Avhandlingsserie / Kriminologiska institutionen, Stockholms universitet 49

Stockholm University

Hardened Responsibility?

Contestations and Contradictions in the Regulation of Corporations

Elin Jönsson

Doctoral Thesis in Criminology at Stockholm University, Sweden 2024

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Academic dissertation for the Degree of Doctor of Philosophy in Criminology at Stockholm University to be publicly defended on Friday 5 April 2024 at 10.00 in Hörsal 6, Universitetsvägen 10C.

Abstract

Throughout the last decades, the social responsibility of corporations has undergone significant changes. From revolving around self-regulation, voluntariness, and soft law, the regulatory landscape has expanded to involve harder demands on corporations, such as mandatory sustainability due diligence. This thesis considers these changes as a hardening of Corporate Social Responsibility (CSR), and explores such hardening as an outcome of contestation and struggle. In doing so, it echoes critical scholars' call for criminology to direct attention toward the harms committed by powerful entities – in this case, large corporations in the global context – and the interests that frame the regulatory response to such harms.

Three papers are included in this thesis, focusing on key actors that participate in the contestation and struggle under study: politicians (Paper I), corporations (Paper II), and non-governmental organizations (Paper III). The first two papers consider struggles for and against regulatory hardening, and shed light on the contradictory dynamics that permeate these struggles, while the third paper explores how organizations struggling for justice in the wake of corporate harm seek to alter the contours of the existing regulatory landscape. Taken together, the papers offer insight into how social actors articulate demands for change, or resist such change, and their underscoring interests or ambitions.

This thesis situates these findings in previous research on the regulation of corporate social and environmental responsibility, considers the papers' methodologies, and develops the theoretical lens through which the findings can be understood. The final analytical discussion considers the hardened regulations as solutions, with the problem at hand being the paradigm of self-regulation and voluntariness that has long characterized CSR. This problematization is interpreted as an articulation of internal critique, in which social actors strive for consistency between practices and normative expectations. Thus, new regulatory practices, which conform to these expectations, have been proposed. The analysis then traces this problematization, and the contestation around it, to fundamental contradictions. Drawing attention to the inherent contradictoriness of CSR as a social formation, it argues that this should be understood as the driving force behind contestation and thus the hardening trend itself. In addition, the analysis considers the transformative potential in actors' struggles, suggesting that some may go beyond an adjustment of regulatory practices to an existing normative framework.

All in all, the thesis contributes to criminological research on corporate responsibility by highlighting the dynamics of conflict and contradiction involved in contemporary regulation. Moreover, by understanding hardening as a solution to a problem, revolving around the shortcomings of CSR – which was itself introduced as a regulatory solution in the 1990s – the thesis situates the regulation of today in a historical development. By doing so, it draws attention to both continuity and change in this regulatory landscape.

Keywords: *Corporate Harm, Corporate Social Responsibility, Critical Theory, Regulation.*

Stockholm 2024
http://urn.kb.se/resolve?urn=urn:nbn:se:su:diva-226828

ISBN 978-91-8014-685-2
ISBN 978-91-8014-686-9
ISSN 1404-1820

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Printed in Sweden by Universitetsservice US-AB, Stockholm 2024

Acknowledgments

Writing a doctoral thesis is sometimes described as a lonely endeavor. I am happy to say that I have been surrounded by people that have kept me company, and guided me, on this journey. My supervisors, Magnus Hörnqvist and Janne Flyghed – you have been by my side since Day 1. It is hard to explain just how much your support has meant to me, but I know this thesis would not have been written without you. Thank you for being a constant source of inspiration and encouragement, and for always having my back. I am so grateful for you!

For these last five years, I have had the great pleasure of being a part of the Department of Criminology. A huge thank you to all of my colleagues, for your interest in and reflections on this project – and for making these years so much fun! A special thanks to my fellow PhD students, and all of the post-doctoral researchers, for being such great friends and colleagues.

This thesis has benefitted much from being reviewed by other researchers at different stages. I am so grateful to all who have shared their thoughts on it over the years. In particular, I wish to thank Felipe Estrada, Johan Edman and Isabel Schoultz for your careful reading of, and thoughtful comments on, an earlier draft of this thesis. A huge thank you, also, to Christoffer Carlsson, for always making time to discuss my work with me. Becoming a criminologist takes time – thank you, Christoffer and Isabel, for your continuous support on my journey, and for helping me grow as a teacher and researcher.

The research in this thesis has been presented at different academic conferences. To the participants at the NSfK Research Seminar 2022, ACCESS Forum 2022, DWCC/EUROC Conference 2023, EG Annual Conference 2023, and ESC Annual Conference 2023 – thank you for making me feel at home in the international research community, and for your feedback on

my work. Thank you, also, Ulrika Mörth, and the researchers at Score, for valuable comments and reflections. I also wish to thank the students I have met throughout my years as a university teacher – watching your interest in criminology grow has been so inspiring to me.

Writing this thesis would not have been possible without my family and friends. I am so grateful for your constant support and encouragement – it means everything to me. David, thank you for always being by my side. I love you all so much.

Elin Jönsson
Stockholm
February 2024

List of Articles

I. Jönsson, Elin (2023). Struggles for Regulatory Hardening: Exploring Swedish Politics on Corporate Social Responsibility. *The British Journal of Criminology*. 63(5): 1184–1198.

II. Jönsson, Elin. Navigating Contradictory Demands: An Analysis of Corporate Responses to Regulatory Hardening. Revised manuscript under review.

III. Jönsson, Elin. Justice from Below: Struggles Against Corporate Misconduct in the National Contact Point System. Submitted manuscript under review.

Contents

1. Introduction

Of all the things in my kitchen pantry, one of the first you come across is a box of cane sugar. The sugar was packaged in Sweden, but originates from an unspecified country outside of the EU. On the box is a Fairtrade logo: a certification to signal that the product was produced under responsible conditions. This can be viewed in light of the sugar industry's involvement in labor exploitation and environmental degradation, and looking back at history, its role in the development of slaving regimes (Nimako and Willemsen, 2011; Richardson, 2015). Moving on to my fridge, you find a block of tofu, made from soybeans. These soybeans, the producer promises, were grown in Europe, far away from the issues of deforestation that have been associated with the soy industry over the years (see, e.g., Boekhout van Solinge, 2020). Further in, on my kitchen table, is a mobile phone, containing minerals sourced from areas unknown to me – and in the words of the European Commission (2024), it is "difficult for consumers to know if a product they have bought is funding violence, human rights abuses or other crimes overseas". To tackle these harms, new regulation has been introduced, requiring EU importers to check their supply chains and ensure that they source responsibly.

Taken together, these things tell stories of harm, injustice, and exploitation, but also of the paradigm of self-regulation built around the idea of Corporate Social Responsibility (CSR), and the hardened regulations introduced in recent years to demand responsible operations. This thesis is essentially about these stories; not sugar, soybeans and conflict minerals per se, but the overarching issue of regulating the harmful impacts of corporations on society, which has long been a site of contestation and struggle (Shamir, 2004; Khoury and Whyte, 2017; Muchlinski, 2021). More specifically, it focuses on the hardening of corporations' social and environmental responsibility, illustrated by regulations on mandatory disclosure and due diligence (Momsen and Schwarze, 2018; Macchi and Bright, 2020; Sinclair and Nolan, 2020).

The aim of this thesis is to explore this process of regulatory hardening as an outcome of contestation and struggle. To do so, it directs attention to a number of key actors involved in this process: the nation-state and politicians, attempting to regulate cross-border corporate activity; the corporations themselves, who are able to operate in this global context; and civil society and non-gov-

ernmental organizations, struggling to address injustices in the wake of transnational corporate conduct. Taken together, this thesis offers empirical and theoretical insight into how actors participate in the contestation around the social responsibility of business, and how this contestation generates regulatory hardening. As a whole, then, it takes an interest in two of the three processes that, for Sutherland (1934), define criminology: the making of laws, and the reaction to the breaking of laws. Its scope, however, stretches beyond hard law, and thus also beyond crime.

The thesis begins with the concept of CSR, "best understood as international private business self-regulation" (Bader, Saage-Maaß and Terwindt, 2019, p. 159). This frames the focus of this thesis. It does not study the entire legal and regulatory space devoted to corporate crime and harm; it has a much more targeted ambition, by investigating how the regulation of social responsibility, which has primarily been managed through soft, voluntary and private strategies, has come to incorporate harder regulatory interventions. The process under consideration here is therefore understood as a hardening of CSR. The first three chapters consider the issues of what CSR is, where it came from and its main actors, before discussing this hardening trend in greater detail. The following chapters map out the theoretical framework, which draws on critical theory – primarily the works of Rahel Jaeggi and Nancy Fraser – and the thesis' methodological approach, as well as the three papers that constitute its empirical base. In the final chapter, the key findings from the papers are further discussed in relation to previous research and theory. Split into three sections – focused on regulatory hardening as a solution, the articulation of problems, and the development of immanent critique – this chapter shows how regulatory hardening can be understood as an outcome of contestation and struggle that, in turn, can be traced to fundamental contradictory dynamics in capitalism as a form of life.

Points of Departure

This thesis has a few basic points of departure; addressing these clarifies the direction in which we are going. As briefly highlighted above, the thesis takes an interest in the dynamics of capitalism, understood as an economic and societal order grounded in "a mode of production, with a very specific set of presuppositions, dynamics, crisis tendencies, and fundamental contradictions and conflicts" (Fraser and Jaeggi, 2018, p. 3). In doing so, it follows the renewed interest in capitalism and critique visible in critical theory, driven by signs of crisis and conflict which draw attention to deeper dysfunctionalities and problems within capitalism itself (Fraser and Jaeggi, 2018; see also Fraser, 2022). From this perspective, capitalism is understood as characterized by:

> (1) private ownership of the means of production and a separation between producers and the means of production; (2) the existence of a free labor market; (3) the accumulation of capital, and, as a consequence, (4) an orientation toward the exploitation of capital, thus toward gain instead of need, toward the cultivation of capital instead of the consumption of it or subsistence on it. Finally, (5) under capitalism the market typically functions as a coordinating mechanism for the allocation, as well as the distribution, of goods, such that capitalism and the market economy are closely bound – though not identical – to one another (Jaeggi, 2016, p. 46; see also Fraser and Jaeggi, 2018; Fraser, 2022)

Thus, as a system, or form of life, capitalism is geared toward the constant expansion of capital; to not expand is to not survive, making capital itself the *subject* (Fraser and Jaeggi, 2018). For this thesis, interest falls on these more overarching features of capitalism, as well as on the contradictions and conflicts located within them. One such contradiction, to which we will return throughout this thesis, is between the need for capital accumulation – facilitated by governmental 'regimes of permission' (Whyte, 2014) – and the need for the state to protect society from harm, to secure legitimacy and the progress of industry (Tombs and Whyte, 2015; see also Chambliss, 1979). By focusing on how the social harms of corporations are regulated, then, this thesis directs attention to the contradictions, conflicts and crisis tendencies of capitalism through a criminological lens.

Beyond these general characteristics, this thesis considers the "governance regimes that embed and organize capitalism" – in particular, neoliberal globalization (Fraser and Jaeggi, 2018, p. 15). A defining feature of global capitalism is the geographical mobility of capital, illustrated by the ways that corporations are able to shift location in their search for the best rates of return (see, e.g., Michalowski and Kramer, 1987; Castree et al., 2004). They are, in other words, able to go 'regime shopping' and decide which regulatory regimes "to choose from the shelf" (Tombs and Whyte, 2020, p. 20). This mobility has been facilitated by laws and regulations which, Gill (1998, pp. 23, 25) argues, are "premised upon the dominance of the investor" and thus seek to provide "an appropriate business climate". It has therefore been suggested that the governance of the global economy can be understood as a neoliberal project aimed at extending the power of capital (Gill, 1998; Gill and Cutler, 2014). These lines of reasoning will be further developed in Chapter 3.

In this context, one of the key actors – if not *the* key actors – are the corporations, operating within webs of "strategic alliances, supplier chains, and financial and governmental networks" (Picciotto, 2011, p. 8), thereby making up different constellations of economic power (Dicken, 2007). Of interest in this thesis are the larger entities operating in this global context, drawing on the insight that economic and political power shapes the potential for social harm (Michalowski and Kramer, 2006a). It is from this perspective, then, that this

thesis approaches the issue of corporate harm and regulation: with an emphasis on the basic structures of capitalism – in particular, their fundamental contradictions and orientation toward expansion – and the dynamics of neoliberal globalization, which facilitate and structure transnational corporate operations.[1] In this global context, CSR has been understood as a regulatory alternative for corporations that operate in spaces or gaps that neither home nor host states may effectively reach (see Ruggie, 2018). More attention will be directed toward these issues in Chapter 2 and Chapter 3.

This thesis focuses on regulation – but what is it that needs to be regulated? In the words of Bittle and Snider (2013, p. 179), it is "hard to exaggerate the extent and severity of the human rights and environmental damage" caused by multi- and transnational corporations in the last five decades. The papers in this thesis offer insight into how such damage may look. In Paper I, politicians reference instances of corruption, bribery and complicity in war crimes (see also Schoultz and Flyghed, 2016); in Paper II, some of the actors under study have faced allegations related to the mishandling of toxic waste, union busting and tax evasion (see also Evertsson, 2016; Business & Human Rights Resource Centre, 2020; OHCHR, 2021); and in Paper III, communities and organizations struggle for justice in the wake of corporate harm, such as pollution of land and water resources.[2] Rather than being isolated cases, these can be understood as examples of routine or systematic elements of the global economy (cf. Tombs and Whyte, 2015). As Olsen (2023, p. 2) argues:

> Many people may think of human rights abuses as an unusual, worst-case scenario in business. Yet, individuals are regularly injured, trafficked, enslaved, forcibly displaced, or killed in the corporate context. Recent examples include enslavement of migrant workers across agricultural communities in Argentina; over 4,500 employees working in a sweatshop in Peru, some of whom were

[1] It should be highlighted that the focus on the contemporary era of capitalism is not a suggestion that other social and economic systems in history, or corporations in other eras of capitalism, have not generated or contributed to harm (cf. Fraser and Jaeggi, 2018; see Matthews, 2006, for an example of the latter).

[2] Two well-known cases can be described here as an illustration of the harms at hand. In the late 1990s, Lundin Oil signed a contract with the government to extract oil in Sudan. Over the years, there have been reports of human rights violations in an area awarded to Lundin, as militias and the Sudanese army expelled the people living in the area – something that involved rape and murder (Schoultz and Flyghed, 2016). Former executives are currently on trial for complicity in war crimes (Business & Human Rights Resource Centre, 2024). A second case concerns the enterprise Boliden, who in the mid-1980s shipped toxic waste – which included arsenic, mercury and lead – from Sweden to Chile. The waste ended up in an uncovered pile, close to populated communities, with adverse impacts on peoples' health and the local environment. Affected communities have made different attempts at seeking redress, in Chile as well as Sweden. In 2019, a Swedish Court of Appeal determined that the claims were time-barred – an interpretation that "renders the right of access to justice meaningless" (UN Special Rapporteurs, 2021, p. 5; see also OHCHR, 2021).

> dismissed for trying to form a union; and forced displacement of communities by paramilitary forces in Colombia on behalf of a palm oil company. Claims such as these are widespread, suggesting that businesses abuse, neglect, or fail to protect the basic human rights of workers and communities.

Another important point of departure comes into light here, in the use of 'harm' rather than crime – a decision that has theoretical roots in critical criminology. From this perspective, the law that defines crime is understood as

> a *result* of the operation of interests, rather than an instrument that functions outside particular interests […] law does not represent a compromise of the diverse interests in society, but supports some interests at the expense of others (Quinney, 1970, p. 35 emphasis in original)

Similarly, for Chambliss (1976, p. 7), crimes are defined as such "because it is in the interests of the ruling class to so define them". From this it follows that "the ruling class will be able to violate the laws with impunity while members of the subject classes will be punished" (Chambliss, 1976, p. 7). What is being articulated in these critical approaches is an understanding of law as inherently linked with the economic and political structures of society; it is not a neutral or objective instrument, but an expression of underlying relationships of power. Following these lines of reasoning, criminologists employing the label of 'crime' to determine their area of attention could be described as becoming "an extension of the political state" (Michalowski and Kramer, 2006a, p. 6).

Acknowledging and developing these kinds of criticism, critical criminologists have turned to other concepts. From a zemiological perspective, using 'harm' has been a means of shifting away from "many toxic aspects of the histories of criminology" (Canning and Tombs, 2021, p. 5; see also Hillyard and Tombs, 2007). In the literature on state-corporate crime, studying adverse outcomes resulting from the interaction between institutions of political governance and economic production, focus has fallen on 'socially injurious actions' (Michalowski and Kramer, 2006b). In this thesis, the concept of harm – which includes both legal and illegal corporate conduct – is used, in line with the theoretical tradition mapped out above, and in recognition of the structure of global governance. As the papers in this thesis show, actors struggling for regulatory hardening do so in light of 'human rights violations', or 'corporate non-compliance'. They are thus referencing not only sources of hard law, but also soft law and voluntary guidelines to define their scope. Moreover, remembering the notion that corporations in the global context can operate in spaces between laws (Michalowski and Kramer, 1987; Tombs and Whyte, 2020), not being limited to 'law' allows us to consider a wider range of actions and outcomes that generally tend to be less visible for us as criminologists (drawing on Croall, 2007; Whyte, 2007).

Another perspective that could contribute to this conceptual issue is articulated within critical theory. Guided by an interest in social struggles, critical theory directs attention toward the "standpoint of situated agents who are potential participants" in them (Fraser and Jaeggi, 2018, p. 123). It is thus in these standpoints and experiences that critical theory finds its criteria (Celikates, 2018), not in externally imposed or predefined standards. These lines of reasoning will be further developed throughout this thesis; in particular, the final discussion in Chapter 9 will consider how the struggles under study revolve around *justice*, interpreted as a multidimensional concept following Fraser (2008). This perspective thus highlights the importance of speaking with, and not only for, social actors, in order to understand the experiences of – and thus theorize – the struggles of our time (cf. Celikates, 2018).

On a final note, from the perspective of critical criminology, it is important to pay attention to the "patterned presences and absences of law and enforcement in relation to the harms perpetrated or facilitated by the powerful" (Canning, Martin and Tombs, 2023, p. 5). In relation to this, Hörnqvist (2015) suggests that the final barrier between policing strategies on the one hand, and regulatory strategies on the other, lies in the social valuation of the act itself. While corporate conduct can have harmful impacts, the conduct itself remains valued and thus legitimate (though not uncontested, as this thesis will show). Therefore, the regulation of business can be understood as driven by the ambition of maintaining trust and confidence in markets (Clarke, 2000), of keeping the wheels of industry turning (Whyte, 2014). One way of analyzing a regulatory intervention is therefore to consider "how it contributes to the temporary stability of the social formation as a whole; the reproduction of capital accumulation" and, by extension, "other constitutive power structures" (Hörnqvist, 2020, p. 241). It is from this vantage point – one concerned with fundamental structures of power – that this thesis approaches the issue of regulating corporations, and the steps taken in the trend toward regulatory hardening.

2. Corporate Social Responsibility: Understandings

There is no consensus on how to define CSR (Matten and Moon, 2008; Gjølberg, 2010; Tombs, 2016; Ruggie, 2018); it is an ambiguous and imprecise concept, which allows for significant flexibility for actors to engage with it as they see fit (Andrews, 2019; cf. Heydon, 2019). There have been attempts, however, at defining CSR in very general terms. For instance, Tombs (2016, p. 94) suggests that "most fundamentally, CSR involves the claim that corporations can or do recognise a social responsibility", which may go beyond the duties placed on them through legal or regulatory requirements. Similarly, Matten and Moon (2008, p. 405) argue that at its core, CSR "reflects the social imperatives and the social consequences of business success"; it thus consists of "policies and practices of corporations that reflect business responsibility for some of the wider societal good". Another suggestion comes from Shamir (2008, p. 382), stating that CSR can be understood as a "set of socio-moral expectations" that companies and other market entities have come to address in the last decades. Exactly what these responsibilities, imperatives or expectations cover, however, is difficult to pin down. The principles in one of the most well-known international frameworks for CSR, the United Nation's Global Compact, include general statements such as "Business should support and respect the protection of internationally proclaimed human rights", and "Business should support a precautionary approach to environmental challenges" (United Nations, 2023). At the most basic level, then, CSR is the idea that corporations recognize a social and environmental responsibility, which is addressed by the corporations themselves. Searching for a more detailed definition of CSR leaves us with a range of possible options to choose from. This chapter proceeds with exploring these options, before turning to the general neoliberal foundation of CSR, and considering some fundamental lines of critique against it.

