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Corporate social responsibility, hydraulic fracturing and unregulated space: recognising responsibility without the law

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Abstract: This paper considers the role of legal regulation in assessing the actions of firms in relation to CSR. Utilising recent legal developments surrounding the controversial practice of hydraulic fracturing ('fracking') as an illustrative example of the issue, it questions whether judging CSR is possible in a legal vacuum. Having established the linkage between CSR and the law the piece moves to illustrate that instances of legal freedom question established conceptions of CSR and warrant a greater exploration of this connection. Whilst instances of this type are conceded as rare, they do question the extent to which, without law, the responsibility for actions can be demonstrated by firms and it is this which the paper highlights.

Keywords: corporate social responsibility; CSR; law; regulation; hydraulic fracturing.

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1 Introduction

This article, which is borne out of an unusual regulatory circumstance, arguably raises more questions than it provides answers. It reflects on the relationship between regulation and corporate social responsibility (CSR), but does so in the context of recent developments in the controversial area of hydraulic fracturing (or 'fracking' as it is commonly known).

Regulatory issues are not usually associated with CSR in academic literature, which has tended to focus on established business and management fields such as strategy, accounting, finance, reputation, stakeholder theory, legitimation and corporate power (Bebbington et al., 2008; Quazi and O'Brien, 2000; Okoye, 2009, 2012; McWilliams and Siegel, 2001, 2002; Orlitzky et al., 2011; Joyner and Payne, 2002; Bondy, 2008; Steurer

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et al., 2005; Carroll and Shabana, 2010; Wartick and Cochran, 1985; Wood, 1991; Siltaoja, 2006). The idea that governments, through the use of regulation, should be involved may seem contradictory to the concept given that CSR is perceived as something willingly given by corporations (Okoye, 2012; Dahlsrud, 2008). This might explain why regulation has struggled to establish a proper position in the discourse surrounding CSR, and indeed in relation to the concept at all, though it would be misleading to suggest it has been entirely overlooked (McBarnet, 2007; Buhmann, 2006, 2013; Okoye, 2012; Vives, 2007). Legal analyses are predisposed to challenging a more purist view. They ask whether an act is responsible if it represents something firms are obliged to do.

This article looks at legal standards in policy interpretations of CSR. Legal standards appear to be part of policy rhetoric, acting as a measure for minimum responsible actions. The position in policy, expressed frequently in discourse, is that CSR, though voluntary, concerns the sense of duty that firms should have to meet legal standards as a minimum – or preferably exceed them, thus 'going beyond compliance'. Such expressions as 'beyond compliance' could be idle and meaningless phraseology. The volume and repetition of the connections however suggest that legal standards are more embedded in how we look at CSR. Arguably, beyond compliance and responsible action behaviour is good because it exceeds relevant minimum legal standards. Conversely, but arguably the less contested point, would be to the say that an action would almost certainly not be deemed responsible if it did not meet minimum legal standards. Identifying CSR as associated with regulatory standards perhaps represents a useful way to gauge responsibility. Clear legal standards enable firms to identify practices that are irresponsible (i.e., those falling below legal standards), acceptable (i.e., officially permitted) and responsible (i.e., conscientious, ethical, or beyond compliance). Where identifiable legal or codified ethics (Carroll, 1991) exist, we may be able judge more conveniently whether business practices are responsible or not. In turn, this could be a basis for establishing the boundaries of morals in economic interactions and for reinforcing 'microsocial contracts' (Donaldson and Dunfee, 1999). Identifying an area where legal standards cannot be used as a baseline is difficult, given their pervasiveness. As a result, law seems ever present when, and in how, we judge the responsibility of firms even if not overtly acknowledged in every instance. The article will present an instance, in relation to the extraction of gas via hydraulic fracturing, in which this is not however the case and outline the questions this raises for CSR more widely.

