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Article

# Orchestration of Corporate Social Responsibility in Company Law—Reframing Human Security through Education

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**Abstract:** This paper argues the fundamental significance of education in addressing notable gaps in the constitutive, performance and evaluation criteria for corporate social responsibility (CSR) and endeavours to showcase the complementarity between education, human security, sustainable human development, and the pursuit of CSR as an ideal normative paradigm. Corporate philanthropy has not been helpful outside traditional CSR paradigms without looking at key dynamics that can robustly underpin successful CSR. It systematically analyses written data sources to theoretically explore the central significance, and complementarity between human security, education, and human dignity and how they can orchestrate a holistic CSR paradigm. The UNDP in formulating the human security doctrine recognised the syncretic correlation between human security, education, and sustainable human development as fundamental elements that should underpin CSR. This paper contends that these are necessary intrinsic components of human dignity as the central factor that justifies a multi-dimensional and proactive approach to CSR. Despite the criticisms against human security, this paper identifies it as an important concept that could instrumentally orchestrate a model of CSR that uniformly mainstreams sustainable human development and human dignity that leverages education which has routinely and traditionally been seen as a constitutive component of CSR. It reveals how a holistic path to CSR can reinvigorate the central pillars of human security and human dignity using education as a springboard and makes a compelling case for supporting explicit references to education in company law with appropriate human security informed constitutive, performance and evaluation criteria which are absent in existing legally orchestrated CSR.

**Keywords:** company law; development studies; sociology; corporate social responsibility; education; human development; human dignity

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## 1. Introduction

This paper investigates how company law can utilise the human security paradigm to orchestrate the promotion of education as part of corporate social responsibility (CSR). Due to the complementary role of CSR to development-oriented public governance (Lozano *et al.* 2008:35-36), its scope has extended to traditional government functions. Nonetheless, despite an exponential popularity of CSR and increased legalisation it has entailed, 'the articulation of substantive obligations is limited' (Chiu, 2019:166). In line with the contextual perspective which, with the institutional theory, emphasises the need for issue, time and place appropriate conceptualisations and practices, a persistent problem of operationalisation applies to CSR. This can be attributed to impreciseness of ideological underpinnings of governmental interventions (Vallentin and Murillo, 2012; Vallentin 2015), fostering of 'legal endogeneity' in 'opaque' 'privatised implementation' resulting in 'de facto self-regulation' (Chiu, 2019:142) and notions such as Creating Shared Value

(Porter and Kramer, 2011) with 'business case' and 'win-win' rhetoric (De Lethl and Ros-Tonen, 2021) that can denature the ethical premises of some CSR subjects such as education.

As underlined by several initiatives,<sup>1</sup> education is a key plank of sustainable development and human rights (De Beco *et al.* 2019) requiring collaborative efforts of the public and private sectors to address. In *A.P. Smith v Barlow*, a US court dismissed shareholders' claim that a donation made to a university which was not expressly authorised by the corporate constitution constituted a breach of the directors' duties. In holding that contemporary 'conditions require that corporations acknowledge and discharge social as well as private responsibilities'<sup>2</sup> the court confirmed that specific provisions in corporate constitutions are not necessary for CSR to be undertaken. Nevertheless, questions arising in the context of recognition of education in company law frameworks for CSR include: What is education? Is it crucial to refer specifically to education? What should underpin references to education in CSR? While the establishment of the UN Trust Fund for Human Security, for example, implies that the human security paradigm can underpin collaborative public and private sector engagement in public governance matters, orientating education to further human security is necessary to plug gaps existing in the constitutive, performance and evaluation criteria for CSR.

The concept of human security can be traced to the UNDP's (1994) Human Development Report which, with the establishment of the Commission on Human Security in 2001 (Ogata and Cels, 2003:274; Oberleitner 2005:187), shifted security discourses in international law (Newman, 2016:1165) from normative state-centred notion to inherent human dignity and its unique quality in stimulating sustainable development. The role of education in human security and dignity recognised by the US Supreme Court earlier<sup>3</sup> explains why it is one of the more visible aspects of CSR implicitly or, more recently, explicitly embedded in company law.

However, some cases of legally orchestrated CSR lack clarity regarding 'what' should be addressed and 'how' it is focalised. Education is implicitly recognised as part of CSR in UK Companies Act 2006, which, firstly, in providing for 'amongst other matters' in s.172(1) shows that the factors listed for consideration in the directors' duty to promote the company's success are not exclusive. This can accommodate education which, prior to the statute, was already a popular CSR intervention sphere. Secondly, education can arguably be undertaken 'to foster the company's business relationships with suppliers, customers and others, the impact of the company's operations on the community and the environment, [or] the desirability of the company maintaining a reputation for high standards of business conduct' as outlined in s.172(1)(c)(d)(e).

This paper argues that the human security paradigm can provide the necessary directions. It demonstrates the importance of education in addressing human security and how company law can more effectively orchestrate CSR for sustainable development (see Figure below). It links education to human rights, an essential field of CSR, through human security and human dignity. Thus, a key contribution is to illuminate education's primary role in the inherent connection between human security and human dignity for sustainable development.