A Contested Concept

Scholars have acknowledged the uncertainties and ambiguities of CSR in different ways. In her work, Sahlin-Andersson (2006) understands CSR as three parallel trends. The first trend is CSR as a regulatory framework, through

which companies can demonstrate their awareness of social and environmental issues. This trend, Sahlin-Andersson (2006) argues, has been driven by criticism against the corporation as an exploiter of the world's resources. The second trend considers CSR as a mobilization of companies to assist in state development aid; from this perspective, the corporation is a legitimate provider, which is able to complement and support states. The final trend is that of CSR as a fashionable management model, foregrounding how commitments to social responsibility have become a necessary part of the modern organization to remain legitimate in the eyes of its stakeholders (Sahlin-Andersson, 2006). Thus, depending on the trend we focus on, we may trace CSR to slightly different origins, end up with contrasting ideas of companies, and associate it with various aims or goals.

Another way of thinking about CSR is offered by Shamir (2004, p. 645), who understands CSR "first and foremost" as "a field that consists of a multitude of social actors", who struggle to consolidate their ideas about the social responsibility of business. Examining claims brought under the US Alien Tort Claims Act, Shamir (2004) argues that while claimants seek to shape the notion and practice of CSR as legally binding obligations, corporations – who are resisting these claims – seek to stabilize the notion of CSR around ideas of voluntariness and non-binding commitments. Different actors in the 'CSR field' are therefore involved in a contestation of installing their own meanings of CSR (Shamir, 2004). Berger-Walliser and Scott (2018) also recognize the conflicts involved in defining CSR, and draw attention to the variety of definitions that do exist. Through the lens of shareholder primacy theory, the only moral duty of companies is to further the financial interests of their shareholders; from this perspective, committing to social responsibility becomes a business strategy that builds value. Through the lens of stakeholder theory, however, companies have a social duty to all stakeholders affected by their operations; from this perspective, CSR involves the weaving together of business interests with moral interests. Another definition has a slightly broader approach, foregrounding that companies have a basic ethical responsibility of 'giving back' to people and the planet. Lastly, the authors note, CSR has also been defined strictly as voluntary activities. Thus, only when companies address environmental and social issues in ways that go beyond what they are legally required to do, is it relevant to speak of CSR (Berger-Walliser and Scott, 2018).

It is thus possible to consider CSR from a number of different perspectives, but definitions can also change over time. This is illustrated in Ungericht and Hirt (2010), mapping out how the European Commission changes their understanding of CSR throughout the years. At the turn of the millennium, the Commission promoted binding standards for social responsibility, but later begins to reject this notion. By 2006, the Commission promotes CSR as voluntary

business conduct, arguing that it will enhance the competitiveness of European enterprises. Here, CSR comes to be less about social responsibility per se, and more about economic growth (Ungericht and Hirt, 2010; cf. Vallentin and Murillo, 2012). Continuing this timeline, in 2011, the European Commission (2011, p. 6) defines CSR as "the responsibility of enterprises for their impacts on society", which – in Maguire's (2017, p. 12) analysis – leaves the "door open to interpretations of CSR that include the use of mandatory rules". Apart from acknowledging that the meaning of CSR can be molded by different actors to suit their specific interests, then, it is also important to consider how the concept can change over time[3] – which is imperative for a thesis interested in its successive hardening.

Understandings of CSR may also differ depending on context. Generally, on a national level, corporations are expected to operate "within a more or less properly working political framework of rules and regulations which are defined by governmental authorities" (Scherer and Palazzo, 2008, p. 414). This assumption, however, "does not hold" in the global context of interest in this thesis, as the "global framework of rules is fragile and incomplete" (Scherer and Palazzo, 2008, p. 414). In Ruggie's (2018, p. 317) words, "there is no central regulator and national laws where multinationals operate may be weak, poorly enforced, or simply do not exist"; voluntary CSR thus becomes a regulatory response to the adverse impacts that these enterprises create, beyond the reach of domestic law and regulation. This global context will be further explored in a following chapter. Moreover, this understanding is mirrored in the Swedish government's approach to CSR. Exploring how Nordic governments have approached and understood CSR, Gjølberg (2010) finds that in Sweden, CSR has been defined as a means of addressing global governance gaps, and not the rather well-regulated domestic context. It thus concerns non-domestic markets only, where no other frameworks or laws are seen as effective or applicable. Similar lines of reasoning are developed in Midttun et al. (2015, p. 474), drawing attention to the government's preference for multilateral approaches against an understanding of CSR as "'superfluous' domestically". Instead, CSR has been embedded within the humanitarian narrative of Sweden's general foreign policy, rather than being a policy area in itself. It is thus perceived as a "corporate addition" to existing traditions of a Nordic heritage (Gjølberg, 2010, p. 219), with the aim of supporting developing countries to improve existing standards on social and environmental responsibility (Midttun et al., 2015; cf. Sahlin-Andersson, 2006, on CSR as corporate-led state assistance). Drawing on Andrews (2019), these governmental lines of

[3] Paper II, focusing on the proposed directive for Corporate Sustainability Due Diligence, sheds light on the more recent position taken by the European Commission.

reasoning can be problematized as they perpetuate an idea of local communities needing to be 'saved' not from, but *by*, foreign investors and companies – a criticism to which we will return below.

A Neoliberal Strategy

Although different understandings of CSR exist, and the concept itself is contested, a common theme in the literature is that CSR is generally considered to consist of voluntary business activities. CSR is understood as being 'beyond law' or 'post-legal', and therefore often contrasted with mandatory or binding regulations (Banerjee, 2008; Gjølberg, 2010; Picciotto, 2011; Ruggie, 2013; Andrews, 2019). On "the regulatory scale", in Ruggie's (2018, p. 317) words, CSR thus falls on the side of voluntariness. The regulatory framework that has developed around CSR is therefore centered on voluntary self-regulation instead of top-down legal responsibilities (Sahlin-Andersson, 2006; Picciotto, 2011; Garsten and Jacobsson, 2013; Tombs and Whyte, 2015). Such regulation is developed by the individual enterprise, but could also involve industry initiatives, as well as soft law frameworks, certifications or labeling schemes to which the corporation voluntarily submits (Berger-Walliser and Scott, 2018). The idea of responsibility that emerges in CSR, then, is responsibility in the form of "voluntary commitments of companies to self-selected social standards", as opposed to civic or penal liability for violating legal norms (Laruffa and Martinelli, 2023, p. 600).

Connected to this discussion on voluntariness and self-regulation is the research that highlights CSR as a neoliberal invention, which is visible in its regulatory strategies as well as in the rhetoric underpinning those strategies. After all, the neoliberal subject, Dardot and Laval (2014) discuss, is a self-governing subject. This is reflected in CSR discourses and strategies, which imagine corporations as "real flesh and blood citizens: as an autonomously acting rational actor that takes decisions that are largely based upon the costs and benefits for the corporate 'self' or 'citizen'" (Whyte, 2018b, p. 94). For Shamir (2008), CSR illustrates the ways in which corporations have become responsibilized with social duties, which over time have become built into the very structure of the enterprise (see also Power, 2007). This responsibilization is made possible through the 'business case' of CSR – that doing good for society, is good for business – which allows companies to understand morality through a market logic. From this perspective, being socially responsible is in the economic interest of the corporation, which allows governments to remain at a distance or 'at arm's length' (Shamir, 2008; see also Andrews, 2019). Similar conclusions are drawn by Garsten and Jacobsson (2013) studying global governance, and Vallentin and Murillo (2012) studying EU policy. Both papers highlight that CSR rests on a harmony or 'win-win' ideology, in

which financial and social interests can be combined. This ideology, which relies on the goodwill of companies, therefore works as a self-regulating mechanism (Vallentin and Murillo, 2012; Garsten and Jacobsson, 2013), and signals a possibility for regulation to benefit both corporate capitalism and wider society (Fleming and Jones, 2013; see also Baars, 2019). The ways in which these policies tend to be placed beyond contestation, through their 'win-win' logic, can be suggested as illustrating the "great ideological victory of neo-liberalism" (Dardot and Laval, 2014, p. 191), or what has been considered a shift toward post-political discourses (Garsten and Jacobsson, 2013). Drawing on the above, CSR can thus be understood as "inherently part of neoliberal globalization and attempts to preserve the status quo dominated by self-governance" (Laruffa and Martinelli, 2023, p. 600). We will continue to explore the role that neoliberal ideology has played, and continues to play, for CSR throughout this thesis.

A Criticized Phenomenon

The logics, strategies and alleged merits of CSR have been subjected to much contestation and criticism, not least from the perspective of critical criminology.[4] *Firstly*, rather than being a mechanism for corporate responsibility, it has been argued that CSR is primarily a mechanism for increasing profitability and preserving corporate power. By demonstrating their commitments to social responsibility – for instance, by adopting the terminology associated with environmental movements – corporations are able to further their financial interests. Along similar lines of reasoning, it has been argued that corporate commitments to social and environmental issues are only considered if they can be aligned with corporate commitments to profitability (Tombs and Whyte, 2015; Tombs, 2016). From this perspective, CSR is more than a smokescreen – it is a means of ensuring the corporation's survival, and by extension, the survival of capitalism (Glasbeek, 1988). Thus, CSR becomes a tool for preserving the interests of dominant groups, rather than holding them to account (Laruffa and Martinelli, 2023). *Secondly*, continuing these lines of reasoning, voluntary and soft law mechanisms are limited as they do not address the asymmetrical power relationships within the global economy, which are important enablers of harm. These limits have been discussed in empirical studies on mechanisms and frameworks associated with CSR: for instance, the National Contact Point system (Balaton-Chrimes and Haines, 2017; Haines

[4] There is a vast literature on CSR, and corporate self-regulation more generally, examining the effectiveness of these mechanisms (for instance, whether they generate substantive compliance or not). This thesis does not focus on such issues on effectiveness, and does not delve into this literature here; instead, it directs attention to the more fundamental critiques of CSR, primarily developed within criminology, as critique will be addressed in the chapters to come.

and Macdonald, 2020) and the Ruggie Framework, later known as the UN Guiding Principles on Business and Human Rights (Bittle and Snider, 2013).

Thirdly, previous research highlights the risk that CSR directs attention away from other mechanisms of regulating corporate misconduct. This is visible in research mapping out how companies promote voluntariness and softness as a means of deflecting the legalization of their social responsibility (Shamir, 2004; LeBaron and Rühmkorf, 2019). Through its emphasis on voluntary self-regulation, CSR is thus aimed at "pre-empting, weakening or indeed displacing legal responsibilities" (Tombs and Whyte, 2015, p. 122; cf. León and Ken, 2017; Baars, 2019). Extending these lines of reasoning, it has been argued that CSR promotes an understanding of the corporation as a singular, abstract entity, thereby masking the real people that benefit from the corporation's operations – in other words, fundamental power relationships (Whyte, 2018b). The *fourth* strand of criticism targets the more fundamental level of whether it is even possible for corporations to assume social responsibility in the first place. It has been argued that the corporate pursuit of profit cannot be subjugated to some other priority, such as social responsibility; it is a "logical incoherence" (Tombs and Whyte, 2015, p. 120; see also Pearce and Tombs, 1990). Along similar lines of reasoning, Bittle and Snider (2013) discuss the structural contradiction that exists between the corporation's legally defined commitment to profitability, and its non-binding commitments to human rights (cf. Khoury and Whyte, 2017). *Lastly*, and from a slightly different perspective, it has been argued that CSR construes a false narrative of the corporation. In CSR, the corporation becomes a legitimate party in global governance, and is positioned as a provider of rights (for instance, by 'giving back' to local communities and 'aiding states', see Baars, 2019). Not only does this uphold an idea of local communities as needing to be saved by, not from, foreign companies (Andrews, 2019), it also creates a distinction between Western companies as being more 'civilized' in comparison to the 'backward' companies of host states (Baars, 2019).

CSR in This Thesis

Drawing on what has been presented thus far, this thesis considers CSR along the lines of the first trend discussed by Sahlin-Andersson (2006). From this perspective, CSR is a regulatory framework, through which companies demonstrate awareness of, and address, adverse social and environmental impacts. This understanding of CSR is similar to what Ruggie (2013) focuses on in *Just Business*, where he takes an interest in CSR as companies' response to the risk that they may generate, or contribute to, adverse impacts through their

operations.[5] This response, as discussed above, is voluntary and self-regulatory, tends to go beyond the requirements of local laws (see, e.g., Picciotto, 2011; Ruggie, 2013, 2018), and rests on neoliberal ideology (see, e.g., Shamir, 2008). This understanding of CSR thus directs attention to the corporations themselves – focus falls on their operations, the adverse impacts they generate, and their activities to address these impacts – and the specific regulatory regimes built for CSR. Moreover, as highlighted earlier, this thesis focuses on CSR in relation to the global context.

While it is important to map out what CSR is, and how it is approached in the context of this thesis, it is less important to establish an exact definition of it. Taking our cue from Andrews (2019) and Shamir (2004), among others, we find that CSR is a contested and malleable concept, which allows actors with diverse interests to imbue it with specific meanings and content (cf. Heydon, 2019). Moreover, it is a changeable concept, with scholars questioning the extent to which it remains concerned with only voluntariness (see, e.g., Maguire, 2017; Berger-Walliser and Scott, 2018). The three papers that make up this thesis shed light on such contestation and change, in which competing framings of the corporation, its relationship to government, and the nature of its responsibilities come to the fore. Keeping the contested and malleable character of CSR in mind therefore allows us to explore the meanings the concept takes on for different actors, and how regulation may change in the direction of hardening.

[5] This is one of the two strands of CSR, according to Ruggie (2013). The other strand is CSR as a business opportunity focused on, for instance, social entrepreneurship and socially inclusive business practices.

3. Corporate Social Responsibility: Origins

If there is no consensus on how to exactly define CSR, as suggested in the previous chapter, it might be expected that there is no consensus on its origins. It is possible to take a historical perspective on the issue of CSR and, as Baars (2019) does, trace ideas about the corporation as a 'good citizen' to the early 20th century, when companies needed to restore public faith in their operations in the wake of the economic depression and growing concerns over cartels. Going further back, Andrews (2019) considers corporate philanthropy in the 1800s as an early form of CSR, which has lasted well into modern days.

Nevertheless, the 'master narrative' of the origins of CSR traces it to the 1990s. During this decade, companies began to actively address the impacts of their operations, by developing their own codes of responsible conduct, expressing support for existing international standards, and participating in collective initiatives across specific industries (see, e.g., Sahlin-Andersson, 2006; Picciotto, 2011; Locke, 2013; Ruggie, 2013; Muchlinski, 2021). This has been understood as a response to increasing levels of criticism against their conduct, often with reference to specific cases of harm. For instance, Ruggie (2013) highlights the experiences of Shell[6] and Nike,[7] who were the subjects of lawsuits and public campaigns in the wake of their unethical conduct, while Muchlinski (2021), apart from referencing Shell, highlights corporate investments in South Africa[8] during apartheid as a key case behind the 'CSR trend' (cf. Picciotto, 2011; Khoury and Whyte, 2017). Corporations thus voluntarily

[6] Shell was involved in environmental destruction and human rights abuses in Ogoniland, in the Niger Delta. In response to local campaigns criticizing Shell's operations, the dictatorship responded by executing nine Ogoni people. It has been argued that the significance of this case lies in its ability to show that "corporations hold significant power as political agents", yet "cannot be held accountable as public authorities might when this power is exercised" (Khoury and Whyte, 2017, p. 33; see also Andrews, 2019; Muchlinski, 2021).

[7] In 1996, Nike was accused of child labor in Pakistan. The case was exposed by a non-governmental organization, and featured in a photo story containing a picture of a twelve-year-old boy surrounded by the pieces of a Nike soccer ball. According to reports, the boy made just over 60 cents per day (Ruggie, 2013; Khoury and Whyte, 2017).

[8] Going back further in time, the anti-apartheid movement exerted significant pressure on Western multinationals to take a stand against apartheid, and disinvest from South Africa, throughout the 1970s and 1980s. It was also in this context that the first voluntary instrument for corporate human rights disclosure emerged (Muchlinski, 2021).

adopted social and environmental standards to strengthen their legitimacy in the wake of scandals "linked to (multinational) corporations making huge profits through the systematic violation of human rights and the overexploitation of nature" (Laruffa and Martinelli, 2023, p. 599). The literature also directs attention to the role played by social movements and non-governmental organizations – such as anti-globalization movements, environmentalists, consumer activists, and human rights organizations – in raising public awareness of corporate irresponsibility through, for instance, boycotts and 'naming and shaming' campaigns, in which they put forth demands for improved corporate conduct and better protection for communities. It was thus in this context that companies began to demonstrate their voluntary commitment to social and environmental responsibility; it was a response to the pressure generated by these movements and the backlash that followed (see, e.g., Sahlin-Andersson, 2006; Picciotto, 2011; Elver, 2014; Andrews, 2019; Baars, 2019; Muchlinski, 2021; Laruffa and Martinelli, 2023).

However, as Andrews (2019) highlights, this did not happen in a vacuum. The criticism against companies in the 1990s can be traced to a much more general struggle against corporate power and misconduct in the global economy. For instance, Banerjee (2008, p. 66) suggests that the ways in which large transnational corporations began to develop responsibility policies was a "response to the broader critique of industrialization that emerged in the 1960s and 1970s". A similar story is told in Khoury and Whyte (2017), foregrounding that in these earlier decades, the focus was not so much the conduct of individual companies, but rather the ways in which the governance structures of the global economy allowed corporations the power of challenging and undermining nation-states, with harmful outcomes. The issue of corporate responsibility was thus one in which the legitimacy of the global economy as a whole was at stake (Khoury and Whyte, 2017; see also Picciotto, 2011). To fully understand this broader criticism, and why it became an issue at this historical conjuncture, it is important to understand these governance structures – as well as their limits, on national and international levels – and how they emerged. This task is taken up in the remainder of this chapter, which seeks to situate CSR in the context of crises and conflicts in neoliberal globalization.

Neoliberal Globalization

During the second half of the 20th century, in particular from the 1970s onwards, the global economy underwent significant changes. Trade barriers were lowered, and capital controls were relaxed, which allowed for the global economy to take on a much more integrated form, characterized by flexibility

and mobility (Gilpin, 2001).[9] Following Dardot and Laval (2014), these changes were facilitated by a neoliberal turn, visible both in ideological shifts and the ways in which these shifts came to guide economic policy. The turn to neoliberalism has been portrayed as a response to the crises and challenges emerging under the previous Fordist regime of capital accumulation[10] (Dardot and Laval, 2014), such as enterprises facing declining rates of profit, and governments struggling with high inflation (exacerbated by the oil crisis in the 1970s, see Patomäki, 2008; Crouch, 2011). To combat inflation and restore profits, there was a shift in economic policy across a large number of governments and international organizations, which followed a neoliberal normative framework. A key principle for such a framework, then, is to establish and maintain an economic order based on the principle of competition. Coupled with this principle is the notion that actors in the private sector possess much more expertise and knowledge about their operations than their public counterparts – therefore, policy must allow them the freedom to operate in accordance with their own interests, rather than relying on government intervention (Dardot and Laval, 2014; see also Crouch, 2011). These lines of reasoning are visible, for instance, in Thatcher's dismissal of the 'nanny state', and Reagan's framing of government as 'the problem' (Ruggie, 2018). The outcome of this neoliberal turn is a restructured global economy, which is regulated in decentered and polycentered ways, with consequences for both the rights and responsibilities of the corporations active in it (cf. Gill, 1998; Banerjee, 2008; Picciotto, 2011).

The contemporary system of capitalist governance thus differs from previous eras, as Levi-Faur (2005) suggests. It is characterized by a redrawing of boundaries, and the dispersal of regulatory authority across actors. These developments have happened within states, but are also visible in the regulatory landscape of the global economy as a whole. Global governance is complex and fragmented; the regulation of markets involves a multitude of actors – from public and private spheres, operating across different geographical scales – and various sources of regulation, from hard and judicial to soft and non-binding (Picciotto, 2011; Garsten and Jacobsson, 2013; see also Olsen, 2023, on remedy mechanisms). Of particular importance here is the growing reliance on soft law and non-binding regulations, which have been understood as a key feature of neoliberal governance (Zerilli, 2010; see also Picciotto, 2011). The

[9] This is not to suggest that globalization as such is 'new', or that companies did not operate globally before; for instance, transnational trading companies played a key role in the development of a world economy in the 15th century (Dicken, 2007). It has been argued, however, that the period between 1988 and 2008 is one of "high globalization", given the increasing interconnectedness between nation-states during this time (Milanović, 2016, p. 11).

