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Devaluing Sustainability: Financialized Disclosure Governance and Transparency in Modern Slavery and Climate Change

Abstract: The long-awaited European Supply Chain Act, known as the EU Corporate Sustainability Due Diligence Directive (CSDDD), entered into force on July 25, 2024, has been criticized as a missed opportunity to advance more impactful protections for vulnerable stakeholders of global value chain capitalism. Concluding a lengthy, contested legislative process, the Directive's adoption reflects the diverse trends that make up global value chain (GVC) governance today: disclosure legislation, international soft law, and private actors' corporate sustainability codes of conduct. Despite an abundance of norms, egregious human and environmental rights violations in and around GVCs persist, and devastating factory accidents, worker deaths, and exploitation along with irreparable harm to lands and water continue. This article assesses the prevailing regulatory approach against the background of deeply rooted accounting and discounting methods that discourage actors from adopting substantial—and costly—measures today with a view to long-term benefits.

Keywords: modern slavery law, global value chain governance, climate change law, ESG, materiality, Corporate Sustainability Due Diligence Directive

I. Introduction

The 20–4 majority vote on March 19, 2024, in the EU Parliament's Committee on Legal Affairs—JURI—in favor of the European Corporate Sustainability Due Diligence Directive (CSDDD; Directive (EU) 2019/1937) was the result of months-long, arduous efforts to respond to Germany's and eventually other EU member states' withdrawal of support for the Directive (Van Bael and Bellis 2024; Thoms et al. 2024). Anyone interested in the legal regulation of what has come to be called "modern slavery law" (LeBaron 2020; Phung and LeBaron 2023) over the past decade and a half held their breath in the early months of 2024 as the long-worked-on European Directive to hold

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multinationals accountable for child, slave, and other forms of forced labor[1] threatened to wither away in lobby-driven backroom deals between Brussels, Berlin, Rome, and other EU capitals. With the vote being stalled twice in February and March 2024, as Germany led other governments to withdraw their support, the CSDDD remained in a stomach-turning limbo (Amnesty International 2024; Oxfam 2024b; Kashyap 2024). Finally, on May 24, 2024, the Council of the European Union, the gathering of EU member states' responsible ministers, approved the CSDDD, bringing to an end a drawn-out and contested regulatory process that had started on February 23, 2022, when the European Commission had submitted its first proposal for the Directive to the Council and the EU Parliament (Sjåfjell and Mähönen 2024; European Coalition for Corporate Justice 2024).

The CSDDD finally entered into force on July 25, 2024, but its arguably less ambitious scope in comparison to what could have been possible continues to feed into a wide-ranging discussion in Europe and well beyond about the prospects of crafting impactful "hard" laws with regard to global value chain–related human and environmental rights violations. This article will first analyze the emergence of the Directive against the background of international, domestic, as well as transnational "hybrid" or public/private forms of norm generation that are geared toward fostering greater corporate accountability but overall continue to frustrate expectations of civil society, human rights, and climate action stakeholders. It will then explore the underlying valuations of present-day investments in measures, the impact of which will reveal itself only in the longer term and with climate change conditions likely only for future generations. As for the regulatory context of the CSDDD, it is evident that, while many of the initiatives that are brought underway nominally aim at opening up remedial avenues for those negatively impacted by companies' activities, the sheer power of lobbyists remains successful in largely maintaining the status quo and in delaying if not outright preventing the creation of a reliable remedial infrastructure built on actionable rights wherever corporate misconduct is evident (Ethical Trading Initiative 2019; European Union Agency for Fundamental Rights 2020).

The, thus, both impressive and underwhelming array of corporate social responsibility (CSR) and business and human rights (BHR) governance instruments manifests itself in numerous intersecting normative instruments that reiterate rather than debunk and, eventually, transform the false dichotomy between state and market governance (Kampourakis 2021a, 214). The effective delay of meaningful change that is caused by prioritizing transparency and disclosure over impactful, radical transformation of industries and their actors is often explained by references to "governance gaps" in global value chain regulation (Crane et al. 2019; Schrage and Gilbert 2019). Beyond that assessment, however, we can point to another dynamic that has been shaping the timid regulatory responses to corporations' detrimental impact on humans and the environment in a more fundamental way. Liliana Doganova refers to this as "discounting the future," which manifests in the identification and, effectively, the valuation, of an investment made right now with a view to the income that can reasonably be expected to flow from it in the future (Doganova 2024, 24–25). This translates into discouraging cost-intensive investments in assets with either uncertain or low future return. "The distant future counts less than the near future: the value of something occurring in one year (for example, the cost of a drug development project or an environmental policy) is reduced by the discount rate" (ibid. at 61). The consequences for present-day deliberations of how to respond to climate change and which investments to make as part of such efforts are shaped by the dilemma that discounting manufactures:

[1] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937. Brussels. March 5, 2024. Letter to the Permanent Representatives Committee. Interinstitutional File 2022/0051(COD). https://www.politico.eu/wp-content/uploads/2024/03/07/f9dfbffe-ef09-43c2-bd75-a87e2b50c580-CS3D_final-compromise.pdf.

"How much effort should current global society devote to reducing emissions of greenhouse gases to limit future climate change, conserve biodiversity and natural resources, or increase human capital, manufactured capital, or infrastructure? All of these questions involve tradeoffs between current benefits and potential future benefits" (Polasky and Dampha 2021, 692).

II. All Law Is Private Law: The Economic Constitution of Sustainability

The pressure on current decision-makers to provide an economically reasonable justification for their policy choices is a direct result of the prioritization (valuation) of present-day financial return over long-term benefits in the face of the continuance of existing and aggravating climate change (Newell and Pizer 2001; Resources for the Future 2020). In the context of GVC governance, specifically, this dynamic is exacerbated by two key determinants. One is that global value chain risks are defined self-referentially with regard to the operation of the chain and possible disruptions of the chain's operations. That is, risks associated with global value chains are regularly identified and defined as those arising from a breakdown of the chain's operations, as recently articulated in numerous assessments of global value chain operations during the global COVID-19 pandemic. In other words, risk assessments of GVCs invisibilize the impact of the chain on its human and nonhuman environment, something that is even more noteworthy when we consider the measurement parameter of "double materiality," discussed below. The shift to an "inside-out" perspective that informs the double-materiality standard aims at capturing, effectively, the consequences of the chain's operations on the environment and on stakeholders, complementing the existing "outside-in" perspective from which risks arising from "events" ranging from natural catastrophes to regulatory intervention have to be assessed as to their financial consequences for the company's balance sheets and stock value (EFRAG Sustainability Reporting 2024, para. 35;[2] Wong 2023).

The second determinant is that global value chains are considered and represented in both management literature and business consulting practice, as well as international economic trade scholarship as an extension of bi- and multilateral business contracting (Gereffi 2018; Raei et al. 2019). Through that lens, global value chains, in themselves extremely sophisticated contractual and de facto contractual networks across thousands of corporate entities, are treated as connected business arrangements that exist in cross-jurisdictional spaces of commercial interaction and exchange. The sophistication of their operations renders them at risk from external factors such as natural catastrophes, trade disruptions, supply shortages, as well as "regulation." In a prepandemic report, the global business consultancy firm Deloitte frames the supply chain risk through the lens of "compliance": "The global supply chain compliance landscape is more dynamic today than during any other time in history. Increased stakeholder expectations, heavy fines resulting from noncompliance with environmental regulations, delayed market access due to complex global trade rules, and a multitude of overlapping product integrity requirements are common challenges organizations navigate" (Deloitte 2015). Notably, this perception has not significantly changed even in light of the COVID-19 experience, with efforts to foster "resilience" at the heart of forward-going supply chain operations considering regulation as one of the factors causing uncertainty and "burden" (Pinsent Masons 2022; Kenan Institute of Private Enterprise 2024; Supply & Demand Chain Executive 2024;

[2] "Impact materiality and financial materiality are often intertwined . . . . The undertaking's impacts on people or the environment, combined with changes to strategy – including in investments – as well as in management decisions made to address such impacts, may give rise to risks and opportunities. Material risks and opportunities generally derive from impacts and dependencies."