The paper continues, firstly, by examining the concept of human security and shows that a narrow approach ignores the nexus between human security and human development while the broader perspective offers more flexibility for the collaborative role of CSR in education and public governance. Secondly, the paper traces the evolution of the right to education and its role in society before using human security to link education to sustainable development and CSR. It shows that corporate philanthropy, which is promoted in company law provisions for education, is unlikely to address human security. Thirdly, it suggests some constitutive criteria for education by using the human security paradigm to inform the definition, disclosure and ethical thrust of CSR alongside

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<sup>1</sup> Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education (Abidjan Principles) 2019).

<sup>2</sup> *A.P. Smith Mfg. Co. v Barlow* 13 N.J. 145,147 (1953); appeal dismissed: (1953) 346 U.S. 861.

<sup>3</sup> *Brown vs Board of Education of Topeka* 347 US 483 (1954) 493.

individualisation of education's instrumental and intrinsic benefits. Before concluding, the paper demonstrates the significance of human security for CSR performance and evaluation.

## 2. Human Security Paradigm, Human Dignity and Human Rights

The human security framework emerged in response to 'new transnational threats' and humanitarian crises arising from conflicts, and focuses on people, not States (Oberleitner, 2005:185; Panait 2014:51). In formulating human security, the UNDP (1994) identified the need to promote aspects of human life that guarantee wellbeing and welfare, suggesting it deals with "early warning and prevention" of all... downside risks, to which almost everyone... is vulnerable' (Howard-Hassmann, 2012:90). Its launch was arguably intended to promote human development and encourage the attainment of a good quality of life since feelings of insecurity arise largely from concerns about daily life, food, social conditions, environmental conditions, and personal safety. Thus, human security requires protection from diseases, the ability to lead a life that is worthy of humans' unique status and satisfaction of legitimate aspirations.

In recognition of the central purpose of human security to better human life, the UNDP (1994:22–23) stated that its focus 'is a concern with human life and dignity' to avoid failed or limited development that triggers human deprivations. Since human development entails broadening of people's ability to make a range of choices safely and freely, it is essential for human security and, therefore, human security concerns the quality of life each person can achieve through human development. This underscores human development, a predominant determinant of quality of life, as a key factor in human security and arguably explains its nexus with human dignity. In tune with the requirements of human dignity, the Commission on Human Security explained that human security should focus on protecting 'the vital core of all human lives' in a manner that enhances essential freedoms and fulfilment of basic needs (Mordini, 2014:622).

Arguably, the cardinal objectives of human security may be better achieved when it is integrated into human dignity as its basic justification and pursued in a mutually enforcing manner. As such, the UNDP (1994) promoted the concept of human security as a human-centred agenda that proposes freedom from want and fear (Howard-Hassmann, 2012:89). Accordingly, human security means 'first, safety from such chronic threats as hunger, disease and repression. And second, it means protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs or in communities' (Newman, 2000:218).

Human security therefore aims to protect people from physical, environmental and socioeconomic harms that affect their status as humans with a unique quality (Panait, 2014:51). The formulation of human security championed a paradigm change in security discourses in international law, as it now contemplates people's security instead of the normative state-centred security (UNDP, 1994:21; Jones 2004:100). A basic rationale is to compel States to prioritise citizens' welfare and security interests and, justified by concerns for human life and the inherent dignity of human beings under international human rights law, demonstrates the nexus between human dignity and human security (Howard-Hassmann, 2012:90).

The concept of human security has, however, attracted criticisms such as being conceptually ambiguous, vague and lacking a specific definition. For example, Paris (2001:88) suggested that human security is as vague as concepts like 'sustainable development' and a general mantra that provides no indication of what it denotes while Newman (2016:82) argued that it is 'normatively attractive but analytically weak'. Although these critiques identify the lack of 'definitive parameters for setting' its 'boundaries', human security may be designed in a manner that focuses on core issues of human personality development as a central element in transforming humans for a better and secure life (Jolly and Ray, 2007:465).

Although human security is distinct from human rights, it is embedded in human rights principles and goals. Kant (1785/2019), whose philosophical propositions influenced the use of dignity in international human rights law, recognised it as 'an unconditional and incomparable worth' that 'admits of no equivalent' (see Barak, 2015:215), which suggests that dignity presupposes having 'an unconditional status of worth or value' (Hill, 2014:215). Human dignity featured in

international law after World War II, through the UN Charter, and is accorded a general principle of international law (Schachter, 1983:848; Heath 2012:336; Barak 2015:215). Paragraph 2 of the preamble to the UN Charter sets the rudiments of human dignity (see O'Mahony, 2012:559) through its determination 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person'. The UN intended to create a new global order predicated on the recognition of human dignity and protection of human rights through the Universal Declaration of Human Rights 1948 (UDHR) (Grant, 2007:303), which is applauded for its '[i]mportation of the idea of human dignity into constitutional cultures around the world [that] has helped to ensure that all peoples have access to adequate education... and other basic necessities' (Daly, 2013:18, 59). As a declarative instrument, Article 1 of the UDHR reaffirmed the inherent dignity of individuals (see O'Mahony, 2012:558) and this is reiterated in Articles 22 and 23(3). Subsequently, the 1966 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR) recognised dignity as the foundation of global peace, justice and order (see Daly, 2013:58). Thus, human dignity is an inherent attribute of everyone requiring human development to foster the use of reason, a necessity for both human security and human dignity and, in principle, supportive of human rights.