If we can relate CSR to legal standards, and law can act as a baseline for responsibility, what happens if there is an absence of those standards? Is it more difficult to judge responsibility if a regulatory gap exists? What if standards are reduced so that firms can practise freely? In the absence of compliance to go beyond, by what standard do we judge responsibility where that has been set as a baseline? These questions are raised because of recent developments in the controversial practice of hydraulic fracturing. Changes to the legal framework around hydraulic fracturing have created just such an area of (virtually) unregulated space. The Infrastructure Act 2015 creates new land rights for purposes of exploiting energy at deep levels, without need to notify the subsurface landowner and effectively free of legal standards or duties. The paper considers the implications for identification of CSR within areas of unregulated space. It suggests that a domain where regulation is absent may pose important questions around what responsibility is, and whether in such circumstances it could be established at all.

2 Law in CSR policy

The concept of CSR remains contested (Dahlsrud, 2008; Okoye, 2009; van Marrewijk, 2003; Moon, 2007; Carroll and Shabana, 2010) and even now, questions remain over its meaning, drivers, impacts, reliability as an agent for change, or value as a vehicle for increasing profitability (Aupperle et al., 1985; Cochran and Wood, 1984; Orlitzky et al., 2003; Waddock and Graves, 1997; Campbell, 2007; van Marrewijk, 2003; Moon, 2007; Williamson et al., 2006; Lynch-Wood et al., 2009; Carroll and Shabana, 2010). The fact that such questions remain is unsurprising given that CSR is sensitive to a wide range of other factors such as firm size, resources, and industrial sector to name a few (Cochran, 2007; Lynch-Wood et al., 2009; van Marrewijk, 2003; Russo and Perrini, 2010; Moon, 2007; Williamson et al., 2006). That said, CSR appears in general terms to concern a firm's role as a citizen and how it should engage in practices that are just and which should benefit society more generally. Firms committed to being responsible ought to manage activities in ways that are profitable and that can improve the quality of life of the workforce, communities and society (Wartick and Cochran, 1985; Carroll, 1979; Castka et al., 2004; Dahlsrud, 2008; Okoye, 2009; Turban and Greening, 1997). This view of the firm is often portrayed as counter to the profit-maximisation view of Friedman (1962a, 1962b), who suggests that there is only one social responsibility – to use resources and participate in activities that increase profits, so long as the rules of the game are observed.

Where do legal standards come into this? Law has tended to be a marginal concern, particularly in academic discussions surrounding CSR. There is very little that can be taken as established or agreed about the applicability and significance of law in this regard. This piece argues, however, that legal standards are pertinent, particularly if we consider CSR from a policy perspective.

Indeed, by looking at policy on CSR, we can observe at least three conspicuous themes. First, CSR is seen as the contribution firms can make to sustainable development (Department of Trade and Industry, 2004; European Commission, 2001, 2002). Sustainable development concerns the need to balance social, economic and environmental issues. Though contested (Moon, 2007), it is said that CSR contributes to sustainable development by encouraging firms to manage economic, social and environmental impacts and take on the broader concerns of stakeholders (Department of Trade and Industry, 2004; European Commission, 2001). Second, CSR should not be seen as contrary to the interests of firms, but as complementary. CSR is not synonymous with altruism or humanitarianism. It concerns the exercise of social responsibility in *how* profits are pursued (McBarnet, 2007). This CSR-profitability link is often called the 'business case' (Lynch-Wood et al., 2009; Carroll and Shabana, 2010; Weber, 2008; Kurucz et al., 2008), and it captures the idea that CSR generates a symbiotic and beneficial relationship and promotes greater connectivity between firms and their social environment. Thirdly, CSR has tended to be seen as something voluntary and it is this idea of voluntariness that raises issues around regulation, because it is suggested that firms should willingly go beyond existing legal standards. As such, whilst seen as voluntary, it is not paradoxical to consider legal standards in relation to CSR. Firms might act illegally by choice and by extension some might argue therefore that compliance with the law is itself a voluntary act. However, those actions would not be deemed responsible within the context of CSR. In short, although a firm does not 'have'

to comply with the law in practice, compliance with legal standards is certainly not considered voluntary in the debates around CSR.