Baker & McKenzie 2020). What remains outside this picture is the reality of the chain in the lives of the millions of workers active in the chain's operations along with the uncounted others who are directly and indirectly affected by the chain (Tsing 2009; Asia Floor Wage Alliance et al. 2016). The emphasis on the normalcy of global supply chains that are presented as being in a state of uncertainty and risk invisibilizes the extraordinary costs of supply chain operations on the environment and humans. As supply chains are portrayed as being endangered by "disruptions" caused by natural events, and their operations "delayed" by regulations that raise the stakes and necessary expenditures on "compliance," their actual disastrous and destructive impact remains unacknowledged (Zumbansen 2022). What is more, supply chain "governance" continues to be primarily seen as a private arrangement, adjusted and amended by supply chain members as part of risk management (Panwar et al. 2022; Kano et al. 2022).

What is crucial here is that from within the world of supply chain managers, consultants, advisers, and operations and supply chain–management scholars, supply chain regulation is not really seen as a public concern, given the predominance of contractual governance across global value chains. On the one hand, the privatization of what is effectively a globe-spanning regime of extraction, production, distribution, and financing repeats the longstanding representation of contracting as an apolitical, natural societal practice, the understanding of which is rooted in neoclassical economics and the idea of self-governing, profit-seeking individuals (Cohen 1933; Campbell 2023; Enright 2013). On the other hand, the depublicization of supply chains as private contractual networks misrepresents their roots in legal "coding" of markets (Pistor 2019). This privatization is maintained despite the proliferation of global supply and value chains as comprehensive market infrastructures, which rest on the constituting role of law through the inauguration and provision of regulatory instruments. This representation of supply chains as private comes at a still greater cost, however. In denying the role of *public*—that is, governmental, even democratically legitimated, regulation—in the maintenance of *private* law as the constitutive and reliable legal constitution of global supply/value chain operations, the very difference, the productive tension between public and private, is collapsed. The naturalization of private market exchanges, whether through one-off contracts between distinct individuals who are exercising their "freedom of contract" or through the continuous organization of business-to-business commercial exchanges across the chain, is only possible if the private precedes and in fact subsumes the public. In other words, "the government" that is seen to cause operational "burden" for the chain, for example through enactments of compliance regulation, creates an aberration from what its role in guaranteeing "the constitution of liberty" (Hayek 1960) is meant to do. The state as lawmaker remains the essential guarantor of supply chains' private self-regulation, which concerns itself with the "navigation" of risk and the development of "resilience." But under a conceptualization of the state as rule of "private law," it is both limited and normatively invisibilized. As a result, the economic constitution of market exchanges, whether these are normalized in the form of supply chains, scandalized as "modern slavery," or moralized via the dizzying employment of environmental, social, and governance (ESG), disclosure, and compliance mandates, which rely on corporate actors' concerns about reputational loss, assumes the form of a naturalized contract among private parties. The ensuing analysis of recent supply chain– and climate change–related disclosure governance reveals the stronghold that this conception has on public actors' agency in developing policy and regulatory instruments. At their center lies the idea that the corporate actors themselves must—and, presumably, will—self-obligate with a view to creating supply chain transparency and disclosing risks under the principles of materiality and double materiality. "Private law, assured of escaping public deliberation and political choice, is established as the *ultima ratio* of political and social order" (Dardot and Laval 2019, 47).

III. Toward a Critical Sustainability Imaginary

The ensuing analysis offers but a snapshot of the intricacies that marked the recent battle over a piece of EU regulation while attempting to bring into the frame the political stakes that continue to shape the evolution of global value chain governance. Widening the lens, what first comes into view is a series of governmental interventions in the unwieldy "fields" of modern slavery and climate change law. Emerging against the background of both intensifying global norm production and growing public concern, pieces of modern slavery legislation are on ministerial dockets in a significant number of states, while the creation of governmental climate change task forces, agencies, and departments charged with drafting and implementing "ESG" standards accelerates at breathtaking speed. This article will not be able to provide a comprehensive sociology of the transnational actors populating this landscape, but will nevertheless attempt to accentuate some of its contours. It will use the EU's recently adopted Directive as a point of departure for a discussion not only of how the Directive fits into the concert of national and transnational transparency regulations, but also as an opportunity to assess the degree to which the Directive extends and prolongs a type of lawmaking that requires the key perpetrators of human rights abuses and environmental destruction to file reports while otherwise shying away from asking them to change the fundamentals of their unsustainable modes of operation. To that effect, it is helpful to outline the genealogies of the prominent mode of disclosure and transparency law starting with the emergence of market governance policies in the late 1970s.

In an effort to debunk the above-described private law primacy of the dominant economic constitution, the paper suggests positing global value change governance (GVCG) in the context of a distinct type of epistemological and activist conceptualization of "modern slavery law," "racial capitalism," and "climate change law." Such framings can be used to counter the private, self-regulatory, and apolitical imaginary that pervades the continuing reliance on soft law, scandalization, and market self-regulation by domestic and supranational legislators. The suggestion of framing the ensuing analysis through a critical sustainability imaginary is inspired by work from novelists, journalists, and scholars such as Amitav Ghosh, Gaia Vince, Jeremy Williams, Ratna Kapur, Carmen Gonzalez, and others who have been able to confront planetary predicaments from a commitment to recognizing the urgency of the challenge and the pressing task of changing the way in which realities are described, positionalities challenged, and alternative visions sought through epistemological critique, dialogue, and engagement—rather than through neocolonial paternalizing imposition (Ghosh 2016; 2021; J. Williams 2021; Vince 2022; Gonzalez 2024; Kapur 2006, 666[3]).

In the current era in search of a name (Anthropocene, anger, catastrophe, the end of time?), one of the defining characteristics of scholarly endeavors might well be their restlessness, if not their outright despair. Both are likely triggered by experiences and impressions of futility, the looming absence of an "out," the denial of a transformative vision. Decades into experiments with the "retreat of the state" (Strange 1996), "risk society" (Beck 1992), (neoliberal) state transformation (Berry 2022), and transnational governance, the burden of political, ethical, and moral failure lies like a wet, unbearable blanket on all those who might have thought they could cut through the "new obscurity" (Habermas 1986) and the shift of "social engineering" to modes of decentralization and responsibilization in an impetus of emancipatory, even collective empowerment through the extension of public law principles

[3] "What happened to the dissidence and rebellious spirit of human rights? How has a project that held out the promise of a grand spicy fete mutated into an insipid appetiser?"

into the spheres of societal organization (Nonet and Selznick 1972; Blankenburg 1985; see also Bora 2017, 18[4]).

In the simultaneously insightful and sobering stock-taking accounts of younger scholars who look back at the emergence of governance and its transnationalization from the vantage points after 9/11 and the global financial crisis, after Piketty, "after" Trump, and, arguably, after "global governance," the frustration with market governance, self-regulation, and soft law—with so little to show for it in the end—is painfully tangible (Kampourakis 2021b; Eller 2021; Canfield 2022). How much of the analysis of "market" governance and its transnational expansions and proliferations that emerged in rapid succession throughout the 1980s, 1990s, and 2000s can explain the current predicaments of political polarization/alienation/radicalization and the undeniable crisis of democracy? There were many who rightly argued against the governance hype and who kept insisting on the underlying, deeply inegalitarian political economy associated with the turn "from government to governance" (Rosenau and Czempiel 1992). Rereading these skeptical voices now reminds us of how distracting and arguably naïve some of the laudatory embrace of "self-regulation" was in the presence of corporations and financial networks festering and digging in much deeper still (Jessop 2002; Arrighi 1994; Streeck 2016; R. Meyer 2016, 38[5]).