As the substructure for human rights (Turner, 2015:364), human dignity 'is inherent in all human beings and transcends cultural barriers and national boundaries' (Botha, 2009:219). The postulation is that 'the State exists for the sake of the individual human beings, and not vice versa' (Kotzmann and Seery, 2017:13) since human dignity 'concerns our status and our equal worth, but also the ways in which various forms of degradation can flow from State power, and the distinctively dehumanising aspects of bad governmental practices' (Riley, 2015:92). When human security is lacking, it indeed signals the absence of human dignity and an attempt to address one correspondingly tackles the other. This presupposes that the other side of human security is human dignity, and both should be pursued in a mutually reinforcing manner. Nevertheless, human security demands that 'security should be measured in terms of the security of human people, in terms of their safety and their ability to access basic human needs without disruption' (Newman, 2000:219). Thus, its ends may not be achieved without offering people the opportunity to develop cognitive capabilities for making use of reason as a qualifying factor for an inherent unique worth.

Two approaches – narrow and broad – exist in discussions of human security (Liotta and Owen, 2006:41-42). The narrow approach ignores human development as a key component of human security (Chandler, 2003:122) and a springboard to a quality of life worthy of human dignity. It focuses on tackling crisis situations that jeopardise the safety of civilian populations in States confronted by armed conflicts (Howard-Hassmann, 2012:91). Justification can be traced to the major objective of the UN under Article 1 of its Charter in the maintenance of global peace and security, especially when potential conflicts could degenerate into armed hostilities. However, under Article 2(7), as a normative standard, States are required to refrain from the threat or use of force against another State's territorial sovereignty. It will then be against the principles of international law to intervene in another State's internal affairs without that State's permission. Under international law, this unfettered sovereignty demonstrably encourages States to pursue security advancement and military capabilities. Thus, it is the responsibility of States in promoting freedom from fear to take preventive measures to ensure that civilian populations are shielded from physical attacks.

Notable successes of the narrow approach include the International Criminal Court and the Anti-Personnel Landmines Ban Treaty (Martin and Owen, 2010). Nonetheless, the international community's prioritisation of that approach may be rooted in human rights politics and relegation of economic, social, and cultural rights as second generation rights, even though they fundamentally promote 'freedom from wants'. Since the narrow approach focuses on violence prevention, it does not contemplate the fate of millions of people who annually die from hunger, diseases and other non-violent 'preventable human security threats' (Liotta and Owen, 2006:52). It fails to holistically incorporate a fundamental aspect that promotes emancipation, quality of life and ability to lead a want-free life with dignity.

In addition to the significance of individuals' physical security and safety, the contrasting holistic perspective encompasses the need for human development, which provides a springboard for leading lives of freedoms that are free from wants. The approach is 'an emancipatory form of security, encompassing respect, empathy, determination to help, solidarity, and care' (Richmond, 2010:206). In practice, the broader perspective to human security requires 'considerations of human development, which refers not simply to the income aspects of poverty but to poverty as a denial of choices and opportunities for living a tolerable life' (Jones, 2004:102). Therefore, the need to promote socioeconomic freedoms, which requires human development, should be the epicentre of human security.

According to Ogata and Cels (2003:274), in accordance with the demands of human dignity, human security entails the protection of 'vital freedoms', which are basic human rights, and presupposes people's ability to enjoy those rights. A holistic approach to human security (which recognises its linkages to human dignity) from the viewpoint of Sen's (1993, 1999, 2009) Capabilities Approach would require promoting 'the real freedoms that people enjoy', which enable them to exercise choices that empower them. Achieving human security would require a focus on human development and, when this happens, it has the potential to integrate human developmental issues, human security, human dignity, and national security. It equally requires 'protection from various kinds of threats, such as economic, social, and natural threats' (Roznai, 2014:98). The Commission on Human Security similarly noted that a holistic approach requires a consistent plan to protect against poverty, hunger, health disaster and provide basic education (Howard-Hassmann, 2012:91). Thus, tackling threats to human security necessitates going beyond physical security to include human development as an imperative for empowerment and addressing socioeconomic imbalances. In support, Jolly and Ray (2006:13-14) and Tadjbakhsh and Chenoy (2007:10) argued for a broader approach to human security due to widespread security challenges transcending State boundaries.