As CSR has evolved from a policy perspective, the idea of voluntariness is often presented within a law context – as relating to or beyond the standards of law. This idea seems to be rooted in policy discourse also. For example, in May 2004, the UK Government published a CSR policy brief which said that, while the focus should be voluntary, the policy framework must use the right mix of tools (e.g., fiscal and regulatory measures) to promote responsible performance (Department of Trade and Industry, 2004). In this policy framework, legal compliance was seen as the base that businesses should go beyond in the interests of business and society. Interestingly, the Department for Business, Enterprise and Regulatory Reform (2009) has since reiterated this view by suggesting that CSR is voluntary actions that firms can take, over and above compliance with minimum legal requirements, to address its competitive interests as well as the interests of society. More recently, the Department for Business, Innovation and Skills (2014), in a response to calls for views on corporate responsibility, reinforced the view that CSR was the voluntary actions that firms take over and above legal requirements to manage and enhance economic, environmental and societal impacts. Within a European policy perspective, the European Commission in July 2001 published its first CSR Green Paper (European Commission, 2001). This report outlined Europe's aim of raising awareness and developing a promotional framework for CSR. Moreover, it offered a widely publicised definition, describing CSR as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. That said, the focus on voluntarism was not seen as a substitute to, or subjugation of, regulations. Rather, voluntary actions were seen as building on regulation and legal standards. In further communications, the Commission confirmed the importance of legal standards. In its 2002 Communication (European Commission, 2002), the Commission said that there is a large consensus on its main features, with one of these features being that CSR is behaviour by businesses over and above legal requirements, voluntarily adopted because businesses see it as being in their long-term interest. A 2006 Communication expressed similar sentiments (European Commission, 2006). The European Commission has since reaffirmed the importance of voluntarism, and stressed the idea that CSR concerns actions by firms that are over and above legal obligations (European Commission, 2011). This strategy report acknowledges that meeting regulatory requirements is a feature of responsibility and that some regulatory frameworks create an environment that is more conducive to enterprises voluntarily meeting their social responsibilities. It should be noted that the idea of CSR as being related to law is not solely the preserve of policy since a number of academics have also alluded to this link (Russo and Perrini, 2010; McWilliams and Siegel, 2001; Carroll and Shabana, 2010; Kilcullen and Kooistra, 1999; Carroll, 1991; Buhmann, 2006).

What could this mean? It could mean not much at all and be little more than careless and insincere language. More likely, however, particularly given the frequency and consistency of statements to this effect, is that it evidences that the responsible actions of firms are seen in terms of how they relate to legal standards. Indeed, it is reflected quite clearly in the use of phrases like 'doing more than obliged' or 'going beyond legal prescriptions'. This suggests legal standards provide a benchmark for both the firm's and society's assessment of practices that may be responsible. Moreover, having legal standards as a benchmark is perhaps inescapable since law has become so pervasive to

the organisational environment. In many circumstances, law provides a baseline standard against which to measure responsibility. While laws cannot address every aspect of individual or organisational behaviour, it is difficult to think of a voluntary action that cannot be judged in terms of its relationship with a legal standard. CSR is a subject with links to many areas of law, including international law and European law, corporate law and corporate governance, tort law and contract law, procedural law, labour and environmental law, and criminal law; all of these areas contribute to the development of CSR (Lambooy, 2014). Thus, it could be suggested that viewing CSR as a law-relative, or a beyond compliance, matter is both understandable and often inescapable. This is particularly evident in a Western industrialised setting, given the difficulty of identifying a geographical, commercial or social domain there that operates in a legal vacuum. Few domains of activity are free of regulated standards, common law principles or duties of care. Some domains (e.g., those relating to employee protection and welfare, health and safety, environmental protection, or consumer protection) are affected by vast arrays of legal standards that business enterprises have to meet, or can quantifiably exceed, and are in some cases affected by ubiquitous and cross-cutting duty of care standards. These business enterprises are provided with a relatively distinct – though admittedly not always easy to comprehend – line in the sand against which to judge their actions.