The following discussion of supply chain- and climate change-related reporting laws sheds light on how the political and financial investment in transparency and disclosure governance fatefully extends the misguided commitment to market (self-)governance. Fateful because the repository of both conceptual and empirical literature on "hard" versus "soft" law or "direct" versus "indirect" regulation is impossible to ignore. The debates, which became virulent well before the neoliberal, contractual transformation of the state really took off in the 1980s and 1990s, were prompted by the everywhere-experienced transformation and "de-centering of the state" (Black 2002) that resulted in the precarization of the many and the liftoff of the few (Harvey 1989; Standing 2011; Schram 2015), evidenced by the "social anomy" that grew out of the breakdown of what Jens Beckert has called "promissory legitimacy" (Beckert 2020).

The politics that shaped regulators' prioritization of recommendations and guidelines over regulations and enforceable, actionable rules are still on plain display. The retrospective journey into the ephemeral sphere of "indirect regulation," where the task of problem-solving through legal means was relegated to inchoate processes of "naming and shaming," leaves a particularly unpleasant aftertaste (Scheper 2015; Laruffa and Martinelli 2023). As the benefits of "efficiency," the "contracting state," and "new public management," manifesting themselves in the blurring of boundaries between public and private actors in the assumption and appropriation of regulatory functions, were lambasted in a heated discursive environment, concerns around legitimacy, but also around sustainability and inclusiveness, were tabled "for another day" (Picciotto 2017; 2008, 463). All that while, in a refreshing moment of interdisciplinary cohesion between law, political science, sociology, international relations, and political theory, discussions over hard and soft law generated insightful analysis in both international and domestic contexts (Shaffer and Pollack 2010; Trubek and Trubek 2005; Zumbansen

[4] "Governance theory . . . usually deals with multiple structures, processes and forms of coordination. Governance concepts have emerged as a result of a crisis of interventionist thinking and technocratic models of societal planning in the 1970s. Post-interventionist theories and concepts of pluralist societies have replaced traditional, more rigid concepts of social steering with new ideas of co-operation, negotiation, co-production, hybrid communication, self-regulation and networks."

[5] "Transnational activists have mobilized in response to neoliberalism and 'flexible' capitalism, but there is no global state to which they can appeal."

2008). Such analysis was simultaneously fueled by an interest *in* and by deep concerns *over* the fate of democratic, accountable governance of formerly public functions that, sucked into the tractor beam of neoliberal state transformation, had fused into "markets" where they would hitherto be portrayed as allegedly "autonomous" expressions of self-regulation—and "freedom" (Crouch 2009; Scott et al. 2011; Bevir 2022; Dahl and Soss 2014; Djelic and Quack 2018, 124; Joerges and Everson 2019, 487[6]).

A few decades onward, the anatomy of the September 2008 global financial crisis revealed the instrumental role that state regulation had played in generating and fueling the debt-driven financial bubble, the bursting of which led, inter alia, to the annihilation of millions of workers' old-age security savings (Crotty 2009, 564–65; Mirowski 2013; Supiot 2017, 141–42). And in the present moment, in which the much-needed scrutiny of what made the COVID-19 pandemic so particularly disastrous for the already most vulnerable among us is only a sideshow of academic concerns (Alviar García and Frankenberg 2021, 28;[7] Papamichail 2023; Fiske et al. 2022), is the experience of a certain and distinctly disquieting amnesia only attributable to a heightened degree of sensibility? After half a century of market-based "regulation" in the forms of certification schemes, disclosure standards, and best-practice guidelines, this regulatory mode that prioritizes transparency over punishable offenses and actionable rights of protection appears to have become accepted as normal (Bartley 2013; Gunningham and Rees 1997; Bendrath 2007). The bustling landscape of rating agencies, standardization committees, and certification companies provides a suitable backdrop to the emergence of "influencers" and "ESG consultants" busying themselves to provide guidance and advice on how to make anything from friends, to sourdough, to a profitable as well as "green" investment. Anyone suggesting that "the state" take charge and exercise its prerogative to regulate risks being called a socialist (Wilkinson 2018; Kaufmann 2022; Cammaerts 2022).

Lawyers are still finding their niche in this context when trying to articulate the role of law and, more still, the nature of the state. Preoccupied with the identification and processing of "problems," there is little time left in the day, apparently, to reflect on the degree to which the mobilization of public infrastructure programs like the Inflation Reduction Act (IRA) in the United States (Bustamente 2024) or the surge in domestic supply chain regulations (Hathaway 2020; McKean 2021) may indicate a wholesome and sustainable transformation of the neoliberal state of the present past or, as many suspect with regard to the latter, represent a new stage in the "non-death" of neoliberalism (Crouch 2011). At the heart of this evolution is the continuing depoliticization of market "governance," which is variably characterized as bottom up, as decentralized, and ultimately as something good (Canfield 2022, 11–13; Bartley 2018, 146; van Elteren 2009, 180). As Christos Boulokas frames this concern:

> Normal forms of capitalist state (liberal-democratic, as opposed to exceptional-dictatorial ones) are founded on a separation between political power and economy activity, a public and a private sphere, the state and society. Each of these realms and their interrelation are set in law. Thus, the state's institutionality and powers are defined constitutionally, and its relations to society are organised as a net of legal rights, obligations and liberties (Jessop 2016). Indeed, the capitalist state is the first state that acknowledges limits to its power in principle. Thus, paradoxically, it has to secure the continuation of capital accumulation but cannot command the economy or intervene in it directly. Instead, it must shape society, and each individual

[6] Tracing these roots back, with Rudolf Wiethölter, to the ordoliberal conceptualization of the "economic constitution."
[7] "[T]he privatization of health care not only privileges profitable health provision and loses sight especially of community services and basic medical treatment but also tends to imply a crippling effect of the regular legal tools available to face the crisis."

> therein, as productive—as fit and willing to contribute to accumulation. It is thus constantly occupied with an endless array of tasks ranging from education, deviance, health, and transportation, to housing, alimentation, and demographics (Boulakas 2023, 324).

IV. Struggling with Disaster Law

The conceptualization of category- and discipline-crossing fields as analytics and as disruptors is a further expression of the alluded-to restlessness of today's disaster scholarship. The scholarly, discursive, tireless, and courageous advocacy campaigns for a "modern slavery law" are significant interventions. By effectively scandalizing the in-themselves longstanding, but largely ignored practices of child and other forms of forced and slave labor, their scandalization has over the past years made them a topic of conversation in the media and the object of litigation and legislation in countries in Europe and North America (LeBaron and Rühmkorf 2019; Hampton 2019). Modern slavery law's additional importance lies in its inherent challenge to the problems it can be understood to address. By directing attention to the structural nature of slavery practices, modern slavery law as a legal subfield itself is uncontainable, even if its practical implementation and operation boil down to concrete and exhausting struggles over definitions and applications. As modern slavery implicates longstanding, institutionalized, and state-backed practices of exploitation, discrimination, gendering, and racialization (Blackett 2022; Marvin and Zimmerman 2024; Arun and Olsen 2023), the invocation of a modern slavery law frames a radical perspective for law and lawyers, who must work out and work through the intersecting snapshots that labor law, antidiscrimination law, refugee and human trafficking law, and tort, contract, and criminal law offer in selective perspective of modern slavery.