The responsibility for addressing human security, like other aspects of human rights (United Nations 2011) lies primarily with States. Accordingly, the UN General Assembly resolution 66/290 of 2012, in acknowledging the relationship between human dignity and human security, underlined the responsibility of States 'in identifying and addressing widespread and cross-cutting challenges to survival, livelihood and dignity of their people'. Although the social investment paradigm (Cantillon and Van Lancker, 2013; Deeming and Smyth, 2015; Anderson, 2018; Hemerijck 2018), new welfare (Taylor-Gooby *et al.* 2015) and other welfare state theoretic models underline the role of States in human development, the broader perspective to human security may be an unattractive proposition for States with resource constraints. This concern is, however, a constricted perception of public governance derived from the liberal political economy system that distinguishes the roles of government and business. In that framework, the private sector is regarded as 'unreliable, unaccountable and undemocratic' and corporations lack necessary 'institutional DNA' for public governance (Fleming and Jones, 2013:34). As exemplified by the notions of 'corporate citizenship' (Matten *et al.* 2003; Aßlander, 2014) and 'shared value' (Porter and Kramer, 2006:84), the contemporary understanding of decentralised political power between public and private institutions (Scherer *et al.* 2006) presupposes roles for the private sector, particularly large corporations, in traditional government agendas (Mäkinen and Kasanen, 2016). Not-for profit social entrepreneurship (Jenson, 2016) or 'emancipatory social entrepreneurship' (Haugh and Talwar, 2016) by business organisations and philanthropy by individuals ('philanthrocapitalism' (Bishop and Green, 2009; McGoey 2012), 'philanthropreneurship' (Callahan, 2017), 'disruptive philanthropy' (Horvath and Powell, 2016) or 'entrepreneurial philanthropy' (Harvey *et al.* 2021)) which create opportunities for people and enable changes to social orders are private sector attempts to support States' social investment. Another is CSR (Enderle, 2021) which for-profit businesses undertake.

If the complementary role of CSR to public governance is acknowledged, it may be 'a much needed way to enlist the resources of business to supplement welfare state services' (Gjølberg, 2010:203) and assist in addressing the resource-based leaning of States towards the narrow approach to human security. Businesses, some of which have far greater resources than some States, can then be encouraged, including through orchestration in company law, to undertake education and other

human security-related activities. Nonetheless, the role of CSR is clearer in the broader approach of human security, which is in consonance with the need for human dignity. For CSR to play this role, its political perspective (Scherer and Palazzo, 2007; Scherer *et al.* 2013; Johnston *et al.* 2021) needs to be acknowledged.

Political CSR recognises the moral responsibility and legitimacy of private economic actors in undertaking governance functions traditionally associated with political and governmental authorities (Scherer and Palazzo, 2010; Detomasi 2015). It reflects 'an underlying political need to attribute greater levels of moral responsibility to corporations as...the dominant social actors' (Dubink and Smith, 2011:225-226). Its underlying foundation is the notion that citizenship creates a sense of entitlement and of service as a nation's member (Turner, 2008), including moral obligations to other citizens (Parekh, 2003) when governmental incapacity exists (Scherer *et al.* 2016:276). Thus, corporate moral responsibility can include education provision and other governance functions. As detailed below, when human security underpins involvement in education, businesses can contribute to human development for the benefit of society and its different segments.

Human development as an essential ingredient of human dignity is arguably a determining factor in people's quality of life and allows individuals to maximise opportunities for achieving self-set outcomes in consonance with human dignity. Overall, human dignity strengthens the significance of human security, hence their overlap and mutual reinforcement. In what follows, the centrality of education in guaranteeing the objectives of broader perspectives to human security is considered.

### 3. Education, Human Security and Sustainable Development

Education is 'a process of leading or bringing up' (Tyagi, 2012:11) comprising of deliberate and systematic activities designed to meet learning needs and including organised and sustained communications fashioned to induce learning (Hausler *et al.* 2019:6). Lonbay (1992:164), for example, describes education as 'a family of processes whose principle of unity is the development of desirable qualities in someone'. Thus, to achieve the purposes of education, everyone needs to be granted access to these 'family of processes' and, more significantly, the recognition of individuals as people with 'conscience and reason' requires continual application of cognitive abilities. It underscores the nexus between levels of knowledge individuals display, access to education, and use of cognitive resources as a beacon to attainment of sustainable development.

In the Middle Ages, the Stoics believed that a key role of education is ensuring free thought processes and liberation of the mind (Flores-Crespo, 2007:46-47). For philosophers of the time and indeed the classical period, reason is the central element that drives human nature and education serves as a vehicle for a life of wellbeing. In a wider sense, education is therefore a 'vehicle to reduce social inequalities' in society and for advancement of personal aspirations (Muller, 2011:254). Later thinkers, including John Locke, equally recognised an inherent relationship between education and human development and argued that education plays a salient role in determining how people use reason to make choices. Thus, education 'is a process of the formation of personal autonomy' (Flores-Crespo, 2007:47).

Subsequent philosophers, including Kant (1785/2019), argued that, while humans are not natural moral beings due to their inclination for vice, education assists in refining reason when its purpose is oriented to stimulate reasoning capabilities. This demonstrates a nexus between education, level of cognitive resources and ability to use reason. Thus, 'the object of education is the freedom of mind which can only be achieved through the path of freedom- though freedom has its risk and responsibility as life itself has' (Nussbaum, 2006:385). The attempts to introduce a more egalitarian society in the US and French revolutions led to the acknowledgement of education's role in moulding reason and, as such, the need for its availability to all and not just some social classes (Hodgson, 1996:239). At first, families and religious organisations were meant to provide education and equally determine curriculum contents, behaviour standards and community-based decorum. Indeed, education alongside the need to be educated (schooling) was not considered a human right or a matter for the State to address.

Nevertheless, the need for State provision of education gained traction. Education became conceived sociologically (Nowak, 2001:248) prompting the US Supreme Court in *Brown* to acknowledge it as 'a principal [sociological] tool'.<sup>4</sup> In this perspective, education is meant to teach and induct young people on developing into active and effective members of society (Durkheim, 1956; MacMillan 2010:535). Indeed, preparing good citizens requires the State to educate people in a manner that will predispose them to accept ways of life that are consistent with shared responsibilities in society, including fundamental democratic norms and values (Brighouse, 2000:68-69).