The argument then that law is a feature of CSR is far from without merit. To support this view, Buhmann (2006) says CSR is 'generally understood' as being beyond legal compliance and that to do more than the law demands requires knowledge of the law and for legal practices to be embedded in firms' practices. This suggests a strong, potentially even inescapable, link at least for the firms themselves even if not in theoretical debate over CSR. Moreover, if the intention is to encourage firms to go beyond compliance, then it is incumbent on policymakers to provide clear and robust minimum standards and to create an enabling legal environment within which CSR can flourish. What happens then when there is no law, or a bar so low that it becomes more difficult to assess acceptable and responsible behaviour? Where the law has created a space devoid of minimum legal standards, what does this mean for CSR in a controversial industry? The next section of the article outlines how these very questions have arisen in the context of hydraulic fracturing following recent changes to the legal landscape.

3 We are fracking free

Having established that law can play a role in the identification of responsibilities beyond mere compliance, and posing the question of how this is achieved in the absence of baseline legal standards, the article will now highlight a situation where this more theoretical discussion has arisen in the practice of an emergent and controversial industry. The industry in question is that of the accessing of oil and gas via hydraulic fracturing. It is hoped that by illustrating the challenges posed by the absence of law when considering CSR, one of two outcomes might arise. The first is that the debate around the relationship between the two concepts might better recognise the role of law in establishing what actions constitute CSR. The second is that the piece would promote discussion as to whether or not the often used definition of 'going beyond compliance' is in fact an accurate representation of CSR if it can still be said to exist where no compliance is demanded.

Hydraulic fracturing is a controversial extraction technique, which itself raises some interesting issues around the place and relevance of CSR within a controversial industry. However, the furore both in terms of support and opposition for the process belies the reality that it is by no means a new process (Kutchin, 2001), but instead one which has only recently been used widely as an extraction method in and of itself. The process involves the drilling of a well in a traditional manner before injecting fluid at high pressure to create or expand fractures in geological features to allow gas (or oil) to flow into the main well and be extracted. Civic groups have suggested a number of environmental, social and economic risks posed by this process, which are often unique to it. In this regard, civic concerns surround risks to the environment more generally, and of significance here, privately owned land. Primary amongst these suggested risks for private landowners are the inducement of seismological events (earthquakes/tremors) and the seepage of fluids used in the process into naturally occurring aquifers impacting the land above. This piece is concerned with the activity which occurs at depth, and the legal standards, or lack thereof, which denote the minimum expectations upon a responsible firm.

Hydraulic fracturing activities are, at the time of writing, governed by a complex arrangement of regulatory bodies and processes which varies for each well drilled. There is not enough space here to provide a complete overview of the system of regulation. Helpfully, there are others who have taken the time to do so (Bryden et al., 2014; Pearson and Lynch-Wood, 2017). A brief précis is however important for clarity and context. Note should be made that the regulatory system described is for the processes permitted at present in the UK, which are purely exploratory in nature and as yet no commercial extraction using hydraulic fracturing as its sole means of accessing gas is in operation. As such the licence for which any firm hoping to establish the viability of a landward site for extraction by hydraulic fracturing must obtain is entitled a Petroleum Exploration and Development Licence (PEDL). This is granted by the Oil and Gas Authority (a government company sponsored by the Department for Business, Energy and Industrial Strategy) and bid for in a series of licensing rounds. The licence grants the ability to, subsequent to other permissions, undertake test drilling within a specified geographic area. Such licences are commonly held by multiple firms in order to spread the burden of unviable or non-lucrative licences, but one amongst said group assumes operational responsibility for any activities undertaken under the licence.