"Climate change law" operates in a very similar way. Its concern is so stunning in scope (Webster and Mai 2020; Paiement 2020; Affolder 2021) that the invocation of a need to "regulate" climate change should be able to place the burden of proof for why there is no need to do so on the climate deniers (Etty et al. 2018; Eckes 2021; Dickson and Hobolt 2024). The fact that, in the current discursive political context, there is an ideological and partisan standoff where there should be rational discourse in the face of the horror of planetary destruction causes tragic, unaffordable delay. In an arguably more pronounced fashion than modern slavery law, climate change law falls victim, on a daily basis, to political contestation, denial, bargaining, ill-fated compromise, and outright ignorance (Strine 2025[8]). Its progress is also hampered by the fighting for a broader public recognition of the urgency of (both of) these concerns, which occurs within a discursive space that has formed over decades of shifting the responsibility for welfare and survival onto the backs of individuals, hereby largely releasing the state from imposing on itself and society's most potent, corporate actors the task of securing equal access to services, justice, and existential protection. It is in this space in which yet another failure of one or more state governments to bring about urgently needed change is met with resignation and cynicism (Stolberg 2013; Manolchev 2020).

Meanwhile, "climate change," "ESG," and "EDI" are ever present. But, present *how*? Business schools reform their curricular offerings and faculty cohorts in order to deliver timely, up-to-date training for future "sustainability experts," ESG consultancies multiply at breathtaking speed, recruitment agencies echo the market's dire need for specialists in ESG and AI (Pérez et al. 2022; Corporate Knights 2023). Legislation to garner greater corporate accountability is surging, but so is the resistance against it.

[8] "[T]he so-called 'culture wars' have fully penetrated the debate over climate change and corporate governance, and in a distinctly Orwellian way, involving the manipulative use of language, denial of fact, and process of doublethink that Orwell warned were all inimical to freedom."

Arguably, such legislation may be bound to leave the status quo untouched, and even more so when it stops short of actually imposing punishable rules of conduct instead of transparency and disclosure standards. The Titanic is still bound for its demise (Baars 2020).

The signals from these developments to the wider public remain confusing and risk being perceived as the corporate sector engaging in a sort of "blowing hot and cold." Considering the arguably remarkable shift in public awareness that has taken place in the last decade regarding the factually undeniable consequences for humans (Viederman 2014;[9] Schuessler et al. 2019, 553;[10] Ferdous and Hossain 2020, 7[11]) and the planet (Mede and Schroeder 2024, 801;[12] Salerno 2023, 1;[13] Tyson et al. 2021[14]) of normatively unsustainable economic and financial practices, haggling like that over the CSDDD in early 2024 prompts wide skepticism (Niranjan 2024; Oxfam 2024a; Kippenberg 2023[15]).

Arguably, no one today can still claim ignorance with regard to widely reported human rights abuses in sweatshops, perilous natural resource extraction sites, and warehouses (Hiba et al. 2021, 149[16]) as global value chains have become a topic of wider public debate and critique, fueled by an instantaneous dissemination of text and visual information through the internet (Thomas and Anner 2023, 34;[17] Ferdous and Hossain 2020; Sander 2021[18]). The scandalization that propels egregious working conditions, the abuse and killing of workers (UNICEF 2020[19]), and in many cases already irreversible environmental destruction onto anyone's phone screens continues to translate into mounting policy pressure to make impactful improvements to workplace safety, labor, and human rights, as well as environmental protection as matters of general public concern (Crane et al. 2022, 264[20]). This

[9] "[I]t reminds us that too many businesses do not know where their finished products are being made."
[10] "The Rana Plaza factory collapse in April 2013 . . . , which left 1,130 mainly female Bangladeshi garment workers dead and more than 2,000 injured, constituted a focusing event that generated public criticism of grossly inadequate building safety and related labor standards in garment supply factories. These developments initiated policy discussions at firm, national, and transnational levels to improve building safety and labor standards."
[11] "[I]mages of the Rana Plaza disaster helped frame and amplify workers' demands for accountability. These were more than powerful images of spectacular disaster or unimaginable human pain: they drew connections and raised questions about the industry as a whole, juxtaposing fast fashion fabrics and labels against broken bodies and smashed concrete."
[12] "Greta Thunberg has arguably been the most influential advocate for climate change action since Al Gore with his movie 'An Inconvenient Truth' in 2006."
[13] "The 'Greta Thunberg effect' has inspired teenagers to engage in climate activism and influenced groups of people who had not previously appeared interested in her agenda, generating one of the most widespread environmental social movements in history."
[14] "More than six-in-ten Americans say large businesses and corporations (69%) and the energy industry (62%) are doing too little to address climate change."
[15] "While it is a step in the right direction, the law is far from perfect, for example only offering weak provisions regarding climate change and excluding the financial sector from due diligence obligations."
[16] "In 2013, the collapse of the Rana Plaza building in Dhaka, Bangladesh focused the attention of the world's consumers on working conditions around the world. Unfortunately, the deadliest accident in the history of apparel industry did not lead to any significant change or the required improvements. Instead, a negative development is taking place at the present time in some areas. The latest ITUC Global Rights Index for 2020 even refers to 'the breakdown of the social contract' and cites examples of the alarming number of workers' rights violations, which has increased in the last seven years."
[17] "The rise of GSCs, increasing power of transnational corporations (TNCs), declining power of unions and ineffectiveness of state regulation has sparked a burgeoning interest in 'global labour governance' . . . , its mechanisms, outcomes and, more recently, its political dynamics."
[18] Discussion of the negative effects of social media "information" on human rights violations due to highly concentrated corporate content control.
[19] Finding that in these key GSC sectors millions of children are used as workers under highly perilous conditions.
[20] "Modern slavery is one of the most extreme forms of labor abuse in the global economy. . . . As such, it has become one of the defining grand challenges of our time."

expresses itself in heated and polarizing public and professional debate (Darian-Smith 2022, 25–26; Smith et al. 2024, 5–6; Falkenberg et al. 2022, 1120) and in intensifying lobbying and litigation from both supporters and opponents of stricter climate disclosure rules (Sierra Club 2024; PBS News 2024).

As Columbia University's Sabin Climate Center director, Michael Gerrard, noted in spring 2024, the Securities and Exchange Commission's (SEC's) release of its proposed climate disclosure rule in 2022—which fell short of requiring companies to disclose their Scope 3, that is, supply chain-based, climate-relevant emissions—caused a "firestorm, drawing more than 24,000 comment letters" (Gerrard 2024). As expected, the SEC's publication of the final rules on March 6, 2024, prompted a flood of lawsuits directed against the new requirements (Levine et al. 2024[21]), following which the SEC, on April 4, decided to voluntarily stay the rules while the litigation is pending.[22] Yet, another group, including environmental law activists, scientists, legal scholars, and others, criticizes the SEC for its failure to roll out Scope 3 disclosures, as has been pursued, for example in California and the EU.[23] The pending anti–climate regulation litigation must be seen in a wider context in which law firms are retained for stupendous honoraria by key players in the fossil fuel industry to save their clients from accountability for their detrimental climate activities (Milman 2023;[24] Kaminski 2021;[25] Law Students for Climate Accountability 2024; LSE Grantham Research Institute on Climate Change and the Environment 2023).