[10] For an in-depth analysis and problematization on the crises and transformations of Fordism, see Clarke (1990).

emergence of CSR can therefore be situated in this context; it captures the idea, described by Dardot and Laval (2014), that regulation will be much more effective if it is closely connected to the market actors who possess knowledge about business operations. Therefore, it has been argued that CSR was facilitated by the neoliberal turn to market mechanisms and self-regulation (Ruggie, 2013).

The corporation, however, is far from the only actor in global governance. International organizations, such as the International Monetary Fund and the World Bank, have been important in diffusing neoliberal norms, advocating for free markets and privatization (Crouch, 2011; Dardot and Laval, 2014). The policies of nation-states have also shifted with the aim of intensifying competition, not only to increase their exports and conquer foreign markets, but also to attract foreign investments, in turn. This can be done by scaling down on their regulatory requirements, to create favorable conditions for business to thrive (to make profits) and thereby avoid capital flight, with the risk of participating in a 'race to the bottom' (Crouch, 2011; Picciotto, 2011; Dardot and Laval, 2014). There are, as previous research has identified, power asymmetries here, as it is the countries of the global North and their organizations that dominate global governance (Rothe and Friedrichs, 2015). One example of this is offered by Cutler (2014), showing how the market-friendly policies of the World Bank encourage foreign investments by transnational corporations in the global South – which essentially amounts to land grabbing (see also Narula, 2013). These Southern countries, then, may depend financially on support from organizations such as the World Bank, or from having a good image in the eyes of investors, making it difficult for them to not adjust to neoliberal policies (Cutler, 2014; see also Dardot and Laval, 2014; Elver, 2014; Rothe and Friedrichs, 2015). Neoliberal reforms were thus launched with the promise of economic prosperity, but also paired with privatization, marketization, deregulation – and, importantly, increased corporate autonomy (Olsen, 2023), to which we now turn our attention.

Corporate Power in Neoliberal Capitalism

For corporations operating in the global economy, the neoliberal turn – which they had an important role in bringing about through lobbying strategies (Ruggie, 2018) – has significantly affected their position. As governments compete to attract investment, corporations have the advantage of being able to shift their operations to the locations that they deem most advantageous. Thus, while nation-states are territorially fixed, the corporation is mobile, fluid and flexible (Dicken, 2007), able to go 'regime-shopping' – choosing which regulatory regime that suits them the best – and exploit the spaces between laws to maximize their returns (Michalowski and Kramer, 1987; Ruggie, 2013;

Tombs and Whyte, 2020). It has been argued that the ability to relocate and exist in such spaces constitutes the basis of corporate power (Dicken, 2007; Baars, 2019), and that it is corporations' most important weapon in the global economy (Castree et al., 2004). De facto moving to another country is not necessary for this power, Laruffa and Martinelli (2023) argue – the threat itself is enough to secure it. The relationship between the power of economic actors, and the limited reach of nation-states to manage their adverse impacts, is often framed as amounting to a 'governance gap', in which corporations can exist beyond the control of host as well as home countries (see, e.g., Wouters and Chané, 2015; Ruggie, 2018; for a critique of the 'governance gap' narrative, see Olsen, 2023). These challenges are related to the ways in which corporations can operate in 'webs' (Picciotto, 2011) or 'constellations' (Dicken, 2007), consisting of separate legal entities. Parent companies, then, are typically not responsible for the actions of their subsidiaries (Ruggie, 2018). The rise in international soft law, corporate self-regulation and voluntary standards can therefore be understood as a response to these limitations and challenges, as a regulatory option in different governance gaps or spaces beyond law (see, e.g., Wouters and Chané, 2015; Ruggie, 2018; Olsen, 2023). These mechanisms can also be viewed as becoming a "default position", to draw on the discussion in Khoury and Whyte (2017, p. 67), when domestic laws are perceived as not being strong enough to tame corporate conduct.

The power of corporations has also been strengthened through a successive hardening of their rights. Tracing policy developments in the area of business and human rights, Khoury and Whyte (2017, p. 31) find that political debates in the 1970s saw "the emergence of a rather peculiar theme: that corporations have rights – and that those rights must be protected". This theme is also visible in the literature on new constitutionalism, mapping out how "investors constitute a privileged stratum in capitalist societies" (Gill, 1998, p. 25). To maintain the confidence of investors, governments must create business-friendly environments, which include an increasing protection of private property rights (Gill, 1998, 2014). Perhaps the clearest example of the rights of foreign investors is their right to sue governments under international arbitration, if governments do not provide favorable conditions for business (Cutler, 2014; Wouters and Chané, 2015; Ruggie, 2018). Corporations thus have the right to sue "should their investments somehow be impaired by governmental attempts to regulate social and economic behavior" – in other words, if governments strengthen regulations on health and safety standards, for instance, or enforce laws to protect workers or the environment (Barak, 2017, p. 10).

It might be misleading, however, to frame the corporate power to operate in gaps, shift locations to find the most profitable conditions, and sue nation-states as unintended consequences of economic globalization. Instead, as highlighted by Olsen (2023) as well as Laruffa and Martinelli (2023), these

are main features of the contemporary global economy – not inevitable or unintended consequences, but generated through political choices manifest in national and international policy. They can thus be considered as part of what Whyte (2014) discusses as 'regimes of permission', upheld by nation-states to facilitate corporate conduct. From this perspective, it could be "misplaced to argue […] that we live in an era characterised by the 'retreat of the state', in so far as this suggests that liberalisation somehow reduces the size and scope of the state in economic and social life" – instead, following Gill (1998, p. 38), what we may be witnessing is a "pattern of governance in which capital has greater weight and representation".

Returning to CSR

This chapter began with a narrative of CSR as emerging in the 1990s, a time in which social movements, non-governmental organizations and civil society actors were struggling for increasing levels of corporate responsibility and accountability (see, e.g., Sahlin-Andersson, 2006; Picciotto, 2011; Locke, 2013; Ruggie, 2013; Elver, 2014; Andrews, 2019; Muchlinski, 2021). While it was during this decade that these struggles gained momentum, they did not suddenly emerge in response to corporate scandals. Rather, they can be understood in light of growing awareness of increasing power asymmetries in the global economy more generally, with developing countries and indigenous communities being the most affected (Khoury and Whyte, 2017; cf. Rothe and Friedrichs, 2015), and in light of the ways in which the neoliberal turn afforded companies rights without responsibilities (Picciotto, 2011). One of the outcomes of these struggles, then, is CSR – the voluntary codes and initiatives which companies began to wear as "an essential badge of corporate legitimacy" (Baars, 2019, p. 356; see also Sahlin-Andersson, 2006; Picciotto, 2011; Elver, 2014; Muchlinski, 2021). CSR can thus be situated within the context of a crisis of neoliberal globalization (Laruffa and Martinelli, 2023). It is important to remember, here, that CSR itself follows the neoliberal logic of this time, revolving around voluntary self-regulation and corporate autonomy (see Shamir, 2004; Garsten and Jacobsson, 2013; Dardot and Laval, 2014). Thus, the rights of corporations were hardened, while their social responsibility remained soft (Gill and Cutler, 2014). CSR should therefore be understood as part of the neoliberal restructuring of the global economy, and the regulatory landscape organized around it.

4. Corporate Social Responsibility: Actors

In the story told in previous chapters, corporations themselves are the main actors of CSR – after all, CSR stands for *Corporate* Social Responsibility. This chapter will begin by continuing this emphasis on the corporation, before turning attention to other actors of interest. The foregrounding of the corporation itself is found across the research literature, whether the focus falls on the origins of CSR as a "business-driven concept" (Gjølberg, 2010, p. 203), the way in which CSR positions corporations as the "major force" in responding to the issues that they themselves create (Ruggiero, 2009, p. 123), or how companies engage in CSR by embarking on "development projects and initiatives" in the communities in which they operate (Andrews, 2019, p. 2). Importantly, from the literature, it appears that CSR was initiated by the corporations themselves, as they voluntarily began to adopt codes and standards for responsible conduct (see, e.g., Picciotto, 2011; Ruggie, 2013). However, it has also been argued that CSR holds a dual image of the corporation. When Sahlin-Andersson (2006) discusses CSR as a regulatory framework, she notes that corporations are both the actors *and* the targets of CSR; the regulation is in their hands, and the object of regulation is their operations. Another way of acknowledging this duality is found in Garsten and Sörbom (2017, pp. 1–2; cf. Ruggiero, 2009), arguing that corporations:

> appear as both heroes and villains in tales of political and policy change […] The corporate social responsibility movement (CSR) expresses this contemporary and double image of the corporation, as both a potentially accountable 'corporate citizen', capable of regulating and overseeing its own activities and as a profit-seeking, expansionist exploiter of human and natural resources.

Moreover, it has been argued that CSR discourses and strategies create a particular image of the corporation as an abstract entity with "a singular identity", that can "make decisions and take action with a singular will" (Whyte, 2018b, p. 93). In this way, CSR focuses on, and maintains, the 'corporate person', while the real people who benefit from corporate operations – for instance, the owners – remain masked and detached from these (harmful) operations. This relates to the concept of legal personhood, in which corporations – as distinct entities – are separated from people that own and control them, who are therefore protected from liability behind their corporate veil (Whyte, 2018b; see

also Tombs and Whyte, 2015; Barak, 2017; Ruggie, 2018). It is thus the 'corporation' that is expected to 'act responsibly' within CSR (Whyte, 2018b) – and research has identified the ways in which they struggle to maintain this position. By lobbying against legally binding standards (see, e.g., Khoury and Whyte, 2017; Muchlinski, 2021), resisting the legalization of their social duties when faced with attempts at hardening (Shamir, 2004; LeBaron and Rühmkorf, 2019), or investing in CSR policies so as to mitigate the impact of legal enforcement (Baars, 2012), corporations have foregrounded themselves as the main regulatory character of CSR. This is further explored in Paper II. Some of these struggles have taken place in international arenas, which have been important for shaping and diffusing the norm of voluntary self-regulation that is associated with CSR. The following section will address this international space, before turning to the role of national governments.

The International Arena

Going back to the 1970s, we find – as highlighted in the previous chapter – struggles over the power asymmetries within the restructured global economy, and their harmful consequences (Michalowski and Kramer, 1987; Picciotto, 2011; Khoury and Whyte, 2017). These struggles were channeled by international organizations into different soft, or non-binding, frameworks, such as the OECD Guidelines on Multinational Enterprises, introduced in 1976 and revised regularly (also referred to as 'the Guidelines', see Picciotto, 2011; Khoury and Whyte, 2017; see also Muchlinski, 2021). These Guidelines provide non-binding standards on a range of topics – including disclosure, human rights and the environment – that corporations are expected to respect (OECD, 2023). The Guidelines have been considered the most widely diffused framework for CSR (Sahlin-Andersson, 2006), and have maintained their importance over time (Garsten and Jacobsson, 2013). Governments adhering to the Guidelines must set up a National Contact Point, which – since 2000 – operates as a nonjudicial grievance mechanism for redress (OECD, 2020, 2023); this mechanism is discussed in Paper III in this thesis. The prominence of the Guidelines in global governance can be illustrated by them having been "adopted as a deliberate counter" to any future – legally binding – UN codes on business and human rights (Muchlinski, 2021, p. 214).

Thus, there have been calls for hardening the standards for business throughout the late 20th century. One of the most well-known attempts is the UN Draft Code of Conduct for transnational corporations. In the 1970s, developing countries – the Group of 77 – launched a manifesto for such a code, with the support of international trade unions. The aim, then, was to introduce some level of control over international business conduct. Faced with resistance from powerful developed countries, the Group compromised on the binding

character of the code (Michalowski and Kramer, 1987). Subsequent attempts, however, included binding provisions – but without support from powerful countries, they came to nothing (Khoury and Whyte, 2017). The UN has continued to play an important role; in the 1990s, in light of the struggles mapped out in the previous chapter, another attempt at introducing a code of conduct emerged. The 'Draft Norms', which included a mechanism for imposing legal duties on firms, were introduced in 2000, and finally submitted for consideration in 2004. Again, the norms were not adopted, with critical stakeholders – including the business lobby – citing that only states have obligations under international human rights law. Introducing binding obligations for business would therefore shift focus away from state responsibilities, as well as voluntary efforts, without the need for such a shift having been demonstrated (Khoury and Whyte, 2017; see also Muchlinski, 2021; Olsen, 2023).

The above section maps out the initiatives debated within the UN that did *not* succeed, but we will now turn our attention to the attempts that have been launched (referenced throughout Paper I and Paper II). Around the same time as the Draft Norms were debated, the UN introduced the Global Compact, encouraging corporations to adopt ten voluntary principles for corporate responsibility. Similar to the OECD Guidelines, it covers different topics, grouped together as human rights, labor, environment and anti-corruption (United Nations, 2023). The Global Compact focuses on learning through dialogue and the sharing of best practices, relying not on legally binding sanctions but on the normative force of being part of this network (Sahlin-Andersson, 2006). It has been argued that the mere existence of the Global Compact was enough for governments to reject the Draft Norms (Khoury and Whyte, 2017; cf. Muchlinski, 2021, on the OECD Guidelines). Later, the UN introduced their Guiding Principles for Business and Human Rights, which rest on three pillars: the state's duty to protect, the corporate responsibility to respect, and access to remedy. The Guiding Principles do not introduce any new obligations under international law, but rather make clear the implications of *existing* obligations and standards for both states and corporations (Andrews, 2019). They have therefore been interpreted as a step from pure voluntarism toward 'institutionalized voluntarism', by creating a "new institutional environment for the development of more effective corporate observance of human rights" (Muchlinski, 2021, p. 220).Taken together, international organizations have been important arenas for debating the responsibility of corporations for the communities in which they operate, and for developing frameworks that follow the voluntary, soft and self-regulatory character of CSR.

The Governmental Arena

The role for government has more or less been excluded from CSR; governments are, in this context, "the regulatory other" (Vallentin and Murillo, 2012, p. 826; see also Gjølberg, 2010). However, as shown above and discussed in previous research, governments have for some time been supportive of business voluntarily assuming responsibility for their social impacts (see, e.g., Ruggie, 2018; Baars, 2019). As of late, CSR has become increasingly visible in government policy, which is further explored in Paper I, and embraced as an instrument for governing the economy on national as well as global levels. For instance, Gjølberg (2010) finds that, since the turn of the millennium, the Swedish government has promoted CSR in line with existing narratives of humanitarianism and internationalism in the global setting (as discussed in Chapter 2). Studying the regional level, Vallentin and Murillo (2012) find that EU policy encourages CSR by stressing its economic and strategic importance. They also find that these lines of reasoning have trickled down in the policies of member states, who have been promoting CSR as a means of generating value for business as well as society; being socially responsible thus becomes a business opportunity (Vallentin and Murillo, 2012). The ways in which governments have supported the development of soft and voluntary regulation for business conduct might be taken as a sign of inactivity, but should rather be understood as "an active engagement by government to define the rules and mechanisms shaping the new mode of governance" (Gond, Kang and Moon, 2011, p. 645). As discussed in the literature on 'the regulatory state', the neoliberal construction of markets has been followed by a growing number of regulatory agencies to monitor them. Neoliberalism is thus characterized not only by marketization, but by increasing levels of organizational control – but rather than direct intervention, control is exercised 'at arm's length' from political leaders (Levi-Faur, 2013; Hörnqvist, 2020). The state is therefore steering toward specific aims – such as a sustainable economy – while others, such as business, are responsibilized to row toward them, by developing systems of internal control and self-regulation (drawing on Levi-Faur, 2005). What we have been witnessing, therefore, is "a new *ordering* of economic activities, social relations, conduct and subjectivities" (Dardot and Laval, 2014, p. 157, emphasis in original), which CSR is here understood as being a part of.

5. Steps Toward Regulatory Hardening

Far from dying down, demands for improved social responsibility and protection of communities – for instance, in relation to global supply chains "causing or contributing to deforestation, ecosystem destruction, and human rights violations around the globe" (Gustafsson, Schilling-Vacaflor and Lenschow, 2023, p. 853) – remain in contemporary policy debates. The three papers included in this thesis shed light on these struggles across different arenas. In the Swedish Parliament, members of one side of the political spectrum argue that self-regulation and voluntariness is not enough to encourage corporate responsibility – thus, hardened regulations are needed (Paper I); on a regional level, the European Commission cites the shortcomings of existing – soft – mechanisms for corporate responsibility as one of the reasons for launching an initiative on mandatory due diligence (Paper II); and from civil society, organizations turn to nonjudicial remedy mechanisms to address these shortcomings in their struggles for social change (Paper III). Taken together, then, these papers draw attention to the growing concerns over the harmful impacts of corporate conduct, the perceived failure of addressing these impacts through existing mechanisms for CSR, and – importantly – how this has motivated demands for adding new tools in the regulatory toolbox. This chapter will delve deeper into these demands and tools. It begins with discussing the changing regulatory landscape on CSR, before turning to how these changes can be understood as steps toward regulatory hardening. It concludes by linking contemporary struggles for hardening to the origins of CSR described in Chapter 3.

A Changing Landscape

Previous research has mapped out how the regulatory landscape revolving around the social responsibility of business is changing, drawing attention to a greater governmental presence in this landscape. For Berger-Walliser and Scott (2018, p. 169), "many governments have taken matters into their own hands with regulations that mandate socially responsible behavior and policies intended to strengthen further CSR". The ways in which governments *impose* CSR on corporations through various legal statutes and regulations, then, is understood as a "legalization of CSR" (Berger-Walliser and Scott, 2018, p.

169). This emphasis on the role of government is also visible in Matten and Moon (2020, p. 20), understanding the new governmental regulations as an "implicitization of CSR", through which CSR becomes adopted by wider formal and informal institutions. In Momsen and Schwarze (2018, p. 574), the new requirements imposed on corporations are conceptualized as a "hardening of CSR law"; that is, a development from soft to hard law.

Acknowledgment of the changing landscape for corporate responsibility is also visible in the research that focuses on areas typically associated with CSR, such as business's respect for human rights and the environment (which are key parts of well-known CSR frameworks, for instance, the UN Global Compact and the OECD Guidelines). Focusing on human rights, Nolan (2018, p. 68) discusses new initiatives that target global supply chains, which are "hardening the human rights expectations of business". Similarly, Gustafsson, Schilling-Vacaflor and Lenschow (2023, p. 866) draw attention to the increase in binding regulation that targets corporations' responsibility for the impacts of their supply chains, suggesting that it is "consolidating a new, highly politicized governance landscape in global trade". Changes are also visible in relation to environmental degradation, discussed in Berning and Sotirov (2023), with a focus on hardened foreign corporate accountability in deforestation regulation. Thus, whether the concept of CSR is invoked in previous research or not, it seems safe to suggest that the legal and regulatory landscape on corporate social and environmental responsibility is undergoing important transformations. Recalling the lines of reasoning in Chapter 1, this thesis takes CSR – with its emphasis on self-regulation, voluntariness and soft law – as its point of departure, and considers these changes in the regulatory landscape as a 'hardening' of CSR (cf. Berger-Walliser and Scott, 2018; Momsen and Schwarze, 2018; Matten and Moon, 2020). Thus, it does not consider the issue of corporate responsibility and accountability as a whole; instead, the thesis takes an interest in how the traditionally soft regulatory regimes on corporate social and environmental responsibility have been reshaped or transformed through the introduction of hard, or harder, components.

What are these new laws and regulations that constitute the legalization, implicitization or hardening of CSR? As illustrated above, they span different areas of corporate conduct – some focus on human rights violations, such as modern slavery, while others focus on environmental harm, and yet others target corporate sustainability as a whole (see, e.g., Nolan, 2018; Sinclair and Nolan, 2020; Berning and Sotirov, 2023; Gustafsson, Schilling-Vacaflor and Lenschow, 2023). These laws and regulations have been developed across geographical scales; some of them are national laws developed in domestic contexts, but with an emphasis on global economic operations, while others stem from the European Union and are implemented by local governments. Moreover, at the time of writing, an updated draft of a legally binding instrument

for transnational corporations and human rights has recently been published by the UN (Business & Human Rights Resource Centre, 2023; OHCHR, 2023). One way of categorizing all of these, then, is to first consider laws on mandatory disclosure, before considering laws that also incorporate due diligence requirements (following Nolan, 2018). In the first category are, for instance, the Australian Modern Slavery Act demanding transparency in corporate supply chains, the US Dodd Frank Act introducing reporting requirements for companies sourcing conflict minerals (Nolan, 2018; Sinclair and Nolan, 2020), and an EU directive on mandatory non-financial disclosure (Berger-Walliser and Scott, 2018), which is addressed in Paper I. This directive, known as the Non-Financial Reporting Directive (NFRD) is focused on disclosure of non-financial and diversity information, with the aim of improving existing corporate practices on social responsibility. It makes it mandatory for certain corporations to produce a statement with information on how they address, among other things, environmental and human rights issues, and requires that member states have procedures in place to enforce compliance (for instance, through auditing, see European Parliament and Council of the European Union, 2014).[11]

In the second category are due diligence laws that go beyond mere reporting by also demanding that companies take appropriate action and develop "a system of internal controls to detect, prevent and redress" harm (Friedman, 2021, p. 311). This can be exemplified by the Dutch Child Labor Law and the German Supply Chain Due Diligence Law, as well as the European Commission's proposal for Corporate Sustainability Due Diligence (CSDD), further discussed in Paper II (Berger-Walliser and Scott, 2018; Nolan, 2018, 2022; Gustafsson, Schilling-Vacaflor and Lenschow, 2023). This directive imposes obligations on corporations with regard to human rights and environmental issues, requiring them to implement due diligence processes, and introduces specific obligations for directors to manage these issues. The directive thus goes beyond mere reporting. It is backed by administrative supervision, but also includes procedures for civil liability (European Commission, 2022).[12]

Understanding 'Regulatory Hardening'

This thesis understands the above-described changes as steps taken toward regulatory hardening. It draws on the concept 'regulatory' to acknowledge the complexity and plurality in the introduced laws and regulations, which are

[11] In 2023, new rules on corporate sustainability reporting entered into force (European Commission, 2023a; see also Regeringskansliet, 2024).