As well as these national regulatory bodies and processes, a fundamental aspect of the approval process for an extraction site (whether exploratory, or in future, commercial) is the local planning system. Note should be made that at the time of writing this remains the case. However, there are suggestions that, following the highly contentious development on the Fylde Coast in Lancashire (the site commonly referred to as Preston New Road), planning applications for the purpose of extracting gas via hydraulic fracturing should be decided upon at the national level as Nationally Significant Infrastructure Projects. Although worthy of note, such a shift in the process of granting permission does not detract from the thesis of the piece. At present, as well as approval from the surface landowner on whose land any project is to operate, an extractor will have to seek planning permission from the relevant local Mineral Planning Authority (MPA). This point in the approval process has to date been one of the most contentious, and subject to complex appeals and overriding national approvals which have themselves courted considerable controversy. The focus of opposition in the local sphere highlights the significance of local and even individual opposition to such operations being in

proximity to homes and businesses. The ability, or extent thereof, of subsurface landowners adjacent to prospective extraction sites to oppose them has been called into question as a result of the legislative reforms outlined below. It is this limitation which evidences the concerns regarding CSR in this context, and its role in the absence of law with which the piece is concerned.

Historically, the ownership of land in England and Wales has been described using the following maxim: "cuius est solum, eius estus que ad coelum et ad inferos." This means that a person who owns the surface also owns everything above and below it. That said, this principle has, like land itself, eroded over time. The expansion of the use of the subsurface means to communicate utilities to the home and of sewers to remove waste water, as well as subterranean transportation, has meant that public needs have encroached upon this once 'sacred' space. Possibly, the most famous limitation on this expansive approach to the rights of subsurface landowners came in the case of Star Energy Weald Basin Limited and another v Bocardo SA (2010) UKSC 35. In brief, the dispute in the case concerned the drilling for oil under the land of Bocardo without consent from adjacent land in order to obtain oil. The shallowest depth of said drilling was around 240 m and its longest distance under the land of Bocardo about 700 m. The actions of the oil company were held as trespass, i.e., they had entered the land of Bocardo without permission. However, Lord Hope suggested that there were limitations on the maxim despite the fact that it 'still has value in English law' (*Star Energy v Bocardo*, 2010) in relation to subsurface land ownership. Whilst these limitations were not explicitly defined, an emphasis on practical use of rights below the surface was expressed by the statement that "There must obviously be some stopping point, as one reaches the point at which physical features such as pressure and temperature render the concept of the strata belonging to anybody so absurd as to be not worth arguing about" (*Star Energy v Bocardo*, 2010).

Although not necessary, and indeed potentially restrictive, to espouse a depth at which subsurface land rights become 'absurd', the absence of such a limitation presents a legal oddity owing to the recent emergence of hydraulic fracturing as a viable means of obtaining oil and gas resources in the UK, and the regulatory response to it. These rights to land were themselves a considerable aspect of the regulation of firms hoping to operate within that subsurface space. Protections afforded by express regulations (licensing and permissions processes) and civil law recourse when harm is caused to another (the law of torts) formed the legal baselines of responsible activity for firms in this area. In short, as alluded to in the first section of the piece, they demarcated what was irresponsible behaviour in respect of surface landowners. The Infrastructure Act 2015 is a substantial act, being over 130 pages long and split into eight parts, but hidden within it is a severe, if not absolute, constraint on these normal legal baselines. In broad terms, the act makes "provision about maximising economic recovery of petroleum in the United Kingdom" (Infrastructure Act 2015, Preamble), and more specifically, grants "the right to use deep-level land in any way for the purposes of exploiting petroleum or deep geothermal energy" (Infrastructure Act 2015, S.43(1)). The rights laid out therein are granted at a depth below 300 m, notably not significantly in excess of that deemed to be "far from being so deep as to reach the point of absurdity" in the Star Energy case outlined above (*Star Energy v Bocardo*, 2010). The granting of such rights is not without precedent for other amenities such as electricity and water piping. Indeed, this concords with the assessment of Rodgers (2009) of such rights as being, "not a bundle of abstract rights