While an increasingly vast, yet fragmented patchwork of recommendations, standards, rules, and regulations (Peel 2013, 220) might suggest the emergence of a broader basis of support for climate change regulation across public and private actors, in reality, the policy landscape is riddled with tension and division (Jacquet et al. 2014; Gunderson et al. 2016), shaped by intensifying corporate backlash against political and legal interventions with regards to sustainability, EDI (equality, diversity, inclusion), and all things "ESG" (Economist Intelligence 2023). Well-organized and -funded litigation causes delay and kicks urgently needed climate-relevant regulations down the road. A further sobering manifestation of rising tensions around climate change governance as a core regulatory concern is the criminalization of (Laville 2024; Forst 2024; Coca-Vila 2023; Scheidel et al. 2020) and the

[21] "Immediately following the adoption of the rules, multiple parties filed petitions for review in six different appellate courts: the Second, Fifth, Sixth, Eighth, Eleventh, and D.C. Circuits. A total of 25 states filed petitions across four of those circuits (the Fifth, Sixth, Eighth, and Eleventh Circuits). The American Free Exercise Chamber of Commerce joined the state-led suit in the Eighth Circuit. In addition, the U.S. Chamber of Commerce and two affiliated Texas business groups, two energy companies, and two energy producer trade associations filed three additional petitions in the Fifth Circuit."

[22] Order Issuing Stay, In the Matter of the Enhancement and Standardization of Climate-Related Disclosures for Investors, File No. S7-10-22 (S.E.C. April 4, 2024), https://www.sec.gov/files/rules/other/2024/33-11280.pdf.

[23] In California, these pursuits include the California Corporate Data Accountability Act (S.B. 253), the Climate-Related Financial Risk Act (S.B. 261), and the Voluntary Carbon Market Disclosures Act, A.B. 1305 (2023), on voluntary carbon market disclosures, signed into law in October 2023. In addition to public companies, which can be regulated by the SEC, these laws address private companies; they will affect around ten thousand US businesses as well as subsidiaries of non-US corporations. Notably, S.B. 253 makes Scope 1, 2, and 3 reporting mandatory. For the incorporation of TCFD (Task Force on Climate-Related Financial Disclosures) disclosure guidelines in S.B. 261, see the text of the bill at https://legiscan.com/CA/text/SB261/id/2841405.

[24] "More than 1,500 lobbyists in the US are working on behalf of fossil-fuel companies while at the same time representing hundreds of liberal-run cities, universities, technology companies and environmental groups that say they are tackling the climate crisis."

[25] "Over the last five years, the 100 top law firms in the US represented fossil fuel clients in 358 legal cases and transactions worth $1.36tn."

intensification of security and policing measures around (Barton 2022; Lakhani 2023;[26] compare Schlembach 2018, 494[27]) "climate activism."

V. A Trainwreck in Slow Motion? Advocacy and Lobbying Around the CSDDD

The discussions around the CSDDD were lively across a consistently wide range of interested policy circles. That is largely due to the regulatory purpose of the Directive, which effectively encompassed efforts around the mitigation of if not the eradication of forced and child labor within global value chains (UNICEF 2022, 2;[28] European Coalition for Corporate Justice 2024, 6[29]) as well as the responsibility of corporate actors to develop climate change–related "transition plans" (DWF 2023;[30] IFRS 2023, para. 22(a)).

The wide issue scope of the predictably intensely debated regulation is representative of present-day and forward-looking sustainability governance efforts. These mirror the degree of interconnectivity and interdependency of actors and activities across GVCs; their sustainability implications reach far and deeply into the fabric of countries, regions, municipalities, and communities, directly touching the lives and habitat of humans and nonhumans worldwide (Hochachka 2023, 2;[31] Hodge 2022, 85). Long overdue, "modern slavery" has in the last decade or more become a productive category in that context, given the term's role in prompting closer scrutiny of existing categories such as forced labor, slavery, and trafficking and their ability to exhaustively capture persistent forms of structural exploitation and coercion, as well as their legal mobilization, since the emerging international regulations in the 1920s (Kotiswaran 2016; Plant 2014, 1–2, 5; Zumbansen 2022, 310, 349; Meagher 2019, 70).

The EU's Directive has to be placed in the larger context of global value chain governance (GVCG), which today includes labor *and* environmental protection rights (Salminen and Rajavuori 2019, 605; Partiti 2022; Macchi 2021, 95ff.[32]). Not only does it make obvious sense on a policy plane and as a widely acknowledged public concern, but the actual legal, regulatory conceptualization of GVCG

[26] "Eighteen states, including Montana, Ohio, Georgia, Louisiana, West Virginia, and the Dakotas, have enacted sweeping anti-protest laws which boost penalties for trespass near so-called critical infrastructure, that make it far riskier for communities to oppose pipelines and other fossil fuel projects that threaten their land, water and the global climate."

[27] Discussing the use of covert policing and surveillance tools against environmental protesters as part of national security governance.

[28] "Children make up 30 percent of the world's population – yet they are at risk of being invisible. Because the experiences and perspectives of children differ from those of adults, mechanisms designed around adults do not capture salient issues for children."

[29] Highlighting the more limited range of enumerated rights protection under the CSDDD in comparison to under the UNGP and the OECD Guidelines for Multinational Corporations.

[30] Citing the ISSB's "S2" Standard: "A climate-related transition plan is an aspect of an entity's overall strategy that lays out the entity's targets, actions or resources for its transition towards a lower-carbon economy, including actions such as reducing its greenhouse gas emissions."

[31] "As climate impacts are distributed along value chains and affect GVC actors, products and producing regions in varying ways, climate change may become an impetus for GVC actors to convene and collaborate in a novel manner to confront an issue not only of mutual concern, but also one that is too complex to address individually."

[32] Discussing the *Milieudefensie* litigation brought against Shell in 2019 claiming Shell owed environmental responsibilities. The court in *Milieudefensie* stated: "The court acknowledges that RDS cannot solve this global problem on its own. However, this does not absolve RDS of its individual partial responsibility to do its part regarding the emissions of the Shell group, which it can control and influence." Milieudefensie v. Royal Dutch Shell PLC, No. C/09/571932 (District Court of The Hague, Netherlands, May 26, 2021), para. 4.4.49.

presents lawmakers and legal theory with difficult questions on the levels of doctrine, regulatory authority, and enforceability (Eller 2020, 6;[33] Verbruggen 2022). As noted, this has been equally observed with regard to "climate change law," of course (Fisher et al. 2017; Webster and Mai 2020, 5–6).

Despite the obvious challenges arising for doctrinal coherence due to the multidimensionality of climate change as an object of regulation (Peel 2013, 220), the pursuit of a sophisticated concept of *climate change law and governance* has transformative potential. Such concepts prompt us to revisit boundaries between different—public and private—legal fields and to ask why existing legal doctrine struggles with capturing the ubiquitous manifestations of inequitable and exploitative work conditions and unsustainable economic and financial practices. The CSDDD sheds some light on the multiple challenges that sustainability governance efforts are facing in their navigation of competing calls for interventionist norms aimed at substantive change and accountability versus the continued elaboration of disclosure rules. But we must also acknowledge the degree to which the necessary efforts to respond to the lobbyists' pushback not only consume energy that could well be directed toward more productive and actually impactful regulatory strategies, but also keep our attention narrowly on at least getting a compromise under present contested conditions. Because so much ended up excluded in the finally agreed-upon version of the Directive, it is necessary to zoom out in order to bring back into view the Directive that could have been, compared to the result, which ended up being closer to the status quo. In that regard, going forward, it is necessary to monitor the implications of the CSDDD in the fast-evolving context of climate change-related financial reporting regulation in order to better understand the connections between the sustainability governance dimensions of regulating supply chains with a focus on workers' rights and climate change-conscious supply chain governance. This line of inquiry will remain particularly important in light of the above-discussed focus in supply chain management/operations/governance debates on "resilience" as a mode of adapting to natural and regulatory challenges—rather than embarking on a more comprehensive, critical assessment of the role that supply and value chains play in the acceleration of climate change.