[12] At the time of writing, the proposed directive is at the European Parliament and the European Council for approval (European Commission, 2023b).

hardened in different ways but not necessarily *hard* – thus, the concept 'hardening' is also used here. By deconstructing the concept of 'regulation' into its essential components of standard-setting, monitoring and enforcement (drawing on Baldwin, Cave and Lodge, 2011), it becomes visible that some of the newly introduced statutes and regulations are about hardened expectations – or standards – while others are also focused on hardening the mechanisms of monitoring and enforcement. As an illustrative example, we may consider the UK Modern Slavery Act, introduced in 2015. One of the sections of this act imposes obligations on corporations with a certain turnover to issue public statements on slavery and human trafficking on an annual basis. The law does not detail what this statement should include, nor does it require any action, only that a statement *is* issued. There are no additional mechanisms for enforcement (Macchi and Bright, 2020; see also Sinclair and Nolan, 2020); rather, it relies on external stakeholders to assess and critique corporate statements (although there is a possibility for an administrative order, see Nolan, 2018). In this case, then, the 'hardening' aspect lies in the statement becoming mandatory – illustrating the hardened expectations placed on corporations – while the other regulatory components remain soft, with the government acting "as the orchestrator of private actors to encourage compliance" (Nolan, 2018, p. 70). Another illustrative example is the French Duty of Vigilance law, introduced in 2017. It places legal duties on corporations of a certain size to undertake human rights due diligence throughout their supply chains; they must, in other words, identify, prevent and address adverse impacts, which requires them to continuously make risk assessments, implement strategies to mitigate such risks, and monitor their effectiveness. Courts can order the corporation to comply, in cases of non-compliance, and impose financial penalties should this continue. The law also allows interested parties to file civil proceedings (Macchi and Bright, 2020; see also Muchlinski, 2021). In this case, the standards for responsible conduct are hardened, as are the mechanisms for monitoring and enforcement, which do not exclude private mechanisms but focus on including public ones (cf. Nolan, 2018).

The concept of 'hardening' or 'hardened' has been used in previous research (see, e.g., Momsen and Schwarze, 2018; Nolan, 2018; Berning and Sotirov, 2023), and is also employed in this thesis, to conceptualize these changes in the regulatory landscape. There appears, however, to be some variations or nuances in how the concept has been used. While Momsen and Schwarze (2018) describes a shift from 'soft law' to 'hard law', Nolan (2018) focuses on how the new laws are hardening the expectations or principles on responsible business conduct, which have previously been mapped out in soft law frameworks. One way of distinguishing between such 'hard' and 'soft' interventions is offered in Berning and Sotirov (2023), which suggests that hard intervention logics take the form of law – meaning that actors must follow formal rules, and can be held accountable for failure to do so – while soft

logics include reliance on market forces and reputational mechanisms. As illustrated by Nolan (2018), the regulatory interventions discussed here include both hard and soft elements, which makes it difficult to discuss them in overly dichotomous terms. Instead, it is possible to consider a spectrum ranging from 'soft law' to 'hard law' (Choudhury, 2017), or from private to public mechanisms for monitoring and enforcement. It could therefore be suggested that the hardening trend involves policymakers drawing on the entire spectrum to a greater extent than before, illustrated by the ways in which both market mechanisms (such as negative publicity) and legal mechanisms are part of the new regulations on CSR. This is important to remember, because the inclusion of harder law and regulation does not imply that voluntary CSR and self-regulation has been abandoned (see Berger-Walliser and Scott, 2018). For instance, Bader, Saage-Maaß and Terwindt (2019, p. 159) draw attention to the difficulties of holding multinational enterprises accountable for their harms because "their regulatory frame in relation to human, environmental and labor rights is still largely based on Corporate Social Responsibility (CSR)", understood as private self-regulation. Voluntary mechanisms for business and human rights are thus still proliferating, while attempts at hardening remain contested and challenged. Considering the recent attempt at developing an internationally binding UN treaty, Olsen (2023) notes that states remain polarized with regard to, among other things, mandatory due diligence and access to justice. Therefore, what we may be witnessing in the 'hardening trend' is an increasing complexity and pluralism in the regulatory space on CSR, as steps are taken *beyond* mere voluntarism (see Muchlinski, 2021) – but these steps, as noted above, are not uncontested.

An important aspect of this is the slightly changing roles within the regulatory landscape. As discussed in Chapter 4, the government has traditionally been thought of as the 'other' in CSR (Vallentin and Murillo, 2012), but in this hardening trend, governments appear as key players – it is, after all, governments that are developing these new laws and regulations (Nolan, 2018; Matten and Moon, 2020) and imposing CSR on corporations (Berger-Walliser and Scott, 2018). An important part of this trend, then, is the growing presence of governments and state-driven regulation – which is also illustrated by the ways that regulatory hardening appears to be important from a political standpoint (Gadd and Broad, 2018; see also Paper I). As noted above, however, international arenas have also been important in promoting and developing hardening, not least those associated with the European Union (see, e.g., Berning and Sotirov, 2023; Gustafsson, Schilling-Vacaflor and Lenschow, 2023) – something which is further addressed in Paper I and Paper II. Moreover, the role of civil society and non-governmental organizations remains in the struggles against corporate harm, to generate demands for changed governance structures, as discussed in Paper III.

Criticism of Hardened Regulations

In the literature, the trend toward regulatory hardening is not without criticism, most of which mirrors the criticism aimed at CSR mapped out in Chapter 2. *Firstly*, it has been argued that the new regulations – despite being 'hardened' – lack 'teeth', and therefore risk becoming little more than box-ticking exercises for corporations (Macchi and Bright, 2020). Similarly, Nolan (2018) argues that the laws may generate cosmetic rather than substantive compliance, if they are not paired with detailed guidance, require collaboration with stakeholders, and have mechanisms for accountability, such as civil penalties (see also Sinclair and Nolan, 2020; Nolan, 2022). *Secondly*, Macchi and Bright (2020) highlight that these new regulations can be supported not only by governments but also corporations as a means of holding off more stringent forms of regulation (cf. Shamir, 2004; LeBaron and Rühmkorf, 2019). *Thirdly*, the implementation of the proposed hardened interventions has been criticized. Taking due diligence as an example, Baars (2019) discusses how this works through a delegation of responsibility from senior managers to low-level workers – which allows blame to be shifted to individual workers, while the corporation, its directors and managers, remain protected (drawing attention to the asymmetries within 'powerful actors', see Friedrichs and Rothe, 2014). Thus, in light of mechanisms that seek to control it, "capital works to protect itself" (Baars, 2019, p. 368). A *fourth*, and more general, strand of criticism concerns the role of law and regulation as a means of controlling corporate conduct, minimizing harm and providing access to justice. While some critical scholars suggest that law could be used to struggle against existing relations of power and domination (see, e.g., Buckel, Pichl and Vestena, 2023), others discuss whether turning to law and having successful outcomes risks legitimizing these relations, by creating the impression that the capitalist system 'works' (Baars, 2019; see also Khoury and Whyte, 2017). Extending these lines of reasoning to the topic of regulatory hardening, the extent to which regulatory hardening challenges – or maintains – fundamental structures of power is an issue which will be further discussed in the final chapter of this thesis.

A Continued Conflict

While strategies of voluntariness, soft law and self-regulation have not been abandoned, the papers in this thesis suggest that the trend toward hardening takes its point of departure in concerns over corporate harm, as well as in a criticism against this regulatory status quo. Similar arguments have been made in previous research (see, e.g., Nolan, 2018; Gustafsson, Schilling-Vacaflor and Lenschow, 2023). For instance, Macchi and Bright (2020) argue that the new laws and regulations should be understood as a response to the perceived

failure and ineffectiveness of existing (soft) frameworks (cf. Ramasastry, 2015). Moreover, the way in which they have been developed mirrors the history of CSR mapped out in previous chapters. Returning to the two laws discussed earlier, Macchi and Bright (2020) highlight that the momentum for the UK Modern Slavery Act was the result of civil society activism, increasing attention on labor rights issues,[13] and, eventually, on domestic political willingness. Secondly, the French Duty of Vigilance law was the outcome of a process in which politicians, civil society organizations, and trade unions were all actively involved. This thesis therefore understands the trend toward hardening as taking its starting point in the (perceived failure of) frameworks and regulations of CSR, and approaches contemporary struggles for hardening as a continuation of the struggles that generated these frameworks and regulations. At the same time, however, it is possible to reflect on the extent to which existing soft law frameworks can be considered a 'failure'. In the cases discussed above, the UN Guiding Principles played an important role; both in the UK and in France, governments framed their laws as ways of implementing the soft standards of the Guiding Principles in domestic contexts (Macchi and Bright, 2020). The extent to which the regulatory status quo is problematized by actors, and whether regulatory hardening holds transformative potential, are issues that will be further explored in Chapter 9.

[13] One case that played an important part here is the collapse of the Rana Plaza building in Bangladesh, in 2013. Despite finding cracks in the building after an inspection, workers were made to come back the next day. On that morning, the building – which contained mostly garment factories – collapsed. Over 1100 workers were killed, and 2500 were injured. As the garment factories produced items for US and European retailers, the issue of responsibility of local officials vis-á-vis Western retailers emerged (Williamson and Lutz, 2020; see also Tombs and Whyte, 2015; Simončič, 2021).

6. Theoretical Framework

This thesis approaches the contestation around CSR, and the dynamic behind the hardening trend, through the lens of critical theory. For Celikates (2018, p. 206), a critical theoretical project should begin with the struggles of our time; "critique has to be based in an analysis of social reality and its contradictions", and "find its criteria in the social practices, struggles, experiences, and self-understandings to which it is connected". Critical theory is thus intimately linked to ongoing social struggles, with an interest in the perspective of actors participating, or potentially participating, in these struggles. Our analyses do not stop with the actors, however – critical theory is also concerned with the underlying and systematic problems and injustices that exist within the very structures of society (Fraser and Jaeggi, 2018). This thesis turns to the work of Rahel Jaeggi to conceptualize these systematic problems, understood as contradictions, in our contemporary form of life, and their relationship to the struggles and contestations under study. Focusing on these struggles in particular, the thesis also turns to Nancy Fraser's work on justice, to achieve a fuller understanding of the normative dimension within these struggles. Before doing so, however, this chapter begins with a section on different kinds of critique of interest to this thesis.

Forms of Critique

Critical theory is, as the name suggests, interested in developing critique. In *Capitalism: A Conversation in Critical Theory*, Fraser and Jaeggi (2018, p. 116) distinguish three common strategies of critique: functionalist ("capitalism is intrinsically dysfunctional and crisis-prone"), moral ("capitalism is morally wrong, unjust, or based on exploitation"), and ethical ("a life shaped by capitalism is a bad, impoverished, meaningless, or alienated life") (see also Jaeggi 2016). In a previous chapter, which mapped out criticisms of CSR, these strategies came to life – for instance, that CSR does not work as a mechanism for ensuring corporate responsibility can be understood as an expression of a functional criticism. There is, however, another strategy of critique proposed by Fraser and Jaeggi (2018, p. 139): the development of immanent critique, aimed at "spelling out the deep-seated contradictions of a social or-

der". This thesis is primarily concerned with this kind of criticism, which focuses on how an order, formation or constellation – in this case, CSR – *fails on its own terms*.

Immanent critique falls under the broader umbrella of 'social critique', which is the activity of assessing or evaluating a social practice using a normative standard, to highlight deficiencies and thereby facilitate change. This normative standard can be introduced from the outside or be derived from the practice itself: the resulting forms of critique, then, are either external or internal (Stahl, 2013). In this thesis, interest falls on criticism which locates its standards within the formation or constellation that is being criticized. The theorist's task, therefore, is not to develop a "condemnation that merely shows that these practices do not live up to *our* conception of the good and the right" but rather "an argument that establishes that our society fails also on its *own terms*" (Stahl, 2013, pp. 1–2, emphasis in original). This follows the rejection of moralism articulated in different strands of critical theory – for instance, in the words of Marx, we should not "confront the world in a doctrinaire way with a new principle: Here is the truth, kneel down before it!" (cited in Jaeggi, 2018, p. 173). Instead, our standards for critique must be derived from the criticized formation or constellation itself.

There are, however, differences between internal and immanent critique. Internal criticism, as discussed by Jaeggi (2018), is focused on highlighting inconsistencies or discrepancies in situations where ideas or norms are not being realized in practice: in other words, when a formation or constellation does not live up to its normative promises. Such an inconsistency or discrepancy makes a contradiction, but not a very deep one (cf. Fraser and Jaeggi, 2018). The theorist, then, is concerned with pointing out these contradictions, from the perspective that the practices must conform to these ideas or norms. As highlighted by both Jaeggi (2018) and Stahl (2013), internal criticism is reconstructive; what it demands is consistency. An alternative form, then, is immanent criticism, which "does not remain content with only *reproducing* the normative commitments of its members" – instead, it seeks to uncover these normative commitments (Stahl, 2013, p. 7, emphasis in original). Therefore, it is not about merely addressing inconsistencies in how norms are realized, but inconsistencies in the norms themselves, and to highlight the contradictoriness of practices and norms alike. For the theorist, the task lies in analyzing this immanent contradictoriness – which will be further discussed below – and to develop criticism which aims at transformation rather than reconstruction, directed at both social practices and their constitutive norms (Jaeggi, 2018; see also Stahl, 2013).

Contradictions and Conflicts in Forms of Life

In order to analyze the dynamics behind regulatory hardening, as well as the contestation around hardening and CSR, this thesis turns to the work of Rahel Jaeggi. For Jaeggi (2018, p. 50), capitalism can be understood as a specific *form of life*, or a nexus of "practices, orientations, and orders of social behavior". This conceptualization of capitalism relies on an understanding of economic practices as part of the social and cultural fabric of society. Thus, rather than understanding the 'economic' and the 'social' as separate spheres – which leaves critical theory "reduced to the project of somehow 'taming' [the economic sphere] and protecting social life from it" – what is proposed is a monistic theory which understands economic practices as part of a form of life itself (Fraser and Jaeggi, 2018, p. 51). Such a perspective allows the analyst to keep the normative basis of economic practices in mind (Fraser and Jaeggi, 2018; see also Jaeggi, 2018). Drawing on this, it could thus be suggested that ideas about the social and environmental responsibility of corporations have become part of the normative structure in our contemporary form of life, upheld by different actors in both rhetoric (in the harmonization of social and economic interests) and practice (in the emphasis on self-regulation and soft law). Moreover, this perspective is useful for developing immanent critique, because it enables us to "hold economic practices up to the normative conditions of fulfillment immanent to their location within a given form of life", and thus to track their flaws and defects (Fraser and Jaeggi, 2018, p. 51).

Forms of life, Jaeggi (2018) describes, are thus nexuses, ensembles, or clusters of practices that are interconnected. They have a normative character which guides collective conduct, without being strictly codified or binding. The concept is highly malleable, which Jaeggi (2018) acknowledges by stating that forms of life can have very varying scopes. This allows for consideration of both 'the whole' form of life – more comprehensive formations, such as capitalism or modernity – and 'the parts' – more small-scale formations, such as belonging to the form of life of the nuclear family or the middle class – that constitute it. However, all forms of life must have a degree of stability, depth and self-sufficiency as opposed to being transient, superficial, or made up by isolated practices (Jaeggi, 2018). The relationship between members of a form of life, and the form of life itself, is dialectical; the actions of members shape, and are being shaped by, the form of life itself. Being simultaneously "*given and made*" (Jaeggi, 2018, p. 74, emphasis in original), forms of life are made by human action – they are thus changeable – but this action sediments into institutions, habits and knowledge which confront the members. This changeability is illustrated in the history of capitalism – for instance, in the development of the neoliberal and global capitalism of interest here (Fraser and Jaeggi, 2018; see also Dardot and Laval, 2014). Among the most prominent

members in this form of life, then, are the transnational and multinational corporations themselves (see, e.g., Dicken, 2007; Picciotto, 2011; Rothe and Friedrichs, 2015).

What is the motor behind these changes? For Jaeggi (2018), forms of life are problem-solving entities, as they face problems that must be overcome and solved. From this perspective, contemporary capitalism can be understood as a 'solution' to issues in previous eras. Problems, however, do not simply exist but must be actively defined as such by social actors – therefore, a problem "first becomes a problem through interpretation", but at the same time, "it cannot be constructed out of nothing" (Jaeggi, 2018, p. 143). Moreover, problems have specific histories; they are the result of previous problem-solving attempts. There is therefore no "zero point" to a problem – and neither is there a simple 'end point', as the attempt at solving a problem could generate new problems in the future (Jaeggi, 2018, p. 145; cf. Chambliss, 1979 on the dynamics of problem-solving). A problem, then, is both functional and normative – it is not a question of mere dysfunctions but of something "becoming problematic in relation to an ethically predefined problem description" (Jaeggi, 2018, p. 137). Extending these lines of reasoning, developing criticism of forms of life invites consideration of several dimensions or strategies of critique (normative or moral, ethical, and functional) – what sets the immanent approach apart, as discussed above, is a concern with systematic and deep-seated structures, a focus on norms as well as practices, with an ambition of uncovering their contradictoriness (Fraser and Jaeggi, 2018; see also Jaeggi, 2016).

For these reasons, the problems of particular interest in this thesis are immanent problems, drawing on an understanding of problems as contradictions made up by connected, but conflicting, claims. Contradictions may take on different shapes, but here focus falls on contradictions in cases where practices and norms depend on each other, at the same time as they undermine each other (Jaeggi, 2018). This understanding of contradictions draws attention to the notion that there is something fundamentally "inconsistent about our social practices that simply cannot be reconciled in their current form"; the problem at hand is thus not that a formation fails to live up to existing standards, but that it is incapable of doing so (Fraser and Jaeggi, 2018, p. 139). To analyze a social formation from this perspective is therefore to analyze not that it "does not correspond to *our expectations* of it, but that it does not correspond to its own concept" (Jaeggi, 2018, p. 131, emphasis in original).

Underlying contradictions, then, may trigger or motivate conflicts – but this is no deterministic process. Jaeggi (2017, 2018) rejects such a causal logic, instead stating that whether or not a contradiction is manifested in a concrete conflict – and the shape or direction the conflict takes – is up to the social

actors. It is, in other words, the actors that must appropriate and actualize the contradiction. The contradiction itself can therefore persevere for a long time, and exist latently – how and when conflicts emerge is in the actors' hands. When considering an already erupted conflict, then, the concept of contradiction directs attention to an underlying structural element; we can thus trace a relationship between the two, as the conflict becomes structured *through* the contradiction – but it is not automatically *caused* by it (Jaeggi, 2017, 2018). After all, "people make their own history but they do not make it out of whole cloth" (Chambliss, 1979, p. 164, paraphrasing Marx). Understanding the trend toward regulatory hardening through this theoretical lens thus allows us to trace the conflicts and struggles over hardening to underlying contradictory dynamics, which then become the driving force of historical development (drawing on Jaeggi, 2017, 2018).

Considering contradictions and conflicts from this perspective is not tied to a "romantic-harmonistic ideal of consistency", in other words, of overcoming or resolving them (Jaeggi, 2018, p. 212). Nevertheless, attempts are made at coping with them, if only temporarily – which generate a dynamic where a problem requires a solution, which produces a problem, and on it goes (and throughout the process, the problem shifts and changes). Therefore, as they unfold, contradictions and conflicts become the driving force behind development, allowing the articulation of "a crisis-driven dynamics of history" (Jaeggi, 2017, p. 213). However, like problems, solutions are also contextually bound, dependent on the same interpretations and expectations – and therefore, the possible scope of solutions is limited, which suggests that there are limits to the direction of development (see Jaeggi, 2018). Similar lines of reasoning have been articulated in critical criminological and socio-legal scholarship, in drawing attention to how law and regulation function as means of temporarily stabilizing conflicts that threaten existing power structures. This, in turn, raises questions about law and regulation as productive sites of struggle, and the extent to which they are able to target – or fundamentally alter – these structures (see, e.g., Khoury and Whyte, 2017; Baars, 2019; Hörnqvist, 2020).