protected by legal rules, but rather a bundle of individual elements of land based utility." Whilst this assessment is aimed at justifying constraining land rights to facilitate environmental protection, the theoretical underpinnings apply equally to projects with significant public interest facets. As such the apportionment of some of these 'utilities' to those not recognised as the legal owner is perfectly possible, indeed arguably necessary if one considers for example the communication of running water to homes. However, in the case of the Infrastructure Act, it is done in such a way as to preclude opposition and is granted in relation to an extractive (as opposed to communicative) activity with significant potential for disruption and which had not, prior to the passing of the statute, been afforded such wide ranging permissions.

The act states that below 300 m or at 'deep-level', rights of use exist for the purposes of petroleum exploitation and which includes the right to leave said land "in a different condition from the condition it was in before… including by leaving any infrastructure or substance in the land" (Infrastructure Act 2015, S.44(3)). If 243 m was deemed to be far from a depth inducing 'absurdity' into the notion of granting rights to land, then the 300 m limit set by the act is certainly well within those bounds. Therefore, the rights outlined in Star Energy are considerably curtailed and the actions of individuals and firms left without any baselines by which to judge their responsibility beyond 300 m depth. Coupled with this is the fact that the nature of the rights granted significantly inhibits what might otherwise be avenues to recourse by removing trespass as a wrong (or tort) on which opposition might be based. This in essence therefore represents a compulsory removal of rights over land and a clear statement that the government is continuing in its commitment stated in 2014 to be "going all out for shale". In effect, this represents a statutory granting of rights to all those able to operate to extract petroleum by limiting those of the landowner. No remuneration is therefore achievable for those under whose land extractors operate below 300 m but on which a drilling platform is not situated. The manner of this grant of rights also restricts the ability to oppose its initiation considerably. Thus, firms are permitted to act in this designated space against the wishes of surface landowners above. Such an act would likely be deemed irresponsible in the context of CSR, but is positively permitted within the act, leaving legal baselines for responsible actions to be judged against further constrained.

Individual landowners are able to engage with the various licensing and approval processes required to establish a hydraulic fracturing site. However, there is by no means any guarantee of ensuring that activity is not undertaken under their land as a result of the removal and reduction of protections that the Infrastructure Act has brought about. Essentially, stopping drilling occurring at all below 300 m under land owned, assuming a licence to drill has been granted and all other approvals have been met, would be impossible. This leaves only nuisance or negligent conduct on the part of the extractor as possible means of challenging drilling, but both are ex post facto responses and require significant proof of the harm being caused by both an individual firm and their activities which had been foreseen and/or not acted upon. Given that all hydraulic fracturing activities would have been assessed during the licensing and permitting processes to establish a site, this too would be hard to establish.

Thus, harm caused by hydraulic fracturing is seemingly exempt from liability unless it gives rise to harm above the statutory 300 m threshold set in the Infrastructure Act and not directly below the area for which planning permission(s) were granted. Even in the event of harm occurring above the threshold set in the act, whilst actions might be taken, owing to negligence or nuisance, these are significantly inhibited by the existence of a

regulatory framework and a statutory authority to drill at depths below 300 m. Whilst not precluded entirely, the current regulatory framework permits all activity below 300 m to obtain natural gas, and considerably inhibits routes to recourse in the event of consequential harm occurring above that threshold as a consequence. The cases of Barr v Biffa Waste Services Ltd. (2012) EWCA Civ. and Allen v Gulf Oil Refining Ltd. (1981) AC 1001 are worthy of note here, primarily for their opposing, yet justified, conclusions. The former restricted the extent to which statutory authority eliminated private rights over land, whereas the latter allowed complete exemption from private actions and deferred to statutory authority. The distinction in the judgements is found in the need for the courts to have evidence of a removal of private rights being the intention of Parliament in the creation of the provision.