The much-commented-on EU Directive offers sobering evidence of the tensions between future-oriented aspirations for impactful, transformative regulation and short-term political bargaining and lobbying. After a hard-fought compromise was reached in the European Council on March 15, 2024, the vote within the legal affairs committee of the European Parliament (JURI) had paved the way for a final vote on the Directive in the European Parliament. The final version[34] applies but to a fraction of the formerly targeted scope of companies across the EU. While the original CSDDD had aimed at companies operating within the EU with over five hundred employees and exceeding 150 million euro in revenue (or, with more than 250 employees and 40 million euro in revenue), the watered-down version is limited to those companies with more than one thousand employees and a minimum of 450 million euro in annual turnover.

As regards non-EU companies, the original proposal aimed at those with a net EU turnover of 150 million euro or at those with a net EU turnover of 40 million euro if more than 50 percent of that

[33] "Besides being a multifaceted empirical reality, the label of 'GVC' pertains to a prominent analytical framework of analysis in the social sciences. . . . Law, however, continues to be a surprising lacuna; it is yet to be recognised as integral factor within GVC analysis and has not accommodated GVC analysis within its own scholarship."

[34] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 – Letter to the Chair of the JURI Committee of the European Parliament. Brussels, March 15, 2024. Interinstitutional File 2022/0051(COD). https://data.consilium.europa.eu/doc/document/ST-6145-2024-INIT/en/pdf.

turnover (20 million euro) was generated in "high impact" sectors such as textiles, agriculture, and minerals extraction. The agreed-upon compromise text of the Directive applies to those non-EU companies with a net EU turnover of at least 450 million euro, or to those that enter into certain franchising or licensing agreements where the royalties amount to more than 22.5 million euro and that have an EU turnover of EUR 80 million, or the ultimate parent companies of groups that fall within these thresholds.

To better appreciate the compromise that was reached, it is helpful to recall the range of obligations that were considered in the original proposal. In that regard, the proposal as it was agreed upon on December 14, 2023, demanded that target companies integrate due diligence policies aimed at the identification, prevention, termination, and mitigation of actual and potential adverse impacts observed to be resulting from violations of international human rights and environmental agreements. Furthermore, targeted companies would have been obliged to establish a complaints procedure and to monitor and communicate due diligence policy, including by annex listing of specific rights and prohibitions that constitute adverse impacts when violated. Reflecting on the structural connectedness between global value chain networks and the persistent destructive environmental impact of sourcing, production, dissemination, and waste processes (Macchi 2021; Zumbansen 2022; The Initiative n.d.), the CSDDD's original proposal aimed at requiring large companies to adopt and put into effect a transition plan for climate change mitigation. Under the final compromise, however, these obligations only apply to less than a third of the originally targeted number of companies. The World Wildlife Fund, in a communiqué from March 15, 2024, found that this "agreement sends a horrendous signal to those suffering from corporate abuses and severely harms the EU's commitment to ensuring a level playing field, as well as its credibility as a legislative force" (World Wildlife Fund 2024).

As regards the enforcement of these obligations, the EU Parliament, in its press release after the pivotal compromise of December 14, 2023, highlighted the fact that "MEPs negotiated that companies will be liable for breaching their due diligence obligations and their victims will have the right to be compensated for damages." The EU Parliament further stated that "each EU country will designate a supervisory authority to monitor whether firms are complying with these obligations. These bodies will exchange best practices and cooperate at EU level within the European Network of Supervisory Authorities established by the Commission. They will be able to launch inspections and investigations and impose penalties on noncompliant companies, including 'naming and shaming' and fines of up to 5% of their net worldwide turnover" (European Parliament 2023). A further obligation under the Directive is the creation and administration of complaints mechanisms to allow for a more robust engagement with individuals and communities adversely affected by companies' actions. And, reflecting the increasing interconnectedness of public and private governance responsibility, member states are required to designate a supervisory authority in charge of monitoring, investigating, and imposing penalties on companies that do not comply. As for foreign companies operating in the EU, they are required to designate their authorized representative based in the member state in which they operate, who in turn will communicate with supervisory authorities about due diligence compliance on their behalf. The Commission will establish a "European Network of Supervisory Authorities" to support cooperation among supervisory bodies.

The Directive marks an important step in the advancement of actionable human rights due diligence norms and should therefore be welcomed as a valuable contribution to a still expanding transnational regulatory landscape of hard and soft law aimed at the actual improvement of workers' lives and environmental conditions through the imposition of obligations on key actors. At the same time, the CSDDD and, in particular, its eventually more limited scope of application reminds us of the challenge

of putting in place norms which will make an actual and urgently needed impact. Not least due to the CSDDD's inclusion of a corporate obligation to elaborate a climate transition plan, the existential parallels between efforts aimed at human rights, supply chain regulation and those which focus on climate change mitigation are obvious. In both, we are well past the point where we may want to comfort us and others in justifying less-than-ambitious action by resorting to "it-all-takes-time" phraseology.

VI. The Directive's Significance in Battling Human and Environmental Rights Violations

The political climate in which regulations such as the EU's Supply Chain Act are being fought over is a particularly charged one. Denial and abuse of workers' rights, egregious workplace conditions, and a dramatic expansion of forced and child labor have become global public concerns. The epitome of a longstanding exploitation of labor for the enrichment of few, the still-too-slow acknowledgment of the climate change effects of predatory and "chokepoint" capitalism (Crane 2013; LeBaron et al. 2018; Perkins 2020; Vrousalis 2022; Giblin and Doctorow 2022) places modern slavery and "supply chain governance" in a larger context of existential risk management and global survival. Given the significance of global warming and the increasingly urgent pleas from scientists and broad ranges of stakeholders to acknowledge the existential importance of climate change mitigation and to take radical steps, everyone can "feel the heat" (Burger et al. 2021; T. Meyer 2016, 441; Lloyd and Sheppard 2021). Unsurprisingly, climate change mitigation[35] (Columbia Law School Sabin Center n.d.; Peel and Osofsky 2020) has become a policy concern in just about any area of regulation, reaching far beyond what was once perceived to be the ambit of "environmental law." With that, many of the foundations of global economic growth as well as the practices, pursued for centuries, in sourcing and producing materials at immense human and ecological cost have come under intense scrutiny. "There is now a growing recognition that the current model of economic development based on fossil fuels and resource extraction is not sustainable in the long term and that alternative models of development are needed. These alternative models of development prioritise social equity, environmental sustainability, and the well-being of people and communities over the interests of multinational corporations and global capital" (Calvão et al. 2023, 2).

Global value chains and their deep roots in inegalitarian, exploitative, and unsustainable practices across the world and predominantly in the global South have become intimately tied into a transformative critique of economic practices in the Anthropocene, a critique that has been touching on sensitive nerves (Siewers et al. 2024; Selwyn 2015). In a politically volatile context of deepening economic and political uncertainty, "anti-ESG" lobbies find support in both conservative and probusiness leaders who prioritize short-term returns over investing in meaningful and impactful transformation, often in fear of voter backlash in a context of high inflation and shrinking economic prospects. Their impact continues to prove substantive, is able to distinctly shape political outcomes, and, as is evident in the United States today, can unsettle the political and institutional landscape (Brown 2023; Schmitt 2024).

Even if the degree of polemical, "either-or" political discourse is comparably lower in Europe than in the US, the fight over the CSDDD revealed entrenched economic interests that were ready to insist

[35] See, for example, Urgenda Foundation v. Netherlands [2015] HAZA C/09/00456689 (H.R., December 20, 2019) (Netherlands).

on their positions (Sinnig and Zetzsche 2024, 10). As in other high-profile, ambitious, and transformative regulatory initiatives—as, for example, during the EU's efforts to adopt a Takeover Directive in 2003 (Elofsohn 2012, 524; Nilsen 2004; Maher 2007)—that require intergovernmental agreement and respective stakeholder support, the CSDDD was only passed after substantial amendments had been made. Preventing it from failing altogether was the intensive diplomatic leadership by the Belgian presidency of the EU Council and advocacy efforts across human rights and business stakeholder groups (Business and Human Rights Resource Centre 2024).