Struggles over Justice

Contradictions must thus be articulated by social actors and turned into conflicts by them. This requires an interpretive act – as Jaeggi (2018) suggests, problems are not merely given but also made, and as such, understood in relation to an existing normative framework. In this thesis, these processes are further explored by turning to the work of Nancy Fraser, and her multidimensional concept of justice. For Fraser (2008, p. 16), "justice is parity of participation", which "requires social arrangements that permit all to participate as

peers in social life". There are three dimensions of justice, concerning economic distribution, cultural recognition, and political representation, with the associated injustices of maldistribution, misrecognition, and misrepresentation (which can arise together, see McKenna, 2014, 2016). From this perspective, being denied economic resources, being perceived as 'less than' in cultural hierarchies, and being excluded from political arenas in which struggles over distribution and recognition are played out, amounts to instances of injustice (Fraser, 2008).

Now, for critical theoretical projects, it is essential to approach struggles with an interest in actors' perspectives and experiences – giving them the first, although not the last, word (Fraser and Jaeggi, 2018; see also Celikates, 2018). Returning to the context in which CSR emerged (see Chapter 3), it is here argued that the demands for responsible conduct developed in this context are bound up with claims for justice. For instance, Elver (2014, p. 267) understands CSR as a response to demands articulated by civil society, who acted as "a voice of globalization from below against market forces and globalization from above". What was targeted, then, was the structure of the globalized economy – for instance, the removal of trade barriers, the increased ability of corporations to take legal action against governments, and the increase in export-oriented production. These structures, which ensure that most of the benefits go to global corporations rather than local communities, encourage growth and consumption with little concern for patterns of inequality. These lines of reasoning follow Fraser's (2008) understanding of distributive injustice, highlighting the unjust conditions of the global economy and the privileged positions of large corporations within it. Moreover, as discussed previously, CSR emerged in the context of struggles around specific cases of corporate harm. For instance, Human Rights Watch brought the human rights abuses of Shell in Nigeria into global visibility, which was a case that functioned to promote a discourse of corporate responsibility (Andrews, 2019). During the same time, Amnesty International added corporations to their agenda by adopting the International Human Rights Principles for Companies (Muchlinski, 2021), thereby signaling an expectation on corporations to respect human rights. These struggles could be interpreted as revolving around misrecognition, following Fraser (2008), as they center in on injustices related to issues of human dignity and discrimination along the lines of cultural status.

Lastly, Khoury and Whyte (2017) draw attention to the ways in which the above struggles were important by acknowledging their political dimension. Local movements engaged in these struggles focused on the corporation as a political, not merely economic, actor – for instance, the Shell case illustrates how corporations can hold political power, yet when they exercise this power, they cannot be held accountable in the way that a public authority can. Thus,

these struggles also revolve around the ways in which existing legal and regulatory frameworks failed to provide mechanisms for redress for corporate human rights violations (Khoury and Whyte, 2017). This issue can be understood as being related to the injustice of misrepresentation, targeting the procedural aspect of being able to have one's justice claims heard (Fraser, 2008). Thus, it is here suggested that the lack of mechanisms and arenas for holding corporations accountable is linked to the political dimension of justice.

As highlighted earlier, CSR did not emerge in a vacuum (cf. Andrews, 2019); it emerged in a context of struggle and contestation, as a specific regulatory intervention or 'solution' in response to the problems described here. These notions of justice can thus be understood as part of the "cultural horizon of interpretation" and the "normative horizon of expectation" (Jaeggi, 2018, p. 234) against which issues of corporate responsibility become recognizable as such – in other words, part of what CSR as a regulatory solution promises to address. Similar lines of reasoning have been developed by McKenna (2016), who argues that while CSR has primarily been designed as a framework for distributive justice, the struggles of local communities are often characterized by claims that also revolve around cultural and political justice. This thesis thus employs a broad perspective, and understands justice in its multidimensional form as relevant to struggles over CSR and hardening. Moreover, recalling the origins of CSR illustrates how problems, as Jaeggi (2018) discusses, have no zero point. The ways in which these lines of struggle and contestation continue today will be addressed in Chapter 9.

Processes of globalization, Fraser (2008) notes, shape how disputes and conflicts over justice are played out. For instance, political decisions taken in one nation-state often have cross-border impacts, and in a similar way, corporations operating in the global context can generate transnational harms. These impacts and harms are addressed in governance structures on an international scale. All of this, then, affects how justice is articulated and understood. Importantly, struggles for justice in this context are not only concerned with the 'what' of justice – with redistribution, recognition and representation. Beyond these immediate first-order injustices, Fraser (2008) also highlights the 'meta-level' of injustice, which targets issues of the 'who' – who is a legitimate subject of justice – and the 'how' – the procedural question of how this should be determined. All of these nodes – the what, the who, and the how – are sites of contestation. Following these lines of reasoning, we must consider how disputes over justice in the globalized economy – which involve actors across different geographical scales, take place in domestic as well as transnational arenas, and include representatives from public, private and hybrid spheres – concern more than the 'what':

> Even as they dispute substantive issues, then, the contestants also rehearse deep disagreements about who is entitled to address claims to whom concerning what; about where and how such claims should be vetted; and about who is obliged to redress them, if and when they are vindicated (Fraser, 2008, p. 53).

Acknowledging these sites of contestation, Fraser (2008) establishes the multidimensional concept of justice described above for solving the 'what' problem. With regard to the 'who' problem of determining the subject of justice, Fraser (2008, p. 65, see also 2010) requests reflexive theorizing coupled with the 'all-subjected principle', which considers "all those who are subject to a given governance structure" as being "subjects of justice in relation to it". These governance structures thus include the global economy as a whole. Lastly, Fraser (2008) proposes a dialogical and institutional approach to the 'how' issue, foregrounding the need for global democratic arenas where inclusive debates on global (in)justice can be held and, hopefully, resolved. Addressing this issue is important, because in its current form, the international system of governance "denies [the global poor] the means to confront the offshore architects of their dispossession – and thereby shields transnational malefactors from critique and control" (Fraser, 2008, p. 146). Therefore, drawing on these lines of reasoning, this thesis considers the struggles revolving around CSR and regulatory hardening as being related to justice.

7. Methodological Considerations

The papers included in this thesis investigate the contestation around CSR and regulatory hardening, by studying key actors participating in these contestations: politicians, corporations, and non-governmental organizations. This chapter describes how this was done. Since the papers draw on different sources of empirical material, and use different methods, including different forms of qualitative text analysis (see, e.g., Rennstam and Wästerfors, 2015; Boréus and Bergström, 2018), the materials, methods and procedures of each paper will be described separately. Following this, the chapter considers the studies in relation to the thesis' theoretical points of departure, and discusses issues of reflexivity as well as research ethics.

Paper I: Struggles for Regulatory Hardening

The first paper focuses on political debates in the Swedish Parliament, and draws on different documents to study these debates: protocols from the parliamentary debates, which may unfold following committee reports, motions and written questions (including interpellations). The common thread in the selection of these empirical sources is that they contain instances of disagreement and contention (following the discussion in Tollin, 2011), in line with the paper's aim of analyzing struggles revolving around CSR. The documents were collected from the Swedish Parliament's website, by using 'CSR' and 'Corporate Social Responsibility' as keywords, in the period 2019–2020. The material was delimited to only focus on CSR as a regulatory framework to place demands on corporations (following the previous lines of reasoning in this thesis). In total, 157 documents remained for more careful analysis, stretching from the years 2001/2002 to 2019/2020.

To understand the political positions taken in the Swedish Parliament, the paper draws on an analytical framing approach. Such an approach directs attention to the policy framing stories that map out what the 'problem' is, and how this problem is linked to specific 'resolutions'. These stories involve ideas about policy issues as well as about policy-relevant actors (see, e.g., Rein and Schön, 1996; van Hulst and Yanow, 2016) – in this case, issues relating to corporate responsibility in the global context, and the status of the corporation

as a regulator. As analysts, then, we are interested in how actors make sense of a situation and construe it as problematic; how these actors select, name and categorize elements in specific narrative patterns; and how this is weaved into a story that explains "what *has been* going on, what *is* going on, and, often, what needs to be done" (van Hulst and Yanow, 2016, p. 100, emphasis in original). To illustrate these lines of reasoning in the context of the present study, if one frames CSR as a 'business-driven' phenomenon, and understands the corporation as a capable regulator, then what has been going on for the past decades is a story of success. What would be problematic from this perspective, then, is introducing governmental regulation that disrupts or interferes with this successful status quo – what needs to be done is to maintain the existing state of affairs. Thus, by utilizing frame analysis (drawing primarily on van Hulst and Yanow, 2016; but see also Rein and Schön, 1996), Paper I maps out competing positions taken in the Swedish Parliament, and analyzes two specific empirical cases in which these positions come into light, with a focus on CSR and regulatory hardening.

Paper II: Navigating Contradictory Demands

The second paper focuses on the responses of Swedish companies to a specific proposal of regulatory hardening, namely the European Commission's proposed Directive for Corporate Sustainability Due Diligence. The responses are available through the public consultation and feedback periods that the proposal has undergone, which encourage stakeholders to 'Have Your Say' in the policymaking process. They were collected in 2022 from the Commission's website. In line with the general points of departure for this thesis, only responses from large companies, and only those who checked Sweden as their home country,[14] were collected. In total, the material comprises 18 instances of feedback from 15 companies (of which five are investment companies), between the years 2020 and 2022. Of the three consultation and feedback periods, the second one was empirically the richest; it consisted of companies responding to a survey with both closed-ended and open-ended questions, while the other two invited written submissions from companies.

The responses were analyzed through qualitative content analysis, following the approach mapped out by Graneheim and Lundman (2004). Using specific concepts or tools, such as codes, categories and themes, the analyst works with both the manifest and latent content of a text – what it *says*, and what it *means*. This involves, Graneheim and Lundman note (2004, p. 107), "a back and forth

[14] The companies have different links to the global economy; most are multinational enterprises, and some are investment and holding companies with ownership positions in multinational enterprises.

movement between the whole and parts of the text". The analytical process in this study began with reading all of the companies' responses to obtain a sense of the whole, before using NVivo to code specific segments into parts that make up the manifest content of the text. Codes that share commonalities were sorted into categories, which were later sorted into themes that sought to capture their underlying meaning. One illustrative example of this process can be found in the initial codes 'level playfield' and 'increase transparency', which were – together with other codes – categorized as 'benefits' that the companies were expecting from the hardened regulation. This category was then grouped together with other categories to form the theme of 'embracing responsibility'. The analytical process was thus one of working in different steps toward higher levels of abstraction (following Graneheim and Lundman, 2004; cf. the conventional approach to content analysis discussed in Hsieh and Shannon, 2005).

Paper III: Justice from Below

The third paper uses interviews as well as document analysis to shed light on the experiences of civil society and non-governmental organizations that have turned to the National Contact Point (NCP), a nonjudicial mechanism for redress established under the framework of the OECD Guidelines. It seeks to understand the perspective of actors turning to the Swedish NCP, and is therefore limited to focus only on organizations with actual experience of turning to it, rather than the more general issue of nonjudicial redress for corporate harm.

For the interviews, I reached out to the organizations that have filed complaints with the Swedish NCP to ask whether they were interested in participating. After receiving information about the study, and being encouraged to ask questions, four representatives of different organizations agreed. Three interviews were held via Zoom (using end-to-end encryption) in either Swedish or English, recorded (audio only) and later transcribed. The interviews were semi-structured and an interview guide was used, which – taking a cue from Becker (2008) – focused on 'how-questions' and activities (in this case, filing a complaint). Each interview began with a description of the study, including research ethics, and gave the interviewees opportunity to ask questions before obtaining informed consent. It was also emphasized that they were being interviewed as representatives of an organization, thus not as private individuals, which placed them in a particular position from which to speak (drawing on Holstein and Gubrium, 1995). In one case, it was not possible to do a Zoom interview; instead, a written interview was done. The interviewee received a document with the same information as given to the other interviewees, including a section on consent, and with the same questions as

the interview guide (although with some slight alterations: for instance, to make them a bit more open). This was not ideal, since a written interview loses the depth and flexibility of an oral interview, but in this particular case, it was the only option at hand. All in all, while the interview material is very slim (cf. Ryen, 2004), the NCP had only dealt with nine specific instances by the time of collecting the material, spanning the course of roughly 20 years. Given the overlaps in the interviewees' narratives, it could be suggested that they together offer insights into common experiences of the NCP.

Apart from the interviews, the study also collected key documents that allow insight into organizational understandings and experiences: the filed complaints themselves, collected from the OECD Watch's website and the Ministry of Foreign Affairs; articles about the complaints published in Swedish media, collected through the database Retriever; and information about the complaints published on the organizations' own websites. For the last two sources, the collection was limited to include only documents that focus on the complaint and the NCP or the OECD (more general statements on, for instance, corporate harm or the OECD were thus excluded).[15] While the interviews are the driving force in the analysis of Paper III, they are thus complemented by other empirical sources, which allow for additional insights and bring out further nuances (cf. Patton, 1999). All in all, a total of 47 documents were analyzed, which span the years 2003–2022. All empirical material was collected with the approval of the Swedish Ethical Review Authority.

The transcribed interviews, the written interview, and the documents were analyzed in NVivo – this time, a thematic analysis was chosen, following the approach of Braun and Clarke (2006). Similar to other analytical processes, this one begins with reading the material and creating initial codes, before considering how these codes may form overarching themes. A theme must have a degree of internal coherence, as well as borders clear enough to distinguish it from other themes. Moreover, the 'keyness' of a theme, Braun and Clarke (2006, p. 82) note, is dependent on "whether it captures something important in relation to the overall research question", and must be reviewed throughout the analytical process. For the study at hand, the different empirical sources were analyzed separately in NVivo in an inductive manner, which allowed the material to shape the direction of the research question at hand. The sources and their themes were later considered side-by-side to get a sense of the material as a whole. At this stage, it became apparent that some themes could be found across all sources, such as 'attacking on all fronts', while others were visible in the interviews but less so in other sources, such as 'visibility'. One of the reasons for these differences may lie in the fact that the sources

[15] The NCP's statements were also collected from the Swedish Government's website, but not included in the analysis, which focused on the complainants' experiences.

capture narratives at different 'stages' (cf. Goffman, 1959), with the interviews allowing more insight into backstage accounts than, for instance, the media statements. Drawing on these sources, then, Paper III sheds light on the organizational experiences of the NCP, focusing on the reasons the organizations share for turning to it.

Reflections on Positionality and Ethics

Criminologists studying powerful actors, such as large corporations, have found that this kind of research comes with a number of barriers (Tombs and Whyte, 2009); for instance, it can be difficult to gather data, because these actors are often able to keep their activities beyond the researcher's reach, and it may be difficult to disseminate research, following the risk of legal action (for an example of the latter, see Galaz, 2018). Studying 'up', therefore, is different from studying 'down' (Tombs and Whyte, 2009; see also Alvesalo-Kuusi and Whyte, 2018). As shown above, this thesis primarily makes use of publicly available documents. Rather than being a choice out of necessity, however, these empirical sources suit the research question at hand: to investigate regulatory hardening as an outcome of *contestation*. The collected documents were chosen because they capture such contestation. Moreover, it is possible to reflect on the extent to which doing interviews or observations in political and corporate contexts allows for insights that go beyond the accounts available in these documents. It should be noted, however, that the empirical sources have slightly different degrees of 'openness' – for instance, the corporate responses analyzed in Paper II appear as carefully constructed documents, perhaps more so than the transcriptions of parliamentary debates analyzed in Paper I. This relates to the choice of empirical sources; the transcribed protocols capture what can be understood as everyday politics (see Uddhammar, 1993), which differs from, for instance, more polished committee reports or corporate statements.

The position of studied actors must also be considered from an ethical perspective. Ethical reflections are a necessary part of any research project, and are often summarized as general principles that researchers ought to keep in mind, such as honesty, openness, responsibility, and protection of research subjects (Shamoo and Resnik, 2015). With regard to this last principle, it has been argued that research on powerful actors must consider not only the research process as such, but also the power structures within which this process is embedded (Alvesalo-Kuusi and Whyte, 2018). For Paper I and Paper II, which analyze political and corporate narratives, it should be highlighted that these narratives are not taken as representative of individual opinions – nor are such opinions of any interest, as focus falls on more general dynamics of public contestation. In Paper III, the position of the research subject, and the

methodology, changes. Interviewing representatives of civil society and non-governmental organizations invited ethical considerations primarily focused on the risk of identification (since the complaints filed with the Swedish NCP are official documents). Remaining open and transparent throughout the research process, obtaining informed consent, being available for questions and providing information was crucial in preserving the integrity of research participants (following the principles in Shamoo and Resnik, 2015; see also ALLEA, 2023). Moreover, in relation to topics of struggle and contestation, the interviews allowed insights into issues which were not as visible in the other empirical sources, such as the complaints (following the above suggestion that the sources capture different 'stages').

Considering the position of the actors under study, and the context within which research takes place, also calls on researchers to be self-reflexive about our own positionality. In the context of this thesis – which takes an interest in the regulation of global corporate conduct, that has disproportionate impacts in Southern countries as well as disadvantaged and indigenous communities (see, e.g., White, 2011; Whyte, 2018a) – it is important to not get stuck in what Mutua (2001) discusses as a Eurocentric rhetoric of 'powerless victims' in 'savage states' needing rescuing from 'Western saviors' (cf. the criticism against CSR articulated in Andrews, 2019; Baars, 2019; see also Chapter 2). Instead, researchers should re-think the "hierarchical, binary view of the world in which the West leads the way and the rest of the globe follows" (Mutua, 2001, p. 245). Being aware of the histories against which this view unfolds, and making efforts not to walk in the footsteps of doing "whiteness as usual" (Mulinari in Mohanty, 2013, p. 980) is therefore crucial, so as to not lose ability to speak on universal issues (see Bhambra, 2021).

To follow these lines of reasoning, Haraway (1988) – discussing issues of positionality and vision – suggests that what we as researchers see is dependent on the particular lens we choose. This thesis views social phenomena through the lens of critical theory, which directs attention to some aspects of social life, such as social struggles and sites of contestation, to be empirically observed and theoretically interpreted. This necessarily means that other aspects become excluded, because to promise vision from everywhere makes it "impossible to see well" (Haraway, 1988, p. 584). But like all lenses, critical theory is not unproblematic. The aim of critical theory has been formulated as "making agents aware of hidden coercion, thereby freeing them from that coercion and putting them in a position to determine where their true interests lie" (Guess, 1981, p. 55). This could be considered emancipatory, but – in suggesting that social agents are unaware and in need of being enlightened – it is also elitist, and difficult to explore empirically. Contemporary critical theory, however, shifts away from this understanding. Instead, it foregrounds that critical theory must be connected to struggles, practices and experiences, and

find its criteria within them (Celikates, 2018), thus rejecting moralism and the imposition of external standards (see Jaeggi, 2018). Therefore, critical analyses should be guided by the ambition of speaking *with*, not for, actors (Fraser and Jaeggi, 2018; see also the discussion in Chapter 6). Such a position of engagement could also be considered as being part of our ethical responsibilities as researchers (Elliott, 2017).

On a final note, returning to Chapter 1, this thesis takes an interest in regulation of corporate conduct in a global context, where corporations are able to exploit spaces between laws (see, e.g., Michalowski and Kramer, 1987). Returning to this interest from a methodological point of view, most of the entities under study in this thesis have Swedish origins, but not all, and in some cases, this notion can be problematized. In Paper II, some entities are Swedish branches of companies originated in other countries, and in Paper III, some of the targets of organizational complaints are foreign entities, operating in Sweden. This plurality illustrates the dynamic of the global economy. Moreover, the regulation under study in the papers directs our attention beyond the nation-state; for instance, Paper I and Paper II consider proposals for regulatory hardening in the form of EU directives, and attempts at regulating transnational supply chains. Similarly, the harm under consideration takes place in contexts all over the world, drawing attention to the structural dimensions of corporate harm (cf. Croall, 2007; Whyte, 2007), and in Paper III, it is shown that organizations operate within this global structure to find arenas in which these harms may be addressed. Our focus here, then, falls on *transnational* struggles for justice, similar to how the focus of all the papers is the regulation of *global* corporate conduct. On a final note, this thesis – and as stated in the introductory chapter – takes an interest in the fundamental structures of capitalism (see, e.g., Fraser and Jaeggi, 2018). It draws on the observed struggles and contestations about corporate responsibility in the material, to shed light on the dynamics behind regulatory hardening. In doing so, it focuses on these fundamental and general structures – in particular, the overarching orientation toward capital accumulation in capitalism, and its underlying contradictions. The ambition of this thesis, then, is to develop an analysis that targets the key dynamics of contradiction and conflict immanent in capitalism.