The success or otherwise of any action brought against an extractor operating under the land would, thus be subject initially to an assessment of whether all, or to what extent, private rights were intended to be curtailed by the Infrastructure Act. A conclusion in this regard is currently possible. However, it should be noted that the court itself highlighted that cases such as this can provide "a sad illustration of what can happen when apparently unlimited resources, financial and intellectual, are thrown at an apparently simple dispute" (Barr v Biffa, 2012). Clarity on the matter would of course be preferable, but it can be stated with confidence that there is a significant limitation of previous common law rights in relation to subsurface land and consequential absence of constraint on activities of firms. This is absolute in relation to land below 300 m, and whilst unclear in relation to impacts caused above this threshold, it would, as a minimum, significantly reduce the likelihood of success of an action on the basis of harms caused as a consequence activity conducted below it. In summary, firms are left with no clear baselines for responsible action, either prior to the commencement of drilling or during its undertaking, arising from either existing legislation which constrains activity prior to it being undertaken, or developing in common law as a response to harms caused by activities of other actors in the same or similar industries. They operate therefore in a free legal space. The space represents an absence of regulation, one in which the actions of extractors are not only practically difficult to monitor but also without legally imposed limitations. In essence, they operate in a space which presents the ultimate test of CSR. By leaving the industry with a lack of legal standards against which to judge its actions, they are left to resort to 'raw CSR'. The question the piece raises is how it can be judged what actions represent CSR in this context, where there is no legal standard by which mere compliance can be judged.

4 Final remarks

This article has raised issues around CSR that derive from an unusual set of circumstances which at first glance undermine a commonly referenced linkage between the concept and legal standards. It asks, if CSR is meeting legal standards as a minimum and preferably 'going beyond' them, and law can be accepted as that with which firms must comply, then what is CSR in spaces where law is absent? Further to this, even if the link between CSR and legal standards is contested, then how can responsibility be measured when there are no legal standards acting as baselines for mere compliance. Our example of hydraulic fracturing and the UK's Infrastructure Act provides us with an

example of the difficulty created where law is absent in the context of CSR. As a result of this legislation, drafted (in part) to facilitate the development of the controversial industry, actors within it are left to decide their own limitations within the space outlined by the act (below 300 m). One thing that is immediately obvious is that the absence of law as a baseline leaves the judgement of what is 'responsible' a more difficult one, and arguably more open than ever. This problem is compounded by the fact that not only is there an absence of firm legal standards in a controversial area, but there is also an absence of legal standards in a geographical or physical domain (below 300 m) where society would already find it incredibly difficult to monitor and judge the actions of firms. Thus, the area is free of regulation almost absolutely, and presents a challenge to CSR in the context of that industry, but also raises questions about how responsibility is judged more widely.

That the responsibility of actions is defined in terms of going beyond legal prescriptions in the discourse around CSR is interesting. Whilst not unlike any action beyond a legal baseline outside this context, there is a significant difference between acting beyond a fixed minimum standard and with absolute freedom. One is more constrained than the other. This calls into question the extant discourse on CSR and demands evaluation of what is 'responsible' where that which is not responsible cannot be so clearly defined. It is not a great leap to accept the fundamental role of law in outlining CSR negatively, i.e., that which is illegal is invariably also not responsible. As such, law, even if not expressed overtly, provides some aspect of the measurement of CSR, in that it establishes as a minimum that which is almost certainly not responsible behaviour. A sphere in which law is absent, such as in the context of the emergent hydraulic fracturing industry outlined by the piece, poses the question therefore of what responsibility is without regulation, and indeed whether in such circumstances it could be established at all. This warrants further discussion as to whether we are more reliant on legal standards in the judgement of responsibility in the context of CSR than has previously been acknowledged.

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