavior increasingly prevails in recent decades, in an instantiation of neoliberalism that has been labeled "disaster capitalism" (Klein, 2008).

Disaster capitalism is not about corporations acting with some degree of self-interest when involving themselves in disaster response. The firm's own sustainability is a pre-requisite to all its other obligations, which is why corporate involvement with disaster affected communities presuppose a degree of self-interest, most often reputational. Therefore, disaster capitalism is not about a corporation donating or rebuilding or providing shelter, hardware or consultancy, and expecting in response laudatory press, free advertising, community good will, and a boost in local sales at a later time; these are deemed acceptable. Disaster capitalism is something more profound and corrosive—"the instrumentality of catastrophes for advancing the political, ideological, and economic interests of transnational capitalist elite groups" (Schuller & Maldonado, 2016, p. 62). As a recent example, the coronavirus crisis proved an (unobstructed by law) opportunity for large corporations to cash in, from receiving government relief funds while at the same time engaging in tax avoidance, to firing staff massively and without notice despite an increase in profits (Gneiting et al., 2020).

It stands to reason that communities would expect in the macrosocial contract a clause protecting them from being taken advantage of, in their darkest hour. It is also not difficult to find hypernorms supporting a decent behavior of business, despite the temptation of quick profits. The grounding hypernorm of Commandments 8 and 9, but especially of Commandment 9, is that of compassion, "the feeling that arises in witnessing another's suffering and that motivates a subsequent desire to help" (Cuff et al., 2016, p. 145). One of the "evidence" tools for hypernorm identification in the Donaldson and Dunfee's list is recognition of the claimed principle by world's major religions—and this is the case with compassion, according to historian of

religions Karen Armstrong. Pleading for a global Charter for Compassion, Armstrong (2011) shows that while the major religions are radically different in many aspects, they agree on one point: compassion is the foundation of ethical life.

If a CSR principle of refraining from taking advantage of disaster-hit communities was accepted in academic and policy-making circles, the law would perhaps become more assertive, including by recognizing the important distinction between small, local business, and powerful large multinational enterprises (Kuo & Means, 2012). Law should protect the former from the latter, who may be inclined to use the disaster to their advantage, sometimes at a ridiculous level of profiteering. Appalling examples existed in the context of Hurricane Katrina in the United States, where a large contractor with foreign links has been paid $12,500 per human body removed, while local firms were not allowed to help (Klein, 2008, p. 357). In their 2018–2022 Strategic Plan, the US Federal Emergency Management Agency acknowledged that "FEMA must do more to incentivize and enhance state and local incident management," since local authorities and local businesses know better. In addition, disaster law—legal rules on disaster prevention, emergency response, compensation, insurance, etc.—could perhaps be improved to limit the leeway large corporations have for profiteering in disaster-struck areas.

4.10 | Commandment 10: Prioritize the human in the age of artificial intelligence

Given the multitude of the impacts of Artificial Intelligence (AI) on CSR, both positive and negative, the law's guidance in this area is perhaps the most needed in this century. From this article's predominantly contractarian perspective, it is fair to assume that the community would not want to be reduced to insignificance with AI taking all the roles in society, from drivers to lawyers, and from bank clerks to politicians. This is not about the (possibly) irrational fear of robots hunting humans in a not-too-distant future, but about a deeper and more justified fear, well spelled out by writer Stephan Talty a few years ago: "I don't really fear zombie AIs. I worry about humans who have nothing left to do in the universe except play awesome video games" (Talty, 2018).

A few years ago, the Pew Research Center in the United States consulted nearly 1,000 technology innovators and developers, researchers, activists, and business and policy leaders about the impact of AI on the future of humans. Most of the interviewees, regardless of whether they were optimistic or not concerning the general impacts of AI on society, expressed "concerns about the long-term impact of these new tools *on the essential elements of being human*" (Anderson et al., 2018, p. 2; emphasis added). This is in line with red flags raised in literature in recent years on the possibility that humanity itself may become purposeless in the age of AI (e.g., Barnhizer & Barnhizer, 2019; Bostrom, 2014; Harari, 2017). One of the interviewees in Anderson et al. (2018, p. 61) summed it up as follows:

> Without explicit efforts to humanize AI design, we'll see a population that is needed for purchasing, but not creating. This population will need to be controlled and AI will provide the means for this control: law enforcement by drones, opinion manipulation by bots, cultural homogeny through synchronized messaging, election systems optimized from big data, and a geopolitical system dominated by corporations that have benefited from increasing efficiency and lower operating costs.