8. Summary of Studies

Against the background, previous research, theoretical framework and methodological considerations described in previous chapters, this one focuses on the three papers of this thesis, with an emphasis on their key findings and conclusions. The papers are described one by one; in the following chapter, an analysis which draws on all papers is developed.

Paper I: Struggles for Regulatory Hardening

The first paper takes, as its point of departure, the trend toward regulatory hardening, and explores how the politics of hardening have been played out in a domestic arena: the Swedish Parliament. By analyzing parliamentary debates, it aims to understand the dynamic or driving force behind hardening, with a theoretical interest in history as driven by crises and contradictions (drawing on Jaeggi, 2017). The paper focuses on two political conflicts as empirical cases. In both cases, the center-right Alliance parties oppose attempts at regulatory hardening. Framing CSR as a 'business-driven' phenomenon, and the corporation as a capable regulator with positive impacts in the global economy, they are keen to maintain the status quo of social responsibility as voluntary self-regulation. Governmental interference, therefore, represents a problem – it is seen as unnecessary, and as hindering corporations from doing what they already do: being good, because it is good for business.

In the first case, the Green Party proposes regulatory hardening. For them, the problem at hand is the lack of binding regulation to hold corporations accountable for their harms (which is also problematic for the reputation of the Swedish state). The solution, then, is hardening: developing an international, legally binding framework for corporations and human rights, by transforming existing non-binding frameworks into mandatory ones. Drawing attention to the irresponsibility of the corporation as a self-regulator, hardening thus becomes the best available solution. In the second case, the Social Democratic-led government seeks to implement an EU directive on non-financial disclosure (the NFRD Directive, see Chapter 5) in a way that exceeds the minimum standards. While acknowledging that most Swedish corporations already commit to disclosure voluntarily, the government highlights that this is not enough

for the directive to have large-scale effects – again, a problem for which hardening becomes the solution. Moreover, it is a solution with benefits for corporations – by increasing their competitiveness – and the nation-state, by being at the forefront of corporate sustainability.

There are two key conclusions from this paper. Firstly, in the debates, different images of the corporation come forth. On the one hand, the corporation is a responsible self-regulator, but on the other, it is incapable of self-regulating, or of doing so to produce large-scale effects. This structure of the parliamentary debates mirrors the conflicting claims of the corporation inherent in CSR, between the corporation as a responsible regulator, and irresponsible profit-maker (see Garsten and Sörbom, 2017). Drawing on Jaeggi (2017), the debates can be considered a manifestation of tensions that can be traced to an underlying contradiction, made up of interlinked but opposing claims. The dynamic that structures the debates, then, is immanent – the political conflicts may have been triggered by external events, but mirror tensions that are already present in the idea of CSR itself. Politicians proposing regulatory hardening are bringing the contradictoriness of CSR to the fore, making it manifest, and the trend toward hardening could be suggested to represent a crisis of the traditional understanding of CSR as voluntary self-regulation. Secondly, the findings highlight the neoliberal context in which the debates take place. The arguments put forth in the debates rely on a neoliberal balancing of corporate profitability and social responsibility (cf. Shamir, 2008; Garsten and Jacobsson, 2013) – not only for the Alliance parties, highlighting that voluntary regulation is good for business, but also for their political opponents, highlighting that regulatory hardening is good for business (with added benefits for the nation-state).

Paper II: Navigating Contradictory Demands

The second paper continues to explore the contradictory dynamics visible in struggles over corporate responsibility, but shifts the focus to the European Commission's proposal for a directive on Corporate Sustainability Due Diligence (the CSDD Directive, see Chapter 5), and to the lines of reasoning within the private sector. It explores Swedish companies' responses to the proposal, by analyzing their submissions in public feedback and consultation periods. Taking the fundamental contradiction between capital accumulation and social protection as a theoretical point of departure (discussed in, e.g., Tombs and Whyte, 2015; Fraser and Jaeggi, 2018), it aims to understand how companies navigate this contradiction which, under neoliberal capitalism, is expressed as a conflict between profitability and sustainability.

The directive can be understood to challenge the regulatory status quo of voluntariness and self-regulation by introducing hardened regulation for due diligence and corporate governance. Focusing on the companies' responses to these challenges, the findings are split in two parts. The first part is concerned with the more abstract level of corporate discourse, and the second is concerned with the specific provisions of the proposal. The first part maps out how the companies, for the most part, embrace sustainability and the hardened demands on their conduct by linking it to profitability. They are thus actively construing a link between their social and environmental interests, and their financial interests (cf. Tregidga, Milne and Kearins, 2014; Whyte, 2020). The second part shows that, with regard to due diligence, the companies foreground their own agency and expertise, and consider existing measures to be enough – all while listing the drawbacks and risks posed by the proposal, which revolve around their weakened ability to conduct business as usual. With regard to corporate governance, the companies' resistance is more outspoken. It is argued, for instance, that existing regulations for corporate governance work well and no more are needed, and that companies only owe duties to the company itself and its shareholders – not external stakeholders. Throughout this section, the companies foreground voluntary self-regulation, non-binding codes, and soft law; in other words, highlight themselves as a regulatory solution. By doing so, they deflect the hardened demands, which are now understood as threatening the success of their existing ways of conducting business (cf. Shamir, 2004; LeBaron and Rühmkorf, 2019).

In this paper, there are two key conclusions as well. Firstly, the companies' responses follow the neoliberal logic that underscores CSR. The first section is an illustration of a 'win-win' rhetoric, in which being sustainable is in their financial interests; and the second section shows a preference for continued regulation 'at a distance', with the government at arm's length. Thus, the companies' responses to the proposal follow a neoliberal logic of regulation, in both theory and practice (cf. Shamir, 2008). Secondly, drawing on Jaeggi (2017, 2018), the paper argues that this logic is inherently unstable, as the findings trace how the companies begin with foregrounding sustainability and profitability as interlinked concerns, but later draw attention to how they cannot, in fact, be reconciled in corporate practice. The companies therefore appear unable to fulfill the normative standards to which they subscribe within neoliberal capitalism, which are immanent to this form of life.

Paper III: Justice from Below

The third paper focuses on actors that, throughout the history sketched in this thesis, have been key in pushing for harder demands on corporate social and

environmental responsibility: civil society and non-governmental organizations. Against the background of the challenges for accessing accountability and redress for corporate harm (see, e.g., Bader, Saage-Maaß and Terwindt, 2019; Buhmann, 2023), this paper explores organizational experiences of turning to the Swedish National Contact Point, as a nonjudicial mechanism for redress. More specifically, it aims to understand the reasons why organizations turn to the NCP, while knowing that it is unlikely to provide either accountability or redress in specific instances. The paper thus seeks to shed light on struggles for justice from below, instead of – as in the other two papers – how contestation around CSR and regulatory hardening play out on political or corporate arenas.

The findings draw attention to the different reasons why organizations turn to the NCP. They seek to increase awareness and visibility of corporate harm, not only in individual cases but also more generally, by bringing forth debates and setting precedents; they use the NCP not so much for itself, but as an element of a wider strategy in which different mechanisms – judicial and non-judicial, global and local – are used; and they seek to highlight the flaws of the NCP system, and global governance more generally. Moreover, the findings show how these struggles have a strategic element to them; organizations must decide which corporation to target – they must be responsive, but not too responsive – and which NCP to turn to, since they exist in all countries that adhere to the OECD Guidelines. Moreover, they must consider the risks for the local communities opposing corporate harm, as well as manage communities' expectations of what turning to the NCP might actually result in. Taken together, then, the paper highlights the agency of complainants turning to the NCP – how they are actively using the NCPs to achieve different ends, which go beyond attempting to achieve successful outcomes in individual cases of harm (cf. Vanhala, 2012; Bader, Saage-Maaß and Terwindt, 2019).

Through the lens of Fraser's (2008) theory of justice, the paper discusses two overarching conclusions. Firstly, it highlights that the multifaceted harms brought to the NCP can be understood as different forms of injustice, relating to economic, cultural and political dimensions – for instance, communities being denied financial compensation, or denied access to dialogue. These injustices, which concern the 'what' of justice, also come forth in the reasons why organizations turn to the NCP: as a means of accessing recognition and representation, of being valued and heard (cf. Campeau, Levi and Foglesong, 2021). Secondly, the paper argues that by turning to the NCP, the organizations are simultaneously struggling to address meta-level injustices, concerning the 'who' and the 'what' of justice, visible in the ways that they claim their own right as subjects of justice, struggle to shape expectations on corporate conduct, and push to improve the spaces in which these disputes can be resolved. The organizations thus emerge as active participants seeking to change

existing, or create new, structures for justice, understood in their multidimensional form (following Fraser, 2008; see also Bader, Saage-Maaß and Terwindt, 2019). These struggles, then, are also understood as part of the hardening trend, by targeting the structures for accessing justice for transnational corporate harm.

9. Discussion and Conclusions

The aim of this thesis, as highlighted throughout the previous chapters, is to investigate the hardening of CSR as an outcome of contestation and struggle. It thus seeks to provide empirical and theoretical insights into how actors participate in such contestation and struggle, and how these in turn generate regulatory hardening. In this final chapter, these insights will be discussed in three sections. The first section focuses on hardening as a contested regulatory solution, while the following two sections explore the dynamics behind this solution. Each section references the findings and the theoretical framework presented earlier in this thesis (see Chapter 6 and Chapter 8), as well as the research discussed in other chapters, with the aim of tying together the thesis as a whole. The chapter ends with a few concluding remarks, and points out possible directions for future critical scholarship.

Solutions: Contestation over Regulatory Hardening

The starting point for this thesis is the observed trend toward regulatory hardening, or what has been elsewhere discussed as the "hardening of CSR law" (Momsen and Schwarze, 2018, p. 574) or the "legalization of CSR" (Berger-Walliser and Scott, 2018, p. 169). It thus focuses on the ways in which governments are hardening their demands on corporations to operate in socially and environmentally responsible ways, with a criminological interest in the harms and injustices perpetrated by corporations (described in, e.g., Tombs and Whyte, 2015; Barak, 2017). The papers in this thesis provide insight into the contestation behind this trend from different empirical contexts: from political conflicts in the Swedish Parliament, to the contested implementation of an EU directive, to transnational struggles for redress, accountability and justice. Each paper thus engages with social actors and arenas that are key in the hardening trend. The remainder of this section will focus on what happens in these arenas, and draw parallels between the findings in the three papers, before turning to how this can be interpreted through the lens of critical theory.

Papers I and II both capture contestation around regulatory hardening, with actors taking on conflicting positions in relation to the future of corporate re-

sponsibility. In the Swedish Parliament, the Green Party and the Social Democratic-led government are struggling for harder demands on corporations – either to harden non-binding guidelines on human rights into a legally binding framework, or to implement an EU directive on non-financial reporting beyond the minimum level (thereby hardening the expectations on Swedish enterprises). On the other side of these political debates are the Alliance parties, who oppose regulatory hardening from the perspective that CSR is strictly 'business-owned', and thus not something for governments to interfere with. Rather, hardening the demands on business – for instance, by making them legally binding instead of voluntary – could be counterproductive, it is argued, as it would hinder corporations from addressing context-specific challenges. Similar lines of conflict are drawn in the second paper. Here, the European Commission proposes a directive on CSDD, which requires companies to implement processes for human rights and environmental due diligence. Again, this proposal for hardening is contested. Affected companies criticize, among other things, the proposed changes to corporate governance by arguing that existing ways of working – through soft law and self-regulation – work well, and that they need to maintain a position of regulatory flexibility to operate in different contexts. Thus, these papers both illustrate attempts at hardening the social and environmental responsibility of business, and how these are contested as they threaten the regulatory status quo, in which corporations are understood as best placed to decide on how to mitigate their harmful impacts.

In the third paper, the hardening trend becomes visible not in proposals for new laws and regulations, but in the ways that organizations turn to existing regulatory mechanisms as a means of challenging and transforming structures for justice in the global landscape. As the paper shows, these challenges are visible in the organizations' focus on the 'bigger picture' of filing complaints, in their attempts to establish guidance for future cases, and in them showcasing the flaws in the system of non-binding guidelines and recommendations. Here, focus falls not on contestation between parties with conflicting interests, but on struggles on behalf of those exposed to corporate irresponsibility and harm. What the organizations are struggling against, then, could be understood as twofold: the companies in specific cases, but also – and perhaps primarily – the existing system of global governance. They are thus struggling to transform or build structures for justice beyond those currently available, and in doing so, they should be understood as playing an important part in the trend toward regulatory hardening.

Taken together, the three papers draw attention to the contestation in the regulatory space on corporate responsibility, visible in how different actors seek to advance conflicting ideas on what these responsibilities are, how they should be regulated, and to what ends (cf. Shamir, 2004). These can be understood as a continuation of the struggles of the late 20th century, mapped out in

Chapter 3 and Chapter 4 (see also Khoury and Whyte, 2017; Muchlinski, 2021); for instance, these struggles for hardening also involve referencing individual cases of corporate harm, and problematizing the wider structures of the global economy (Paper I, Paper III; cf. Laruffa and Martinelli, 2023). Moreover, they show how resistance to hardening involves a framing of the corporation as a successful self-regulator which, by extension, thwarts tougher regulation and limits government intervention (Paper I, Paper II; cf. Shamir, 2004; LeBaron and Rühmkorf, 2019). The papers also draw attention to the ongoing shifts in the regulatory space, as well as the diversity in the hardening trend (as discussed in Chapter 5). For instance, the directive introducing binding obligations on human rights and environmental due diligence is 'harder' than the directive on non-financial reporting – it is more far-reaching, targets the responsibility of directors more specifically, and is coupled with tougher sanctions. Therefore, while there has not been a complete shift from soft to hard law, the fact that something *is* happening in relation to CSR is beyond doubt. This is visible not only in the proposals for hardening themselves, but also in the reaction they generate (taking a cue from Becker, 1963), thus maintaining corporate responsibility as an active site of struggle.

From a critical theoretical perspective (Jaeggi, 2017, 2018), this hardening trend and the contestations around it can be understood as driven by underlying contradictions – a point which will be further developed in the sections to come. The hardened regulations are thus understood as solutions that attempt to address or stabilize these contradictions. They are not, however, understood as 'end points' in a historical development, nor are they perceived as resolving contradictions or settling conflicts once and for all. Rather, through the lens of critical theory, as conflicts unfold, ways of coping with them – solutions, such as hardened regulations – follow. From these, "new problems that spring from the deficiency of the solutions arrived at" can develop (Jaeggi, 2018, p. 234). Following these lines of reasoning, and recalling the arguments in Chapter 6, the analysis provided here is not tied to a "romantic-harmonistic ideal of consistency" (Jaeggi, 2018, p. 212), as contradictions and conflicts are only temporarily overcome or managed. Similar understandings are present in the critical criminological literature, visible in particular in the writings of Chambliss (1979, 1993). For Chambliss (1979, p. 169), if law is understood "as shaped through struggle and conflict in relation to fundamental contradictions then the engine of social change becomes conflict, not harmony and equilibrium". As proposed solutions to conflicts, then, law and regulation temporarily balance the conflicts at hand – and by doing so, these solutions carry the potential for future conflicts. The processes at play here are thus dynamic and dialectical (Jaeggi, 2018; see also Chambliss, 1979, 1993). From this perspective, the hardened regulations discussed above should not be understood as more than the provisional stabilization of contradictory and conflictual dynamics. What is key for such an analysis, following Hörnqvist (2020, p. 241),

is to investigate how a regulatory intervention "contributes to the temporary stability of the social formation as a whole", with a focus on fundamental structures of power. This analytical task will be taken up in the following sections of this chapter.

Problems: Articulation of Internal Critique

Regulatory hardening can thus be understood as an attempt at resolving or stabilizing conflictual dynamics – it is a solution to specific problems articulated by the actors that are pursuing hardening. What problems, then, come to the fore in the three papers? Across the different arenas that have been investigated here, a common problematization of CSR emerges, with actors pointing out that the paradigm of soft law and self-regulation is not working as intended. What we are witnessing is thus the unfolding of a situation where existing regulatory logics and practices no longer appear successful in the eyes of actors (though not all actors), directing attention to how forms of life – such as neoliberal capitalism – encounter problems that must be "mastered and overcome" (Jaeggi, 2018, p. 135).

This is illustrated in different ways throughout the three papers. For instance, the Green Party argues that Swedish enterprises do not adhere to the human rights commitments articulated in non-binding frameworks (stating that this is 'hardly' what they have done in, for instance, Belarus, Sudan and Syria, see Paper I). Another example is offered by the European Commission (2022, p. 2) stating that voluntary regulatory action in the hands of business "does not appear to have resulted in large scale improvements" in relation to human rights and the environment. Moreover, organizations turning to a soft nonjudicial mechanism describe doing so despite knowing it is unlikely to provide redress or accountability ("it is only a political structure that is for political issues", in the words of one interviewee, see Paper III, p. 13). Thus, among the actors involved in struggling for hardening, there is a common understanding of the limits of CSR that draw attention to its alleged dysfunction. Similar lines of reasoning emerge in the critical scholarship on CSR, which discuss its limited ability to address, for instance, the asymmetrical power relationships within the global economy that facilitate harm, and its operations as a mechanism for corporate profitability rather than responsibility (see, e.g., Glasbeek, 1988; Bittle and Snider, 2013; Tombs, 2016; Laruffa and Martinelli, 2023).

Emphasizing their commonalities is not to suggest that these actors are one and the same; rather, they hold very different positions of power in the global governance landscape, which will be explored later in this chapter. Moreover, there are some variations in their accounts of CSR. The Swedish politicians and the European Commission appear to have developed their criticism of

CSR over time, noticing that voluntariness has not generated enough of a positive development, but among non-governmental organizations, the criticism is stronger: they did not appear to expect the NCP – a mechanism associated with a well-known CSR framework – to deliver successful outcomes, as they are already aware of its flaws. Understanding these criticisms as a common problematization, however, allows us to consider CSR as a site of struggle (cf. Shamir, 2004), which in this case revolves around regulatory hardening. While some actors struggle for hardening, others are against it; in the papers, both politicians and corporations display confidence in the ability of CSR, understood as private self-regulation, to generate a positive development and minimize adverse impacts. Here, the ways in which the Alliance cites the success of voluntary reporting to question the need for law in Paper I mirrors how some corporations highlight self-regulation as the best alternative for corporate governance in Paper II. In both cases, their lines of reasoning amount to a "*defensive-offensive pirouette*" (Fooks and Godziewski, 2022, p. 229, emphasis in original), as their suggestions limit direct intervention by referencing seemingly constructive proposals in the interests of business.

The problem articulated by actors supporting hardening, then, does not appear out of nothing, but can be traced to the "visible cracks" and "crisis tendencies" of neoliberal capitalism (drawing on Fraser and Jaeggi, 2018, p. 9). Across the arenas under study, actors struggling for hardening reference concrete issues relating to economic, social, political and ecological dimensions on a global scale, such as workers being held under slave-like conditions (the Green Party), practices of child labor and forced labor (the European Commission), and toxic waste polluting local communities (non-governmental organizations). However, problems are also made; they must be actively interpreted and defined as such. This draws attention to the normative context in which the problem is understood; it does not simply emerge at moments of disruptions or dysfunctions, but when something becomes "problematic *in relation to* an ethically predefined problem description, hence to an appropriate performance of practice in accordance with their normative meaning" (Jaeggi, 2018, p. 137, emphasis added). In this thesis, interest falls on normative standards and criteria internal to the situation itself (see Chapter 6) – and at the heart of the problems articulated above are concerns over justice, which make up their normative constitution.