In international human rights law, education is recognised as a human right due to the need to encourage use of reason and thinking in acknowledgement of humans' unique quality. Human security then becomes an analytical tool for considering security levels and choices available to individuals and evaluating abilities, freedoms and opportunities each individual has for a life that reflects human dignity. Indeed, individuals need to be provided the opportunity to develop their human personalities through access to education as a source of empowerment that furthers human development and autonomy, bearing in mind the necessity of human security for sustainable development. For this reason, Article 13(1) of the ICESCR provides that States 'recognise the right of everyone to education [and] agree that education shall be directed to the full development of the human personality and the sense of its dignity.' This provision presupposes that international human rights law recognises the critical role of education in promoting human personality development and sustainable human development (Schachter, 1983:848).

Focusing education on the full development of cognitive capabilities promotes each individual's ability to lead a quality of life that promotes both human security and human dignity. This underlines the importance of access to and enjoyment of the right to education which, in *Brown*, the US Supreme Court stressed should be on 'equal terms'.<sup>5</sup> Since human security requires education to ensure sustainable human development, individuals should be provided with the opportunity to access schooling in a manner that promotes empowerment and autonomy as human dignity ideals, and evidences the overlap between human security and human dignity. Education therefore promotes human development, which is a key aspect of a holistic perspective to human security that also stimulates human dignity, since it recognises humans as ends in themselves and, in so doing, guarantees sustainable development. This explains why Goal 4 of the Sustainable Development Goals (SDGs) focuses on ensuring that quality education is universally available.

For education to realise its sustainable development potential, a broad approach to human security that 'expands and reinforces the real freedoms that people enjoy' (Ogata and Cels, 2003:273) is necessary. Human security ought to complement and build upon national security, human rights and human development as a foundation for sustainable development (Ogata and Cels, 2003:274-275). Tackling human insecurities allows people to exercise choices and those empowered assist in preventing and mitigating the impact of insecurities and enhancing the protection infrastructure.

Interestingly, sustainable development is now considered an integral component of CSR. While, for example, paragraphs 41, 45, 47, 56, 63 and 78 of the Declaration of the SDGs suggest the primary responsibility of governments for actualising sustainable development, paragraphs 41, 60, 62 and 67 acknowledge the roles of corporations and the private sector. This is an implicit acknowledgment of political CSR and its relevance to sustainable development. Thus, a corollary to the understanding that sustainable development encompasses interdependent social, economic and environment elements is the acknowledgement that 'the economy is not an end in itself but a means to an end to improving living standards and well-being of the people within the country in ways that do not impose harm on people outside the country' (Stiglitz, 2020:8). This notion of commonality of goals between sustainable development and CSR has brought ethics back to business discourse and led to initiatives that advocate shared economic and social prosperity. Corporations are then expected to exercise leadership, responsibility and stakeholder engagement in furtherance of sustainable

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<sup>4</sup> *Brown v Board of Education of Topeka*, 347 US 483 (1954), 493.

<sup>5</sup> *Brown v Board of Education of Topeka*, 347 US 483 (1954), 493.

development (Sachs, 2012). Accordingly, the World Business Council for Sustainable Development (WBCSD, 1998:3) defines CSR as 'the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large'.

Clearly, education is essential for human security and, alongside other sustainable development agendas, is a crucial component of CSR. But to what extent is meaningful education reflected in CSR practice and orchestration in company law? Arguably, explicit provisions such as India's Companies Act 2013 and implicit recognition of education within the framework of CSR in UK Companies Act 2006 lack appropriate constitutive, performance and evaluation criteria which, at best, is a tacit nod to corporate philanthropy. In this regard, corporate philanthropy can be defined as 'the voluntary business giving of money, time or in-kind goods, without any direct commercial benefit, to one or more organisations whose core purpose is to benefit the community's welfare' (Madden *et al.* 2006:49). While this suggests potential sustainable development agendas in corporate philanthropy, however, it can be triggered by profit maximisation, managers' utility maximisation or ethical motives (Gautier and Pache, 2015) and may depend on corporate officers' personal preferences (Liket and Simaens, 2015), which may neither be sustainable nor advance human security.

Moreover, while governance systems often determine CSR practices (Jackson and Apostolakou, 2010), businesses may struggle to understand CSR commitments and what they should do or refrain from doing. Conceptual and theoretical underpinning is therefore essential to improve understanding and policy and corporate interventions in education since a theory 'frames the way we look at problems, the facts and values we think relevant to their solution, and even what we consider to be problems at all' (Feinman, 1990:1285). The next section of this paper investigates how human security can assist in devising constitutive, performance and evaluation criteria for education in furtherance of sustainable development through CSR.

#### 4. Constitutive Criteria for Education in Company Law Orchestrated CSR

Those cases of explicit and implicit encouragement of CSR in company law demonstrate that CSR can be legally orchestrated. The legitimacy of company law intervention is not doubtful since the governance perspective confirms that CSR can be regulated without undermining its voluntarist foundations (Osuji, 2015). As such, the European Commission noted that '[c]ertain regulatory measures create an environment more conducive to enterprises voluntarily meeting their social responsibility' (CEC, 2011:3). In the human rights field which education, as shown above, belongs, there is a renewed emphasis on CSR as a panacea. Notable examples are the European Commission's strategy document (CEC, 2011:14), which explicitly refers to the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises (OECD, 2011).