This takes us back to the roots of the CSR debate, which is one "about the society we wish to build and how companies contribute to the building process" (Lozano et al., 2008, p. 7). Certainly, the type of society envisaged in this quote is not the one that we may wish to build, hence the imperative to preserve the relevance of human in the face of programmed intelligence. Accordingly, one of the solutions proposed by the above-cited Pew Research is "Prioritize people: Alter economic and political systems to better help humans race with the robots" (Anderson et al., 2018, p. 3).

While the essentiality of the human element to markets, corporations, shareholding, management, law, and ethics has been underlined in the CSR literature (Pattit & Pattit, 2019), the AI revolution gives it new meanings and sense of urgency, both requiring the intervention of the law. Unfortunately, there is the danger that the law itself is anesthetized by the neoliberal paradigm that glorifies technological advancement while downplaying the pernicious impacts of AI on society. This is why civil society, including academia, should draw public attention to the 10th commandment of CSR, the grounding hypernorm of which would be that of human dignity. Despite the notoriously controversial contours and pedigree of the human dignity concept, one rooted in Kantian philosophy and more generally in the natural law tradition, its characterization as a hypernorm in Donaldson and Dunfee's understanding is hard to challenge, since human dignity is the foundation of the whole human rights edifice, mentioned as such in numerous international instruments (the UN Charter, the Universal Declaration on Human Rights, and the two human rights covenants, among others) and national constitutions. Furthermore, respecting human dignity has already been established as a justification for pro-responsible AI policy, as reflecting human dignity dimensions such as inherent worth, status, and respect, including self-respect (Ulgen, 2022). State regulation for responsible AI also explicitly acknowledges human dignity as a fundamental value to protect; see, for example, the AI Act of the European Union, expected to be adopted in 2024. So do civil society initiatives, with the Asilomar AI Principles, developed at the 2017 Beneficial AI Conference, including one on the need to preserve human dignity.

5 | CONCLUSION

Premised on the foundational and uncontested principle of CSR—that of integrating social and environmental concerns into corporate decision-making—this article proposes 10 commandments to operationalize the said CSR umbrella principle. Identified through a mixed ethical-contractarian-positivist approach, the 10 commandments are intended as a departure point for debates among academics and managers.

To the author's knowledge, no such systematization has been attempted since the major work by Kerr, Janda and Pitts. Their book discussed 6 out of the 10 commandments proposed here (all but 1, 3, 9, and 10). Like Kerr et al. (2009), this article does not see "abiding by the law" as among the CSR commandments, as this is a non-negotiable obligation of any person (physical or corporate). Again, similarly to the cited work, this article does not see "respecting human rights" as a discrete CSR commandment, but rather a component of the commandment of applying common standards in the developed and the developing world.

The term commandment was preferred over principle given the former's undertones of authority, evocative of the Ten Commandments. Just like the CSR commandments, the biblical ones were historically conditioned, were a mix of negative and positive duties, and some were contested (Coogan, 2014). More importantly, they were, again like the CSR proposed

commandments, the result of a fictional contract between two entities, meant to govern their peaceful relationship. Moses's Ten Commandments were the Covenant offered by Yahwe to the community of Israelites; the CSR commandments are the macro-social contract proposed to business by society. If there is to believe in the new, more responsible capitalism depicted by Freeman (2017), business should not turn the contract down. Then, depending on how well the corporation abides by the CSR commandments, the state may find it suitable to implement them, including the new ones, through positive law.

Further studies will hopefully examine the decalogue proposed here, especially the validity of the emerging commandments. If it passes the test of academic critique, the list of CSR commandments for the 21st century will show its practical relevance by reminding policy makers what areas of CSR the law is expected to guide; keeping society aware of possible manipulative policies and practices in the "iron triangle" of businesses, legal systems, and industries; suggesting corporations to take real (as opposed to greenwashing) voluntary action in these areas; telling civil society on which matters it can legitimately expect (demand) for the law to intervene; and inviting academics to continue the discussion on the currency and perhaps the extent of the list of CSR commandments; indeed, what is proposed here as a decalogue may be more or less than this, in the future. It is also hoped that the list of CSR commandments for the 21st century will contribute to the inclusion of the subject "Legal CSR" in curricula of law schools throughout the world, as a complementary perspective to the business/managerial approach to CSR, widely taught in business and management schools.

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