These concerns illustrate the pluralism of justice claims and how they overlap, thus highlighting the importance of considering justice in a multidimensional form, following Fraser (2008), with economic, cultural and political dimensions. The struggles for regulatory hardening discussed here are all situated within the context of the global economy; this economic dimension comes to the fore as actors draw attention to how companies profit on weak political governance in host states (the Green Party), or how they operate in global

value chains in which there are significant risks for adverse human rights impacts (the European Commission). They are thus articulating a problem that, in the words of Fraser (2008, p. 14), "directly target[s] the new governance structures of the global economy", and the ability of companies to operate beyond the reach of their home states. The other dimensions, relating to cultural recognition and political representation, are most clearly illustrated by the complaints filed to the National Contact Point. These complaints capture the experiences of affected communities, for instance, not having their cultural right to land recognized by companies (or protected by governments), or having their traditional means of livelihood threatened through corporate conduct. Through the lens of Fraser (1996, p. 9), then, it could be suggested that communities are seen as being of "lesser esteem, honor, and prestige" compared to other social groups (cf. McKenna, 2016; Campeau, Levi and Foglesong, 2021). Moreover, focusing on the political dimension of representation, the complaints map out how communities and local organizations have sought to discuss their concerns and experiences with companies, but been met with little or no meaningful response. This illustrates the difficulties of accessing arenas for representation in cases of transnational corporate harm, discussed in Fraser (2008). These lines of reasoning were, at times, extended to the NCP itself, as organizations argue that the NCP fails to recognize their voice to instead privilege the perspective of the company (cf. Khoury and Whyte, 2017, on how some NCPs may operate to preserve the logics of the market).

Problems related to function can therefore not be separated from their normative constitution, because an assessment of "non-functionality is always already normatively stamped" (Fraser and Jaeggi, 2018, p. 120; see also Jaeggi, 2018). The struggles and problematizations described above are thus situated in dimensions of injustice – and correspondingly, what actors *expect*, are just business practices. CSR was, after all, developed as a regulatory response and introduced as a resolution in the context of such demands, as discussed in Chapter 3 and Chapter 6. This is further visible in the statements of companies themselves, as they claim adherence to broad ideals of responsibility – to, for instance, operate ethically and fairly vis-à-vis local communities – since it is thought to be a precondition for their success (illustrated in Paper II). Similar promises are made in the international frameworks for CSR. For instance, the National Contact Point is to function as a forum in which stakeholders can discuss their grievances. In other words, what is promised is an arena in which stakeholders, and their concerns, can be recognized and represented (drawing on Fraser, 2008); that is, justice.

The actors struggling for hardening are thus articulating a problem which has a functional and normative character, concerning instances of inconsistency between their normatively embedded expectations on modern-day corpora-

tions, and the reality of existing practices of corporate (ir)responsibility. Following the lines of reasoning in Jaeggi (2018) and Stahl (2013), it is here suggested that actors are articulating an internal criticism of CSR. This criticism focuses on the discrepancy between expectation and reality; this discrepancy makes a contradiction. One of the quotes from the Green Party included in Paper I illustrates this: as corporations seek to invest in other countries, they "do what is expected of them" to make this happen – and therefore, "they do not at all live up to the voluntary frameworks that exist concerning corporate responsibility" (Jönsson, 2023, p. 1193). It is thus the articulation of this internal criticism, which is further developed through conflict in different arenas, that becomes the driving force behind the proposals for regulatory hardening discussed above. This criticism is the reason for existing practices to change, in order to address these perceived deficiencies (following Stahl, 2013). From this perspective, then, development does not simply 'happen' but is actively brought about through actors' struggles. There is thus a subjective dimension at play here: actors must articulate criticism, bring problems into prominence, and by doing so, create opportunities for change (Jaeggi, 2017, 2018).

If social change can be understood as the general aim of developing criticism, internal criticism more specifically is associated with reconstruction; to achieve consistency and conformity between reality or practice, and expectation or norm. What is demanded, in this case by actors struggling for hardened regulations, is not a new set of norms; instead, they wish to bring existing norms to bear (Stahl, 2013; Jaeggi, 2018). One illustration of this reconstructive character of internal criticism can be found in Paper I, where the Green Party argues that a hardened framework on corporations and human rights should be based on existing non-binding frameworks, and where the Social Democrats pursue regulatory hardening built on norms that the companies are expected to already follow. In these cases, no new frameworks or normative standards are introduced – rather, focus falls on upholding existing ones. A similar interpretation can be made on the basis of the complaints filed at the National Contact Point. In these, complainants require that the contact point ensures that corporations fulfill the expectations placed upon them through the OECD Guidelines – in other words, that the NCP brings the norms of the Guidelines to bear (following Jaeggi, 2018). However, shifting attention to another empirical source, the interviews with organizations highlight the more general aim of changing or building structures for justice. This could be interpreted as going *beyond* reconstruction, if what is at stake is building something new. In this case, the effects could be of a more transformative kind (see Stahl, 2013; Jaeggi, 2017).

Underlying Contradictions: Articulation of Immanent Critique

If conflicts and struggles are the subjective dimension of a critical theory, then contradictions – which are underlying or even latent – are the objective side; they must be actively brought into prominence and actualized. From this follows that there is something deeper, more systematic at play in social conflicts or the articulation of problems: that there is a structural dimension behind the conflicts manifested here (Jaeggi, 2017, 2018). Therefore, taking a step back from the actors' articulation of internal criticism, we now turn to the development of immanent criticism – in other words, focus is shifted from the perceived discrepancy between norms and practices, to problematizing these norms and practices themselves. In doing so, this section shifts attention from the wider concerns over justice in which law and regulation are embedded, and zooms in on the normative basis of CSR itself, and considers the ways in which these norms are reflected in the struggles for regulatory hardening. It thus takes an interest in analyzing contradictions that, rather than being incidental, are "systematically anchored" in our contemporary form of life (Jaeggi, 2018, p. 198).

One strategy for doing so, then, is to consider the extent to which the articulated problems are arising from this form of life's fundamental structures. The criminological literature provides much insight in this regard, as it directs attention to a contradiction that can be found:

> as a thread running through the history of the corporation: that contradiction between the rapacious tendency of capital to accumulate and maximise profits to the point that its conditions of existence are threatened on the one hand and the state's need for some minimal form of social protection (to shore up the legitimacy of the state and ensure the steady progress of industry) on the other hand (Tombs and Whyte, 2015, p. 140)

This contradiction between protection and profitability has been observed in different cases. One example, offered by Tombs and Whyte (2015), is the legal protection introduced for factory workers in the 18th and 19th centuries, which sought to resolve the contradictory dynamic that the need for profit threatened the long-term capacity for sustaining profits. Another example is offered by Chambliss (1979) writing about laws of environmental protection and understanding them as an attempt at solving the contradiction that environmental harm may benefit profits in the short term, but undermine them in the long run. Moreover, both Whyte (2014) and Hörnqvist (2020) draw attention to the idea of regulation as a means of governing social order, as it allows governments to temporarily control or stabilize an inherently conflictual situation.

This provision of protection extends into our contemporary historical epoch but has, as Hörnqvist (2020) maps out, been transformed along the lines of neoliberal ideology. Two characteristics are key here: marketization – the shift to market-oriented regulatory responses – and organizational control in the shape of governance at a distance, rather than direct intervention. The neoliberal subject, therefore, is a self-governing subject (Dardot and Laval, 2014) – the responsibilized corporation coming forth in CSR is a clear example of this (Shamir, 2008; Vallentin and Murillo, 2012). Drawing on these lines of reasoning, as corporations have become increasingly responsible for fulfilling social and environmental duties, it is here suggested that they have simultaneously been responsibilized with the task of navigating the contradiction between protection and profitability – a contradiction that, for a long time, has been facing the nation-state (cf. Chambliss, 1979; Tombs and Whyte, 2015). Moreover, the normative foundation or logic of CSR is also framed in line with neoliberal ideology, resting on the harmonization of economic and social interests; from this perspective, being responsible and ethical is good for business (Shamir, 2008; Garsten and Jacobsson, 2013). Therefore, as Laruffa and Martinelli (2023, p. 599) argue, CSR can be considered as an intervention in which dominant groups partly consider "the needs of the dominated […] but with a view to reinforcing and/or restoring their hegemonic power".

These neoliberal features associated with CSR are also visible in the regulatory shifts discussed in this thesis. For instance, the introduction of non-financial disclosure or due diligence processes can be interpreted as ways of extending existing mechanisms of organizational control, which are characteristic of neoliberal security provision (Hörnqvist, 2020), as they still rely on affected companies to row while government steers – especially in cases where mechanisms for monitoring and enforcement remain weak (discussed in Nolan, 2018). Moreover, as shown in Paper I, political efforts at hardening corporate responsibility may still be framed along the neoliberal 'win-win' logic that characterizes CSR (see, e.g., Fleming and Jones, 2013). While CSR has been criticized because it allows companies to turn social concerns into opportunities for profit-making (see, e.g., Tombs and Whyte, 2015; Laruffa and Martinelli, 2023), it is here suggested that political attempts at hardening could be criticized along similar lines. However, the introduction of harder laws and regulations decided in formal political arenas is a clear shift from the emphasis on voluntariness, self-regulation and private authority associated with CSR (cf. Laruffa and Martinelli, 2023) – but to suggest that we are witnessing the 'end' of neoliberal regulation of business would be overly simplistic, as key features remain.

Moreover, emphasizing the role of neoliberal ideology also allows further insight into the resistance toward regulatory hardening articulated in Paper I and

Paper II, discussed in this chapter's first section. Here, the key point in resisting new laws and regulations appears not to be that hardening shifts responsibility from governments on to corporations, as visible in earlier debates on corporations and human rights (see, e.g., Khoury and Whyte, 2017; Muchlinski, 2021). Rather, for the responsibilized corporation, rejecting hardening is about promoting oneself as regulator; in other words, as the "best placed to define their own priorities in mitigating their potential adverse impact" (Paper II, p. 21), and thereby maintaining the role of a self-governed subject (drawing on Dardot and Laval, 2014; cf. Shamir, 2008). Furthermore, the findings shed light on how this role has sometimes been framed by drawing on a distinction between 'civilized' companies and 'backward' states (cf. Baars, 2019). This is visible in the Alliance's emphasis on the importance of Swedish companies operating in difficult countries to show off their Swedish values (Paper I), and the ways that companies foreground that non-binding standards are more appropriate since economies with 'weak governance' may be unable to enforce legally binding standards (Paper II). These framings of the responsibilized corporation can be interpreted as contributing to an understanding of local communities as needing to be 'saved' by foreign companies, which draws attention away from contestation over CSR by foregrounding corporate benevolence (Andrews, 2019).

Continuing these lines of reasoning, internal criticism – as discussed in the previous section – aims at developing criticism which is reconstructive (see, e.g., Stahl, 2013): what is demanded is consistency and conformity between norms and practices. From this perspective, the norms themselves are not subject to criticism, which means that they endure without transformation. As already highlighted above, the papers shed light on how the normative basis of CSR also comes to light in attempts at regulatory hardening. For instance, in promoting the hardened non-reporting directive discussed in Paper I, the European Parliament and the Council of the European Union (2014, p. 1) argue that "disclosure of non-financial information is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection". This position falls close to that of companies rejecting the CSDD directive discussed in Paper II. This illustrates the notion that problems have a restricted scope of solutions, discussed in Jaeggi (2018), as the solutions are dependent on the normative constitution of the former. In other words, if the trend toward regulatory hardening does not involve a criticism of the normative basis of CSR – the 'win-win' logic discussed above – then this continues to make up the normative expectation on corporate conduct and thus regulation. What is new in the hardening trend, then, is related to practice rather than norms, in the shape of a widened set of regulatory tools employed by governments to reinforce this logic. The 'reintroduction' of the nation-state in the realm of corporate responsibility may therefore not suggest a radical shift in state-corporate relations; instead,

it could be seen as a restructuring of these relations that allows them to continue operating in symbiotic ways (cf. Michalowski and Kramer, 2006a).

Another illustration of this symbiotic relation discussed earlier is found in Paper I, where politicians promote regulatory hardening as being beneficial for the corporations themselves – i.e., in the name of capital accumulation. What appears new, however, is the way in which politicians pursuing hardening bring concerns about Sweden's reputation, and the importance of Sweden taking the lead on the road toward corporate sustainability, to the table. This suggests that corporate irresponsibility does not only pose issues for the legitimacy of the corporations themselves (discussed in, e.g., Laruffa and Martinelli, 2023), but also that conflicts related to this generate specific dilemmas for the state and could pose risks to the state's legitimacy if not addressed (Chambliss, 1979; Tombs and Whyte, 2015). A similar emphasis on the state has been discussed by Gadd and Broad (2018) studying the UK Modern Slavery Act. The authors situate the political need for leading the fight against modern slavery in a crisis of national identity, related to Britain's own history with, and relationship to, slavery. Along these lines, the Swedish Parliament's concern with its own image can be understood as embedded in the same narrative of humanitarianism and international solidarity that shapes the Swedish CSR approach (see, e.g., Gjølberg, 2010), which highlights the domestic context in which the hardening trend is played out.

Continuing this focus on the nation-state, suggesting that the responsibilized corporation must navigate the contradiction between protection and profitability is not to suggest that the state has lost its relevance. Rather, it illustrates the plurality in contemporary regulation and how it involves private, as well as public, spheres (see, e.g., Levi-Faur, 2005; Picciotto, 2011). Paper III offers an example of how governments become confronted with this contradictory dynamic, as it draws attention to the potential conflict of interests facing governmental agencies who are concerned, on the one hand, with promoting trade and foreign investment, and on the other, with providing access to redress and accountability (which can be interpreted as a provision of protection, drawing on the discussion in Tombs and Whyte, 2015). This tension comes to the fore also in Paper I, showing how governmental attempts at regulatory hardening are fraught with contradiction (cf. Chambliss, 1979, on the state's dilemma).

Shifting from these broad contradictory dynamics within capitalism, attention will now be directed to the inherent contradictoriness visible within CSR itself, and its specific normative foundation, following the immanent approach as articulated in Stahl (2013) and Jaeggi (2018). The papers in this thesis consider the contradictoriness of CSR in different ways. In Paper I, focus falls on the contradiction that CSR holds an image of the corporation as irresponsible and responsible at the same time; it is both a hero and a villain, being expected

to assume responsibility and address its own instances of inevitable irresponsibility. The paper argues that the issue at hand is not so much that CSR is not working, but that there is something problematic with the regulatory formation *itself*. Paper II develops these lines of reasoning, by focusing on the contradictoriness visible in companies' defenses against regulatory hardening. On the one hand, they claim adherence to the 'win-win' ideal of linking profitability and sustainability – but on the other, they break it up, suggesting that these are difficult to reconcile. The paper argues that the companies get into a contradiction with their own self-understanding, as they come to realize that they cannot satisfy their own normative claims (drawing on Jaeggi, 2017, 2018). Similar lines of reasoning have been developed in criminological research. For instance, Khoury and Whyte (2017, p. 1) argue that corporate involvement in human rights policy is, as a whole, "riddled with contradiction", as "the priorities of corporations – to maximise profits at all costs – are very often detrimental to those of human rights – to ensure human dignity regardless of the cost" (see also Pearce and Tombs, 1990; Bittle and Snider, 2013; Tombs and Whyte, 2015).

What comes into light here is a version of a practical contradiction (see Jaeggi, 2018). There are, as the findings show, normative expectations and practices – concerning social responsibility, or corporate sustainability, and profitability – that are depending on each other, tied together in the concept of CSR and the 'win-win' idea that underscores it. At the same time, however, these norms and practices appear to conflict, or undermine, each other; they are never actualized in a complete way, as realizing one set of norms and practices undermines the other. Therefore, it is here argued that CSR is constituted as a contradiction itself. To use Jaeggi's (2018, p. 257) words, it is "the provisional, necessarily unstable fixation" of a problem that follows throughout the history of the corporation: the contradiction between protection and profitability, but which in the neoliberal era has been assigned to the responsibilized corporation and become expressed in the language of social responsibility, or corporate sustainability, and profitability.

Thus, it is here argued that behind the contestations mapped out in the three papers – where actors struggling for hardening articulate an internal criticism of CSR – there is an underlying structural contradiction, evident in the formation of CSR itself. Returning to the relationship between contestation, or conflict, and contradiction, the latter acts as the driving force that generates or produces the former; it is thus imperative to consider the "structural dimension" that "triggers, enables, or […] motivates manifest conflicts within social nexuses of practices" (Jaeggi, 2018, p. 261). As discussed in Chapter 6, however, there is no determinism in the relationship between the two; contradictions do not necessarily lead to conflicts. Whether a contradiction becomes manifest in a conflict, as well as the direction and shape this conflict takes, is

thus in the hands of actors; and what is considered an appropriate solution depends on the problematization that these actors articulate (see Jaeggi, 2018). Thus, from an immanent perspective, it is here argued that the underlying contradiction inherent in CSR is being actualized in the struggles and contestations studied in the papers, where actors themselves articulate an internal criticism. This should be understood as the motor behind development, or "the force that drives the situation beyond itself" (Jaeggi, 2018, p. 260).

These dynamics – of contradictions and conflicts as a driving force behind development – can also be considered from a wider historical perspective. It is important to keep in mind that problems have histories, and are marked by previous problem-solving attempts. Looking back, the development of CSR and the paradigm of soft law, voluntariness and self-regulation can be understood as a solution to problems articulated by civil society and social movements, and their demands for action in light of injustices associated with global corporate conduct and existing structures of governance (see, e.g., Sahlin-Andersson, 2006; Andrews, 2019; Muchlinski, 2021; see also Chapter 3). To directly intervene to address these injustices would, however, contradict the neoliberal rationality which privileges market solutions – so when corporations began self-regulating, it was with the approval of governments and international organizations (see Baars, 2019). The internal criticism articulated by actors today, and the hardened regulations developed in response to this, are therefore a succession to the previous problem-solving attempt that resulted in CSR. Following Jaeggi (2018, p. 145), there is thus "no such thing as a 'pure' (that is, problem-neutral or ahistorical) initial situation for problems"; they have no "zero point". Along these lines of reasoning, and looking forward, we may return to the understanding of legal and regulatory solutions as being temporary and provisional – which invites consideration of problems that may arise from the deficiency of these solutions (following Jaeggi, 2018). If governments promoting regulatory hardening are tightening their grip on issues related to corporate responsibility on the one hand, but remain committed to supporting their profit-driven operations on the other, then the 'hardening trend' is itself fraught with contradiction, which will generate future conflict – and so the "crisis-driven dynamics of history" (Jaeggi, 2017, p. 213) can continue to unfold.

From the theoretical perspective of immanent contradictions, progressive social change involves transformation of both norms and practices, rather than merely an adjustment of practices to norms (Jaeggi, 2018). But where should these norms come from? As discussed earlier in this thesis, a critical theoretical project must "find its criteria in the social practices, struggles, experiences, and self-understandings to which it is connected" (Celikates, 2018, p. 206); not external standards. In a previous section discussing organizations turning to the NCP, it was suggested that, to the extent that their struggles seek to

bring the norms of the OECD Guidelines to bear, there is a reconstructive element to them; they seek to close the gap between norms and practices. However, as Paper III shows, these struggles have a transformative ambition, as actors are involved in the project of transforming and building structures for justice. Here, these actors are understood as struggling from below, as opposed to politicians in the Swedish Parliament or the European Commission, in light of the challenges that face access to justice and redress (see, e.g., Vanhala, 2012; Buhmann, 2023). In spite of these challenges, complainants still turn to the NCP – and in doing so, they are not only addressing the 'what' of justice, but also the 'who' and the 'how', for instance, by claiming their right to be heard and showcasing systemic flaws of existing governance structures. Thus, they could be understood as "seeking to re-map the bounds of justice" (Fraser, 2008, p. 31), and create their own opportunities for change within the global setting (cf. Vanhala, 2012). From this perspective, knowing the limits of the NCP and turning to it anyway could be interpreted as a strategic invention "to create a moment of disruption and visibility", to bring forth "demands for social justice and for a different model of the global economic order" (Bader, Saage-Maaß and Terwindt, 2019, pp. 170–171). This does not take place beyond existing relations of power or 'outside' capitalism (cf. Buckel, Pichl and Vestena, 2023), but it is nevertheless a struggle with more transformative – and thus emancipatory – potential, compared to those discussed in Paper I and Paper II. These lines of reasoning draw attention to how forms of life are simultaneously given and made; they confront their members, but at the same time, through their actions and struggles, members may struggle to shape the form of life itself (drawing on Jaeggi, 2018).

However, as Fraser (2008) argues, each of the three nodes of justice – the what, the who and the how – are contested. While Paper III sheds light on the experiences of organizations struggling to claim themselves and communities as subjects of justice, Paper II offers insight into companies' views of their external stakeholders. Here, it is argued that regulatory hardening might lead to "frivolous litigation" – and since this might harm the company, safeguards must be put in place, as well as mechanisms for compensation in cases of unfounded litigation (Paper II, p. 23). Thus, regulatory hardening could also be met with resistance that risks deepening the challenges of victims seeking redress in the context of the global economy, as it may target the uneven economic resources of victims and non-governmental organizations vis-à-vis corporations (cf. Buhmann, 2023; see also Croall, 2007; Whyte, 2007). Returning to the discussion above, while forms of life are changeable, it must be remembered that members struggling for or resisting change do so from very different positions of power.