Meanwhile, a correlation exists between legal and other governance systems and CSR perception and practice. This is, for example, embedded in ISO26000 definition of CSR as the 'responsibility of an organisation for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that contributes to sustainable development, including health and the welfare of society; takes into account the expectations of stakeholders; is in compliance with applicable law and consistent international norms of behaviour; and is integrated throughout the organisation and practised in its relationships' (ISO, 2010:[2.18]). Human rights are not different in showing linkages between legal provisions and CSR. As such, Ruggie (2008:[54]) stated that '[w]hereas governments define the scope of legal compliance, the broader scope of the responsibility to respect is defined by social expectations- as part of what is sometimes called a company's social licence to operate.'

Nonetheless, the lack of constitutive criteria in company law orchestrated CSR and considerable discretion it engenders, at best, promotes corporate philanthropy in education provision and is unlikely to appreciate the intersection of education, human dignity and human rights through human security. Sometimes described as philanthrocapitalism or venture philanthropy, corporate philanthropy has a long history and has assisted in addressing human welfare and social issues

(Eweje, 2006; King, 2013; Youde, 2013; Galaskiewicz 2016:39). It nevertheless constitutes an operationalisation impediment for CSR in education, human rights and beyond.

As Reich (1998) observed, the issue is not 'whether companies should be responsible in some way to society, but rather how they should be responsible.' How then company law can overcome the CSR operationalisation challenge by using human security to provide the constitutive, performance and evaluation criteria for education provision? Against this backdrop, the paper now outlines a constitutive framework for education provision in CSR using the human security paradigm.

#### 4.1. *Human Security Informed Disclosure*

Appropriate disclosure requirements are a necessary follow-on to education specific definition of CSR. Since human security recognises the need for people to live in a society that actively offers opportunities to enjoy basic human rights, the nexus between human security, human rights and human dignity may be elucidated in disclosure requirements. Human security informed CSR disclosure may be required in instruments such as codes of conduct, management system accreditation, certification, rating and assurance schemes, labelling systems and procurement policies. CSR disclosure requirements accord well with the States' duty under the UN Guiding Principles on Business and Human Rights to protect human rights through sustainability reports that are linked to due diligence component of the corporate obligation to respect human rights (HRC 2008). As Ruggie (2008:[54]) noted, such disclosure 'can subject companies to the courts of public opinion– comprising employees, communities, consumers, civil society, as well as investors– and occasionally to charges in actual courts.'

Illustrative of the role of disclosure in CSR are the OECD Guidelines for Multinational Enterprises which encourage enterprises to 'ensure that timely and accurate information is disclosed on all matters regarding their activities' and 'to apply high quality standards for...disclosure of non-financial information including environmental and social reporting where they exist' (OECD, 2011:25[1], 26[4]). Nonetheless, the recurring issues of quality, reliability, credibility, and comparability of CSR disclosures (Osuji, 2012) can partly be traced to vaguely worded undetailed provisions exemplified the UN Global Compact (Berliner and Prakash, 2012; Sethi and Schepers, 2014). Corporate philanthropy can aggravate the problem through an unbounded discretion on the objectives, methods and outcomes of interventions. For example, while the 'good causes' label is often attached to philanthropy, claims may not be guaranteed or verifiable without assessment standards. Arguably, the problem can be ameliorated by ensuring that disclosure requirements for education provision are underpinned by human security, making it easier to appraise corporate policies and responses.

#### 4.2. *Sustainable Development Suitable for Ethical CSR*

Another challenge posed by corporate philanthropy is its capacity to unlatch self-interest actions and disguise motivations for CSR. On the one hand, human security requires human personality development, in accordance with Article 13(1) of the ICESCR, as an essential element for realising human dignity and linking it to sustainable development. On the other hand, while CSR may benefit both businesses and society, for example when labour standards improve productivity, if interventions are manifestly or covertly motivated by business case, they are unlikely to advance human dignity through human security informed education. Rather CSR may be aligned to 'economism' (Poruthiyil, 2013:736) with its flawed premise that social actors' self-interest pursuit of economically beneficial activities can contribute to human dignity and social goals. Notably, Kant (1785/2019) argued the need for actors to 'use humanity... always at the same time as an end, never merely as a means.' The business case approach encouraged by concepts such as Creating Shared Value (Porter and Kramer, 2011) conflicts with Kantian perceptions of human dignity and underscores the need for company law to steer education provision towards ethical CSR.

Ethical CSR (Osuji, 2011; Schwartz, 2011; Hahn *et al.* 2018; Johnsen 2021) is more likely to address human dignity through education provision suffused with human security. In the first place, this

aligns with the Capability Approach (Sen, 1993, 1999, 2009) which CSR discourse (Giovannola, 2009; Kalfagianni 2014) recently accepted as an ethical justification for business responsibility to individuals and communities in society. Secondly, ethical CSR is appropriate for the responsiveness-based ethics of care (Van Cranenburgh and Arenas, 2014:534), which encourages personal autonomy, independence and nurturing for self-sustaining social advancement of individuals owed responsibility. By focusing on the needs of stakeholders, ethical CSR is more suitable for the human development approach which puts 'people at the centre of development to enhance the possibility of fully realising their potential' (UNDP 2015:131). The need for individualised wellbeing and opportunities is buttressed by references such as 'people-centred' (para.2), 'human rights and promote gender equality and the empowerment of women and girls' (para.3) and 'no one will be left behind' (paras.4, 26) in the Declaration of the SDGs (UN 2015).