As for the hope that the Directive would advance transnational efforts to compel businesses to assume accountability for their efforts to mitigate climate change, some progress was made, even if the original ambitions were not met. In its adopted version, the CSDDD still requires, in Article 15, that companies draw up and implement a "transition plan for climate change mitigation." The transition plan is a further noteworthy element of the Directive as it exemplifies the comparatively rapid evolution of transposing a demand made by environmental advocacy groups into a regulatory obligation—acknowledging, for example, the role that The Hague District Court's *Milieudefensie* judgment against Royal Dutch Shell had played in increasing the pressure (Engels and Schumacher 2023; Bergkamp 2023).

The recent development is even more important when considering the reasons for the ambitious Directive in the first place: As keen observers had already noted in 2022, the proposed CSDDD addressed "adverse human rights and environmental impacts" that were "keyed to violations of a thick list of human rights and environmental obligations laid out in international conventions and declarations, irrespective of whether they are ratified or recognized in the jurisdiction in which the alleged violation takes place" (Enriques and Gatti 2022). The obligation for companies to comply with labor and human rights as well as climate change–related norms under international conventions irrespective of these having been ratified points to an important paradigm shift from national jurisdictional regulation to transnational regulation. This shift is prompted by the discrepancy between the actual, transnational, border-crossing reach of harmful business activity which characterizes the collateral effects of global value chains, and the national jurisdiction-focused approach of states regulating behavior within their reach.

The CSDDD forms part of an expanding regulatory framework aimed at governing global value chains—nationally, at the EU level, and across a range of intersecting public and private norms. While the direct addressees of the EU Directive are companies operating in the EU, its regulations do in fact have extraterritorial effect for non-EU parent companies of EU-based subsidiaries if the parent crosses the employee/revenue threshold, for non-EU companies within the global value chain of a threshold-crossing European corporation, and, finally, for non-EU companies whose subsidiaries fall within the gambit of the Directive (Sinnig and Zetzsche 2024, 8–9[36]). While the emerging transnational patchwork of global value chain regimes has implications for human rights as well as corporate law doctrine relating to individual and organizational accountability due to standards of due diligence, oversight, and compliance, as these require amendments to encapsulate organizational processes and conduct with regard to labor and environmental concerns, there remains a pressing concern over whether these changes amount to either concrete accountability or, better still, actual organizational change (Verbruggen 2022; Salminen and Rajavuori 2019).

[36] Lamenting the discrepancies in defining addressee business entities between the CSDDD, the EU's Accounting Directive (Directive 2013/34/EU, OJ L 182/19, June 19, 2013), and Germany's Supply Chain Act (2021).

VII. The Transnational Regulatory Context of #ModernSlaveryLaw

A brief recap of modern slavery law's evolution further helps put the CSDDD in perspective. The Directive's immediate precursor was the already-mentioned German Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz* or LkSG) (2021; in force since January 2023) (Koos 2022; Rühl 2022, 3[37]). The LkSG grew out of the acknowledgment that only a fraction of German companies—between 13 and 17 percent—were making efforts to scrutinize the human rights impacts of their global networks. The Berlin lawmakers' response was to develop a more robust regulatory regime, specifically obliging the management boards of companies incorporated in Germany and with at least three thousand employees (and, as of January 1, 2024, those with at least one thousand employees), to assume responsibility for conducting effective human rights due diligence (HRDD). Expanding this responsibility to a wide range of human rights-relevant labor rights (that is, those pertaining to child, forced, and slave labor), collective labor rights and equality rights, and safeguards (that is, against withholding adequate remuneration, harm to the environment, or the use of private and unsupervised security forces to inflict harm), the LkSG also endorses a broad interpretation of a corporation's supply chain that includes its direct and indirect suppliers.

The LkSG's focus is on companies' due diligence mechanisms, including an annual reporting obligation and penalty fees for noncompliance of up to 2 percent of annual revenue. However, as for creating a novel legislative basis for civil liability, the law regrettably fell short: Under the LkSG, individuals may not initiate remedial action themselves but can only empower a domestic union or NGO to pursue claims in their name. Two years after the LkSG's entry into force, its success or failure is not self-evident but skepticism is well warranted, especially when it comes to the unambitious regulation of companies' ecological responsibilities (Hafner and Simon 2024[38]). Furthermore, and comparable to the resistance that was mobilized against the final version of the CSDDD, the German Supply Chain Due Diligence Act, in its current form, reflects some of the pushback from within business lobbies that emphasized the "monstrous" bureaucratic burdens and costs for medium-sized companies and other "anticompetitive" consequences.

Certainly, neither the German law nor the EU's CSDDD emerged in a vacuum. Arguably, the regulation of global value chains has become a pressing worldwide concern and subject matter of public debate and governmental action, and Germany's LkSG must also be seen this context. But, despite the accelerating speed at which domestic regulators have been tabling related initiatives in recent years, in substance these laws continue to prioritize transparency over actual operational change. This reiterates the concern voiced above that a regulatory paradigm that endorses a private law conception will fall short of placing supply chains at the center of bold public regulatory intervention. The climate in which the German law and, soon after, the CSDDD, were drafted and eventually adopted has been shaped, on the one hand, by a growing number of national laws such as the UK's Modern Slavery Act of 2015, France's Vigilance Law of 2017, and the Netherlands' 2019 Child Labour Due Diligence Act (Enneking 2019) as well as, on the other hand, a further intensifying, encompassing critique of lawmakers' repeated failure to aim at the "big picture" in identifying the connections between global value chains, environmental destruction, egregious working conditions, and finance (Cockayne and Oppermann 2018; Crates 2021).

[37] "[W]hat looks big and impressive at first sight, starts to shrink when taking a closer look. In fact, the Supply Chain Act contains a number of limitations that substantially decrease the reach of the new law."

[38] "At present, the SCDDA fails to fulfill its potential as a comprehensive tool in legally addressing socio-ecological transformation conflicts, as its scope misses specific environmental damage as well as subsequent long-term impacts."

The origin of supply chain regulation in the form of state-enacted laws is usually traced back to California's (largely ineffective) Transparency in Global Supply Chains Act (2010), the poorly designed instruments of which were quickly circumvented by corporations (Corporate Accountability Lab 2017; Know the Chain 2015). Of greater significance has been the UK's 2015 Modern Slavery Act, especially in light of recent efforts of incorporating stricter reporting rules and criminal sanctions into the law (Anti-Slavery 2022; Zhang and Wong 2024[39]). In 2017, France's Corporate Duty of Vigilance Law (*loi de vigilance*) was the first to introduce a civil liability for corporations whose noncompliance with their vigilance plan caused damage (Savourey and Brabant 2021). In 2023, Canada's federal Trudeau government, after previous efforts had never made it past initial discussion stages, adopted its own Modern Slavery Act (S.C. 2023, c. 9).[40] As critics have noted, Canada's Act is largely limited to a number of annual reporting duties with regard to the organization's actions to "prevent and reduce the risk that forced or child labour" is used at any step of the production of goods made in Canada or imported into Canada (section 11(1) of the Act) (Phung and LeBaron 2023; Choudhury 2024).

Each of these and other emerging national laws is but a piece in a global jurisdiction-crossing puzzle of norms nominally meant to curb, prevent, or eradicate rights abuses across value chains. Many of the labor, human, and environmental rights–related norms pertaining to global value chains remain "soft law," and whether their teeth may eventually be sharpened by regulatory instruments such as the CSDDD is debatable (Janssen 2024).