Considering these findings, particular attention could be directed to the role of norms – in particular, the relationship between wider normative ideas about

justice, sketched out in the previous section, and the ways in which these ideas are expressed in contemporary law and regulation. This activates fundamental questions raised in criminology, touched upon in the first chapter of this thesis (drawing on Quinney, 1970; Chambliss, 1976): in whose interests are laws and regulations developed, and what ideas of social order are reflected in them? Recognizing that these issues are not settled but the subject of struggle and contestation (Fraser, 2008) – and that there is no zero point to a problem (Jaeggi, 2018) – it is thus important to develop democratic and inclusive spaces that allow for such struggle and contestation to continue, ensure access to and equal participation in them, and, perhaps above all, protect them (drawing on the lines of reasoning in Fraser, 2008; see also White, 2011). The point, then, is to facilitate means for those affected by corporate harm to confront the "architects of their dispossession" (Fraser, 2008, p. 146), and not shield them from critique; to allow the interests of those subjected to injustice to be represented and recognized.

Given this thesis' considerations of the state-corporate relationship, potential directions of future research into regulatory hardening include exploring this relationship in greater detail. For instance, it could investigate how states navigate the tension between corporate rights and responsibilities, or focus more closely on how the hardening trend plays out for different corporate actors, such as state-owned enterprises. Moreover, expanding the empirical scope in relation to the three arenas under study – for instance, by including a greater variety of companies or non-governmental organizations with regard to size or context – could help develop the lines of reasoning articulated in this thesis, and further nuance our understanding of the dynamics behind regulatory hardening. From a critical perspective, the main task is to continue researching and theorizing social phenomena in ways that render visible sites of struggle and underlying contradictions, and sharpen our awareness of them (see, e.g., Horkheimer, 1972; Celikates, 2018; Cassegård, 2021); that is, drawing attention to the limits of existing legal and regulatory structures, with the ambition of highlighting paths toward solutions with greater emancipatory potential.

Svensk sammanfattning

De senaste åren har frågan om företagens sociala ansvar fått stort utrymme i den allmänna debatten. Detta kan förstås mot bakgrund av de olika former av skada som företag kan orsaka eller bidra till, som drabbar samhällena de verkar i. Det kan till exempel handla om kränkningar av de mänskliga rättigheterna, som arbetskraftsexploatering eller tvångsarbete, och negativ inverkan på miljön, som förorening av lokala vattendrag eller land. Enligt tidigare forskning handlar det inte om enskilda fall eller isolerade exempel, utan snarare bör vi förstå sådan skada som något vanligt förekommande eller rutinartat (Tombs och Whyte, 2015), inte minst i den globala ekonomin (Bittle och Snider, 2013; Olsen, 2023). Men hur sådana skador ska hanteras är en fråga kantad av motstridiga intressen och konflikter. I takt med att företag blivit alltmer rörliga, och förlagt verksamhet i länder med mindre ingripande reglering, har frågan kommit att debatteras intensivt. Under det sena 1900-talet, i ljuset av välpublicerade skandaler och en växande kritik mot företag som innehavare av rättigheter men utan skyldigheter, började företagen introducera egna etiska koder, för att därigenom själva reglera sitt sociala ansvar. Denna utveckling gick i linje med de frivilliga överenskommelser och riktlinjer som redan existerade, som OECD:s riktlinjer för multinationella företag om ansvarsfullt företagande. Det fördes förvisso även diskussioner om potentiella bindande regelverk i internationella organ som FN, särskilt vad gäller företag och mänskliga rättigheter. Men tidigare forskning pekar på att det fanns ett betydande motstånd, inte minst från näringslivet, som bromsade utvecklingen (se, till exempel, Picciotto, 2011; Khoury och Whyte, 2017; Muchlinski, 2021). Istället har vi under de senaste decennierna haft ett globalt styrningslandskap där företags sociala ansvar främst hanterats genom självreglering samt en uppsjö av ickebindande riktlinjer, nätverk och initiativ.

Under senare år har dock styrningen av det sociala ansvaret förändrats. Nya regler gällande hållbarhetsrapportering och tillbörlig aktsamhet i fråga om hållbarhet har introducerats, med särskilt fokus på globala värdekedjor. Styrningen har således skärpts, från att främst omfatta självreglering och frivilliga riktlinjer, till att nu även inbegripa olika former av tvingande åtgärder (se, till exempel, Berger-Walliser och Scott, 2018; Momsen och Schwarze, 2018; Nolan, 2018). Avhandlingen tar sikte på att förstå den här utvecklingen, genom

att undersöka skärpningen som genererad av konflikt mellan motstridiga intressen. Tre delstudier ingår i avhandlingen, som var och en studerar olika aktörer som deltar i sådana konflikter: politiker i den svenska riksdagen, som söker reglera företag verksamma i den globala ekonomin; företagen själva, som kan vara verksamma i denna kontext; och icke-statliga organisationer, som kämpar för gränsöverskridande social rättvisa. Avhandlingen har en kvalitativ metodologisk ansats och en kritisk teoretisk ram, som bygger på insikter från Rahel Jaeggi samt Nancy Fraser.

Artiklarna

I Artikel I studeras hur företagens sociala ansvar debatterats i svensk politik. Syftet är att förstå drivkrafterna bakom skärpningen av detta ansvar. Analysen baseras på riksdagsmaterial – kammarprotokoll, utskottsbetänkanden, motioner, skriftliga frågor och interpellationer – som sträcker sig från 2001/2002 till 2019/2020, och fokuserar på två specifika konflikter. I båda fallen är det Alliansen som motsätter sig skärpt styrning. De framhäver att det sociala ansvaret hanteras bäst genom frivillig självreglering, och konstruerar företaget som en kapabel reglerare med möjlighet att göra gott i länderna som de verkar i. Den grundläggande logiken bakom detta är idén att företag vill vara skötsamma – till exempel, respektera mänskliga rättigheter och ha drägliga arbetsförhållanden – eftersom det blir en konkurrensfördel för dem. Därmed gynnar ansvarstagandet den vinstdrivande verksamheten. På andra sidan i konflikterna finner vi de aktörer som är för ett skärpt företagsansvar. I första fallet är det Miljöpartiet, som kämpar för att implementera ett internationellt, rättsligt bindande regelverk för företag och mänskliga rättigheter. I kontrast till Alliansen konstruerar de företaget som en oansvarig reglerare, som inte kan hållas ansvariga för sina handlingar genom endast frivilliga initiativ. I det andra fallet är det den Socialdemokratiskt ledda regeringen som förespråkar en skärpning, genom att implementera ett EU-direktiv om hållbarhetsrapportering på ett sätt som överskrider direktivets minimikrav. Regeringen medger förvisso att de flesta företag redan har sådan rapportering på frivillig basis, men menar att det inte är tillräckligt för att generera en positiv utveckling. Vi kan således urskilja tydliga konfliktlinjer i svenska riksdagen när företagens sociala ansvar debatteras.

Artikeln diskuterar dessa resultat med fokus på två övergripande slutsatser, och använder Jaeggi (2017) för att tolka dem. Den första tar sikte på de motstridiga bilder av företaget som framkommer i riksdagen – å ena sidan, en kapabel självreglerare, å andra sidan, en inkapabel eller otillräcklig sådan. Denna konfliktdynamik kan härledas till en motsättning som står att finna i

själva idén om företagens sociala ansvar, där företaget förstås som en oansvarig exploatör som genererar skada, *och* som en ansvarsfull reglerare som kan hantera denna skada (jfr Garsten och Sörbom, 2017). De blir alltså både och, samtidigt som dessa förståelser står i motsättning till varandra. Konflikterna i riksdagen kan därför förstås som en manifestation av denna inneboende spänning. Den andra slutsatsen berör den nyliberala balansgång som utmärker den samtida idén om företagens sociala ansvar, där ansvaret balanseras mot och ses som förenligt med vinst (se, till exempel, Shamir, 2008; Garsten och Jacobsson, 2013). Denna balansgång framträder i Alliansens argumentation, men även hos politiker som förespråkar ett skärpt ansvar, där skärpningen antas leda till positiva effekter både för företag (som en konkurrensfördel) och för staten (genom att stärka statens rykte).

Artikel II bygger vidare på slutsatserna i Artikel I, men riktar uppmärksamheten mot hur stora företag ställer sig till nya krav på tillbörlig aktsamhet (översatt från engelskans 'due diligence', ibland även kallat företagsbesiktning) i fråga om hållbarhet. Detta undersöks genom en analys av företagens återkoppling på ett direktivförslag från EU-kommissionen, som företagen skickat in under så kallade feedbackperioder mellan 2020 och 2022. Analysen består av två delar, där den första fokuserar på den mer abstrakta eller diskursiva nivån, och den andra tar sikte på de konkreta eller praktiska ändringarna som föreslås i direktivet. I den första delen visas att företagen i mångt och mycket accepterar sitt sociala ansvar och framhäver betydelsen av att vara hållbar. Hållbarhet ses här som centralt för företagens välmående; det är fundamentalt för deras överlevnad, och är således ingenting de skyr. I den andra delen beskrivs hur tongångarna förändras i relation till konkreta förslag i direktivet, särskilt vad gäller bestämmelser kring styrelsens ansvar. Här riktas uppmärksamhet mot företaget som en självreglerande och autonom enhet, som helst hanterar sitt sociala ansvar på egen hand. Företagen kommer med egna motförslag till direktivet, till exempel att fokus bör falla på att utveckla nya icke-bindande riktlinjer, och argumenterar för att ingenting behöver ändras utan att existerande regelverk är tillräckliga. Detta bygger på uppfattningen att förslagen i direktivet – som syftar till att stärka det sociala ansvaret – riskerar hämma företagen, och generera risker för deras vinstdrivande verksamhet. Det är, med andra ord, en dubbel bild som framträder i materialet: å ena sidan omfamnas det sociala ansvaret (som ses som grundläggande för ekonomisk framgång), å andra sidan värjer sig företagen undan det (eftersom det ses som ett hot mot ekonomisk framgång).

Artikeln argumenterar att företagens resonemang följer samma nyliberala balansgång som diskuterats i Artikel I, både vad gällen företagens retorik (en harmonisering av ansvar och vinst) och praktik (en preferens för självreglering, med staten på armlängds avstånd) (jfr, till exempel, Tregidga, Milne and Kearins, 2014). Artikeln resonerar även om den motsättningsfyllda logik som

tycks prägla resonemangen. Företagen framställer ansvar och vinst som sammanlänkande angelägenheter i teorin, men samtidigt bryter de upp denna länk genom att peka på hur ansvaret blir ett hot mot deras vinstdrivande verksamhet. Detta förstås, med stöd i Jaeggi (2017, 2018), som en motsättning mellan element som å ena sidan hör samman, men å andra sidan motverkar varandra. Snarare än att se en tydlig slutpunkt eller lösning i sikte, framhäver en analys från det här perspektivet att företagen ständigt måste balansera dessa motstridiga element. Motsättning och konflikt är alltså vad som driver utvecklingen framåt, eftersom det finns spänningar som alltid behöver hanteras – och där hanteringen i sig endast är en tillfällig stabilisering av dessa i grunden motstridiga element (se Jaeggi, 2018; jfr Chambliss, 1979).

Artikel III skiftar fokus från politiken och företagen, för att istället studera icke-statliga organisationer. Mer specifikt riktar den uppmärksamhet mot organisationer som utkräver ansvar och gottgörelse i fall där företag anklagas för att ha kränkt OECD:s riktlinjer för multinationella företag. Artikeln bygger på intervjuer med representanter för organisationer som vänt sig till den svenska Nationella Kontaktpunkten (NKP), en mekanism utvecklad inom ramen för OECD:s riktlinjer, och analys av dokument som fångar deras erfarenheter. Artikeln undersöker hur det kommer sig att organisationerna vänder sig till NKP:n, som de samtidigt menar har begränsade möjligheter att hålla företag ansvariga eller möjliggöra gottgörelse. Resultaten identifierar olika anledningar till detta, som att organisationerna vänder sig dit för att synliggöra företagens skada; att de använder den jämte andra mekanismer för ansvar och gottgörelse, såväl på global som nationell nivå; och att de använder NKP:n för att visa på dess begränsningar. Det går även att urskilja ett strategiskt element, där organisationerna måste överväga vilka företag de bör rikta in sig på, vilken NKP som bäst kan hantera deras klagomål, och de risker som finns för drabbade populationer (som till exempel företagens anställda).

Sammantaget pekar analysen på att organisationerna vänder sig till kontaktpunkten av anledningar som sträcker som bortom enskilda fall. Istället tycks det handla om mer övergripande mål och ambitioner. Detta tolkas genom Frasers (2008) teori om social rättvisa, där rättvisa förstås som omfattande tre dimensioner: ekonomisk omfördelning, kulturellt erkännande och politisk representation. De fall som tas till NKP:n berör samtliga dimensioner, men organisationernas erfarenheter belyser särskilt de kulturella och politiska dimensionerna genom att fånga strävan efter att bli sedd och hörd. Men att vända sig till kontaktpunkten handlar inte bara om dessa rättvisedimensioner, som kan förstås som rättvisans ’vad’. Det handlar även om rättvisans ’vem’ och ’hur’, genom att organisationerna positionerar sig själva och lokalsamhällen som legitima rättvisesubjekt, och söker forma de arenor i vilka konflikter om rättvisa kan utspelas. Detta synliggörs bland annat i försök att etablera vägle-

dande praxis genom att vända sig till NKP:n, eller lyfta fram bristande effektivitet i systemets uppbyggnad. I artikeln tolkas detta som att organisationerna är aktiva i att förändra existerande, och bygga nya, rättvisestrukturer i den globala ekonomin, dit drabbade kan vända sig (jfr Vanhala, 2012; Bader, Saage-Maaß and Terwindt, 2019). På så vis spelar de en viktig roll i utvecklingen av styrningslandskapet för företags sociala ansvar.

Slutsatserna

Artiklarna är fristående empiriska och teoretiska bidrag, men avhandlingen diskuterar även deras resultat i relation till varandra för att utveckla en mer samlad och övergripande analys, med stöd i såväl tidigare forskning som teori (främst Fraser, 2008 och Jaeggi, 2018, men se även Stahl, 2013; Jaeggi, 2017; Celikates, 2018). Denna avslutande analys menar att förslagen om skärpt ansvar kan förstås som lösningen på ett problem, som kretsar kring bristerna i den frivilliga självreglering och de icke-bindande riktlinjer som länge dominerat styrningen av det sociala ansvaret. Denna problematisering är inte oemotsagd, utan i allra högsta grad föremål för konflikt; som artiklarna visar finns stöd för det etablerade paradigmet inom såväl politiken som näringslivet. Det problem som konstrueras av aktörer som *vill* se en skärpning av ansvaret är ett som både har konkreta manifestationer – synligt i hänvisningar till faktiska fall av skada, eller orättvisor – och rymmer normativa förväntningar på företagen, som i grund och botten handlar om rättvisa. Det som artikuleras av aktörerna förstås här som en intern kritik, där det som eftersträvas är förändrade styrningspraktiker som gör att dessa förväntningar införlivas. Det kan till exempel handla om regler för att garantera att företag inte utnyttjar andra länders svaga politiska styrning för att generera vinst, eller för att säkerställa att de måste respektera urbefolkningars rätt till land. Det är således denna interna kritik som motiverar förslagen om ett skärpt företagsansvar – det vill säga, en kritik som tar sikte på hur existerade styrningspraktiker *inte* lyckas införliva aktörers förväntningar, och därför söker de förändring.

Analysen går vidare med att spåra dessa konflikter till grundläggande motsättningar, i syfte att utveckla en immanent kritik. Till skillnad från den interna kritiken tar den immanenta sikte på att problematisera inte bara praktiker, utan även dess inneboende normer. Här söker avhandlingen alltså kasta ljus över mer djupgående strukturer. Den gör det genom att ta sikte på den normativa struktur som återfinns i själva idén om och hanteringen av företagens sociala ansvar. Denna struktur står att finna i den nyliberala balansgång mellan ekonomisk framgång eller vinst, och socialt ansvar eller hållbarhet, som diskuterats i de två första artiklarna. Medan förslagen om ett skärpt ansvar tar sikte på att förändra styrningspraktiker på olika sätt, visar artiklarna att denna normativa struktur består, vilket syns i såväl riksdagens som EU:s resonemang

(till exempel att en skärpning av företagens respekt för mänskliga rättigheter behövs för att säkra företagens fortsatta ekonomiska framgång). Således tycks förslagen inte handla så mycket om en grundläggande förändring, utan tar snarare sikte på att införa nya praktiker och verktyg för att stärka arbetet mot redan existerande mål och intressen. Analysen visar även att dessa praktiker och verktyg representerar ett steg från frivillighet och ren självreglering, men menar att de samtidigt bygger vidare på en liknande styrningslogik, då fokus fortfarande faller på företaget som en central styrningsaktör.

Från ett immanent perspektiv kan den normativa strukturen – balansgången mellan vinst och hållbarhet – problematiseras, vilket här görs genom att förstå dem som motstridiga anspråk; med andra ord, som en motsättning. Som tidigare diskuterat innebär idén om en motsättning att det finns anspråk som är tätt sammanlänkande, men ändå skilda åt; de tycks beroende av varandra, *samtidigt* som de underminerar varandra. De kan tillfälligt stabiliseras i specifika formationer eller styrningspraktiker, men inte harmoniseras fullt ut en gång för alla. Det går därför att säga att sådana formationer och praktiker kan falla på sina egna villkor, eftersom det finns en inbyggd eller inneboende spänning i dem (se Stahl, 2013; Jaeggi, 2018). I den här avhandlingen är det denna spänning som förstås som en drivkraft bakom skärpningen av företagens sociala ansvar, som är mer grundläggande än aktörernas interna kritik.

Spänningen mellan vinst och social hållbarhet kan förstås som ett nyliberalt uttryck för en grundläggande motsättning som följer genom företagets historia, mellan behovet av att generera vinst och behovet av skydd mot de skadliga effekterna av detta (Tombs och Whyte, 2015; se även Chambliss, 1979). I första hand har det varit staten som behövt hantera denna motsättning, för att garantera såväl sin egen som företagens legitimitet. Men i den nyliberala eran har även företagen gjorts ansvariga för att balansera vinst och skydd i sin verksamhet (jfr Shamir, 2008). Utvecklingen av självreglering som beskrevs inledningsvis illustrerar hur företagen gjort detta. På samma sätt kan dagens skärpta styrning förstås som ett sätt för såväl staten som företagen att navigera och stabilisera denna grundläggande motsättning. Här blir det även relevant att igen peka på hur styrningen fungerar som en temporär lösning. Som vi sett tidigare kan förslagen om skärpt styrning knytas till aktörers problematisering av det paradigm av frivillighet och självreglering som utmärkt hanteringen av företagens sociala ansvar (aktörernas interna kritik). Förslagen kan alltså förstås som genererade av konflikt runt bristerna i detta paradigm, som även det kan tolkas som ett svar på samtida konflikt. Från det här perspektivet är det sannolikt att även de skärpta förslagen kommer generera konflikt, som i sin tur leder till nya lösningar. Den gemensamma grunden i denna historieskrivning är motsättningarna i botten av dessa konflikter, men när och hur konflikt uppstår – och vad de resulterar i – ligger i aktörernas händer.

Inom det immanenta perspektivet faller fokus på kritik av både praktik och normer; social förändring måste därför omfatta båda dimensionerna. Men hur skulle detta kunna se ut? Den tredje artikeln visar hur kampen för att utkräva ansvar och gottgörelse kan utmana såväl etablerade normer som praktiker, genom att söka förändra rättvisans vad (vilka orättvisor som blir föremål för konflikt), vem (vem som ges möjlighet att delta i dessa konflikter) och hur (hur dessa konflikter ska utspela sig och lösas). Här finns det alltså en transformativ eller förändrande potential. Denna pekar på betydelsen av att öka representationen och deltagagandet i existerande styrningsstrukturer, så att dessa strukturer speglar intressena hos de som träffas av dem – det vill säga, lokalsamhällena i vilka företagen verkar.

Avslutningsvis riktar avhandlingen uppmärksamhet mot flera möjliga vägar för fortsatt forskning. En väg tar sikte på statens roll i det styrningslandskap som tecknats ovan, till exempel genom att studera hur staten hanterar relationen mellan företagens rättigheter och skyldigheter. En annan väg är att studera hur skärpningarna träffar olika företag, som statligt ägda företag, eller bredda analysen genom att studera hur konflikter om ansvaret utspelar sig för andra aktörer. Mot bakgrund av den skada som stora företag kan åstadkomma är det viktigt att fortsätta studera hur denna skada hanteras, inte bara för att synliggöra brister och begränsningar utan även för att försöka finna möjligheter för förändring.

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