Indeed, the inherent dignity of humans requires 'the full respect for each member of society as a free and self-responsible being' (Machan, 1977:832) as a key ingredient of human security. As such, the recognition of human beings' unique quality makes it important that they develop those capabilities that enable them to lead lives that reflect this value. Achieving 'real freedoms' and other fundamental freedoms requires knowledge cultivation through access to education to enable them to ultimately contribute positively to sustainable development of society.

#### *4.3. Individualisation of Instrumental and Intrinsic Benefits of Education*

More specifically, individualisation of the processes and outcomes of CSR interventions should include the instrumental and intrinsic benefits of education to individuals which Sen's (1993, 1999, 2009) Capabilities Approach underlines (Saito, 2003:24). Similarly, Nussbaum (2011:153) noted the significance of education in the development of human capabilities and argued that its deprivation negatively affects the social, economic, intellectual, and psychological well-being of individuals, and poses an obstacle to life achievements.

Education is considered as both a 'means' (instrumental values) and an 'end' in itself (intrinsic values), which strengthens its predominance as a prerequisite for sustainable development (CESCR 1999). This dual purpose is likely more realisable when learning is oriented to instil fundamental skills on individuals in conformity with the primary aim of education in improving thought processes and use of reason. As a means, education instrumentally equips individuals with necessary skills for exercising citizenship rights. It prepares people for political participation, imbues them with skills and knowledge, is a vehicle for economic empowerment and freedoms, and provides people with opportunities to secure good jobs and lead an improved quality of life that reflects human dignity (Coomans, 2007:185). It transforms people and is at the core of economic empowerment necessary for sustainable development (Beiter, 2006:29).

As an end, education influences human personality development. Educated individuals are more likely to be self-contented and confident for socio-political participation unless personal and extenuating factors exist. While social conditions can contribute to determining how people feel, educated people 'are generally more likely to portray greater satisfaction in life than those with lower levels of educational attainment' (OECD, 2013:2; Fait, 2015:12). Notably, the impact of education and modifications it inspires on cognitive resources may be contingent upon the purpose it is oriented to achieve. The end of education may be determined by its quality (curriculum, design and purpose), but it largely requires providing individuals with choices and opportunities (Coomans, 2007:185).

### **5. Performance and Evaluative Significance of Human Security**

Having demonstrated how human security can be applied in legal orchestration of education, a follow-up question is its significance on CSR conceptualisation in company law and practice. Borrowing from the language of corporate governance scholarship (Chen and Lin, 2016), company law's incorporation of the human security paradigm can motivate and constrain by providing performance and evaluation criteria for education provision in CSR as delineated below.

### 5.1. Regulatory Anatomisation of Human Rights

The human security paradigm can be used to increase the visibility of education in human rights and draw greater attention to its exigencies, role and impact. This is significant since different human rights issues may require different regulatory strategies and actors to tackle them. Unfocused CSR programmes will lack information necessary for effective decision-making, delivery mechanisms and accountability even if there are abundant resources and willingness to undertake sustainable development.

An issue needs to be explicated within human rights before focalisation of public and private sector attention can be induced. For example, private sector involvement and the emergence of CSR-themed legislative initiatives such as the UK Modern Slavery Act 2015, the Netherlands' Child Labour Due Diligence Law 2017 and Australia's Modern Slavery Act 2018 can be attributed to the dissection of human rights and exponential prominence of modern slavery in global discourse.

### 5.2. Interpreting CSR Linkages to Sustainable Development

The human security paradigm enhances a more principled understanding of CSR, including its distinctiveness from corporate philanthropy which can be haphazard and potentially counterproductive by facilitating donations of proportions of profits derived from socially acceptable and even undesirable practices. As indicated above, the orchestrated CSR in India's Companies Act 2013 can be problematic but using human security to inform a more precise definition of CSR will ensure cognisance of its linkages to sustainable development. This is underlined by the 'traditional description theory' which suggests that a term is associated with a concept containing 'a list or combination of properties or features that represents the necessary and sufficient condition' (Schwartz, 2006:275) to facilitate understanding.

The practical significance of explicit reference to human security in definitional criteria is arguably illustrated by judicial decisions on a 'presumption in favour of sustainable development'<sup>6</sup> in paragraph 14 of the UK National Planning Policy Framework which appeared to rival a 'presumption in favour of the development plan'<sup>7</sup> and 'a priority to be given to the development plan in the determination of planning matters'<sup>8</sup> in s.38(6) of the Planning and Compulsory Purchase Act 2004. The Supreme Court in *Suffolk*<sup>9</sup> held that since the Framework had no statutory force, it could not displace or modify the conflicting statutory provisions. While the Framework could be 'a material consideration'<sup>10</sup> for planning decisions, it was only a 'government policy' that did not 'have the same status in the statutory scheme as the development plan'.<sup>11</sup>

### 5.3. Business Judgement, Clarity and Certainty of Obligations

The human security paradigm can be used to clarify the scope of education provision under CSR. It reduces unpredictability, haphazardness and inefficient intervention methods and assist stakeholder evaluation. It will also limit the application of the business judgement rule in Anglo-

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<sup>6</sup> *Barwood Strategic Land II LLP v East Staffordshire Borough Council & Anor* [2017] EWCA Civ 893.

<sup>7</sup> *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, 1449H.

<sup>8</sup> *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, 1458B (Lord Clyde).

<sup>9</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd* [2017] UKSC 337.

<sup>10</sup> *R (on the application of Hampton Bishop Parish Council) v Herefordshire Council* [2014] EWCA Civ 878 [30].

<sup>11</sup> *Secretary of State for Communities and Local Government v BDW Trading Ltd* [2016] EWCA Civ 493 [21].

American company law<sup>12</sup> which confers a degree of discretion on directors that potentially obstructs routes to accountability (Bainbridge, 2004; Andreadakis, 2012; McMillan, 2013; Keay and Loughrey, 2019; Keay *et al.* 2020). As it stands, company law does not provide referential points for assessing CSR policies and activities due to the backdrop of shareholder-orientated corporate governance model. Even the enlightened shareholder value model of corporate governance, which acknowledges CSR to an extent, in '[t]he [UK Companies Act 2006] fails to provide little or no guidance either to directors that have to make corporate decisions, or to the courts which may be asked to review what directors have done' (Keay, 2011:435).

An uncharted notion of education as an element of CSR arguably provides illimitable discretion that may make corporate accountability difficult to sustain. This is illustrated by *R v HM Treasury* where the court declined a judicial review application that sought 'to impose [the court's] own policy in relation to combating climate change and promoting human rights on the board..., contrary to the decision of the board'.<sup>13</sup> As a general principle, insinuation of extraneous matters into statutory provisions is not permissible,<sup>14</sup> hence the significance of explicit statement of constitutive criteria.

Human security can provide certainty that prevents costly speculation for stakeholders and businesses. As Bennett (2006:673) argued in another context, '[b]usiness people would rather have a clear rule that might operate harshly and against their interests in a particular case than an unclear rule designed to produce a fair and equitable result in each case but that might require a lengthy and costly process to apply'. Centuries ago, Lord Mansfield similarly observed: 'in all mercantile transactions the great object should be certainty: and therefore, it is of more consequence that a rule be certain, than whether the rule is established one way or the other. Because speculators in trade then know what ground to go upon.'<sup>15</sup> In this regard, businesses can only speculate the meaning of 'promotion of education' in Schedule VII of India's Companies Act 2013 which, while it may encourage creative methods, lacks clarity.

## 6. Conclusion

This paper makes the compelling case for supporting explicit references to education in company law with appropriate human security informed constitutive, performance and evaluation criteria which are absent in existing legally orchestrated CSR. Justification for human security is its inseparable link to human dignity and human rights which, through education, has significant ramifications for sustainable development. While it is important for human security to adopt a holistic approach, education is critical to promoting and guaranteeing its achievement in a sustainable manner.

The paper contains a number of propositions for applying human security to underpin the constitutive criteria for education provision in company law orchestrated CSR. It argues that corporate philanthropy is quite distinct from CSR, particularly regarding education provision, and can promote objectionable and unsustainable outcomes. In addition to explicit references to education in CSR definitions, human security can be conspicuous in disclosure requirements. In contrast to business case rationalisations, ethical CSR aligns better with the Capabilities Approach which underlines the role of human security and is more suited for sustainable development.

It is further argued that the human security-based conceptualisation of education will have significant impact on CSR approaches in company law and practice, including through the provision

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<sup>12</sup> *Re Smith and Fawcett Ltd* [1942] 1 All ER 542; *Re Macro (Ipswich) Ltd* [1994] 2 BCLC 354; *Aronson v Lewis*, 473 A.2d 805, 812 (Del 1984); *Brehm v Eisner* 746 A.2d 244, 264 (Del. 2000); *In re Citigroup Inc. Shareholder Derivative Litigation* 964 A.2d 106, 126 (Del. Ch. 2009).

<sup>13</sup> *R (on the application of People & Planet) v HM Treasury* [2009] EWHC 3020.

<sup>14</sup> *R (on the application of Palestine Solidarity Campaign Ltd) v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16 [27] (Lord Wilson).

<sup>15</sup> *Vallejo v Wheeler* (1774) 1 Cowp 143, [153].

of performance and evaluation criteria. It will enable education to be extricated from the crowded field of human rights and give it the prominence it deserves in public and private discourse and policies. It will inform a better understanding of CSR and enable the adoption of more principled approaches that advance sustainable development. It will also promote clarity and certainty of CSR related obligations and assist in delimiting the boundaries of the company law's business judgement rule and the wide discretion it confers on directors.

Overall, having regard to the individual benefits of a holistic approach to human security and its mutual reinforcement with human dignity, opportunities should be provided to inculcate knowledge through education and having regard to its sustainable development concomitants. Applying the human security paradigm to education will address criticisms that CSR activities can be random and ineffective, lacking real impact on stakeholder interests.

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