VIII. Sustainable Value Chain Governance and the Legal Frontier

The above suggests that the CSDDD as well as the complementing national regulations that are aimed at supply chain sustainability are footnotes in an unfolding account of how powerful political and corporate actors choose to address the challenges hiding under the labels of climate change mitigation and modern slavery law. From that perspective, it seems quite possible that the present-day bet on more transparency, reporting, and disclosure remains within the trajectory of market (self-)governance discussed earlier. The proliferation of nonstate and hybrid norms, generated in often untransparent and largely unaccountable processes of regulatory governance, continue to attract great skepticism (Kampourakis 2021b; Canfield 2022). Whether or not transnational sustainability governance will merely be an extension of that era or become a robust framework with transformative potential depends on whether or not effective levels of stakeholder input, political control, and actor accountability can be achieved. This, however, remains more ideational than concretely emerging, given the repeated déjà vu experiences of corporate lobbying and self-interested obstruction (Paiement 2021, 828[41]).

Scrutinized against a historical political economy backdrop of market governance that remains rooted in the idea of short-term value prioritization and the valorization of private law solutions to (what are

[39] "It used to be that the authority, known in the guidance as the 'first responder,' made the referral purely based on a victim's story. But following the reforms, they additionally had to provide 'objective evidence' such as other eyewitness testimonies or findings from a police investigation."

[40] Fighting Against Forced Labour and Child Labour in Supply Chains Act (S.C. 2023, c. 9) (Canada). https://www.parl.ca/DocumentViewer/en/44-1/bill/S-211/royal-assent.

[41] "Working largely outside the influence of state actors and public authorities, these [multistakeholder] roundtables and councils develop industry standards on labor rights, environmental protection, Indigenous Peoples' rights, and other human rights concerns for clothing, coffee, tea, cocoa, fisheries, forestry, palm oil, and soy supply chains . . . but critics have illustrated that governance tools which live by global market dynamics also die by global market dynamics."

in fact) public concerns, GVCG offers sobering evidence of the remaining challenges for transformative sustainability governance. As compellingly shown by Fourcade (2011), Lothian (2017), Feichtner (2018, 208), and Doganova (2024), the *epistemological* dimension of the political economy of market governance is a key factor in perpetrating short-termism and in what Doganova calls "discounting the future." Discipline-related specialization and echo-chambering—as in the "from CSR to ESG" narratives that are popular in contemporary corporate governance discourses—further delay actual interdisciplinary analysis and transformative agenda creation. This delay is exacerbated by a particular asynchronicity between political economists', business and management scholars', and lawyers' analysis *of* and engagement *with* climate change (Bhaskar et al. 2010; Basu et al. 2024). Supply and value chain governance have long been theorized by business and management scholars but the actual analysis of how law may be used to problematize relationships, inequities, and external effects of GVCs remained of minor importance (Gereffi 2018); similar and pressing challenges characterize the overly siloed and insufficiently interdisciplinary and collaborative research and policy development on climate change (Houghton et al. 2023; Shishlov and Halbheer 2023).

Legal scholarship aiming at the delineation and elaboration of global value chain law as method or field is both recent and vibrant (IGLP Law and Global Production Working Group 2016; Eller 2020, 8; Beckers et al. 2021). Both value chain governance and climate change scholarship stand to benefit from critical historical and political economy analysis regarding the correlation between governments and corporations expanding their economic and regulatory reach beyond existing territorial boundaries and the increasing sophistication of GVCs as governing regimes in themselves (Salminen and Rajavuori 2021). Seen predominantly through the lenses of management or contract, respectively, GVCs risk being depicted in an abstract space in which efficiency-directed questions drive abstract choices between different types of corporate organization or contractual network. Historically, by contrast, GVCs have been the most pertinent organizing schemes of globally interconnected economic and financial exchanges throughout the last one and a half centuries, if not since long before. They were part and parcel of the globalizing economy, which still today appears to remain *terra incognita* in many law schools' curricula. While the term "global value chain" emerged in the 1970s out of preceding conceptualizations of "commodity" and "supply" chains, the actual practice of contractually and institutionally tying generators of resources, manufacturers, logistics and transport providers, sellers, and buyers into effective webs of exchange has precursors that extend to the decades before (de Backer and Miroudout 2014, 45).

Echoing some of the challenges that legal theory and doctrine as well as political science (Ruggie 2018, 318[42]) have experienced with the phenomenon and reality of multinational corporations (Calliess 2011, 603;[43] Alvarez 2011), global value chains continue to be missed by legal doctrine and thus escape effective legal analysis and interpretation. It is important for lawyers to recognize that "trade law" as a summary term for the multiplicity of legal regimes governing border-crossing exchanges of resources, goods, services, peoples, and monies should not be mistaken as representative of law reacting, adapting to what Donatella Alessandrini highlights as an allegedly "exogenous economic

[42] "Surprisingly, there is no legally precise and universally accepted definition of the multinational enterprise."

[43] "[T]he analysis of transnational corporations from a specifically legal perspective remains underdeveloped. Whereas numerous economic contributions treat the inner structure of transnational corporations, law scholars largely focus on the external relationships of the corporation and regulatory issues like supervision, taxation, or liability. It is remarkable that even the most important economic standard literature on transnational corporations is hardly taken into account in the legal discourse."

reality" (Alessandrini 2022, 620). Instead, Alessandrini rightly argues, law played a key role in grounding and facilitating the proliferation of GVCs (ibid.).

Indeed, a wide range of legal fields have been providing the doctrines, the concepts, and the justifications for institutionalized and protracted practices of extraction of resources and lands and of displacement of people while ultimately shielding and insulating corporate actors from accountability through principles such as separate corporate personhood and forum non conveniens (Salminen and Rajavuori 2021, 236–37; Verbruggen 2022, 542[44]). Here, too, however, the focus is on the gaps left by existing and emerging legal instruments (Gustafsson et al. 2023, 854;[45] compare with Baars 2020; Zumbansen 2022).

The persuasive logic of this concern with "gaps" chimes with the widely acknowledged fact of an absent global regulator who should/would be in charge of tackling this problem on a planetary scale. On the one hand, recognizing that national labor (as well as corporate) laws have not kept pace with the particular vulnerabilities generated and perpetuated through global value chain operations (Crane et al. 2019, 89[46]) and, on the other hand, lamenting the fact that there is no global regulatory authority with adequate legitimacy and enforcement muscle and that the transnational patchwork of inefficient rules, standards, recommendations, and guidelines risks being perceived as normal and, by consequence, as not amendable. Supply chains as facts of life or, as Anna Tsing argued, as an expression of contemporary "human condition" (Tsing 2009, 150–51[47]), then risk being imagined as existing outside of the law either in the sense of being depicted as entities that law cannot touch (the "insulation" and "accountability problem") or as entities that can exist without the law in the first place (the "constitutional" or "legal artifice problem" (Johns 2007, 136[48])). In both instances, the global value chain and, more particularly, the many different actors, institutions, and processes that constitute it, are imagined as either unrelatable (subjectable or accountable) to law or as somehow being able to exist independently from law altogether.

Legal economic sociologists, already at the beginning of the twentieth century, were convincingly arguing that law plays a central role in equipping differently situated actors in society with different degrees of power (Hale 1923, 473; Pistor 2019). This power directly relates to the parties' ability or inability to shape the dynamics, substance, and outcome of bargaining processes and (other) disputes. In recent years, these insights have been revisited again as part of a wider (re)engagement with the political and economic functions of legal rules and the institutions that generate, administer, and adjudicate them (Deakin et al. 2017; Grewal 2014; Britton-Purdy et al. 2020, 1800). The contribution of Law and Political Economy (LPE) scholarship to the continuing interrogation of governance gaps

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[44] "It has long been recognised for the equity model that the concepts of 'separate legal personhood' and 'limited liability' are deployed by corporations to outsource high-risk activities to formally independent subsidiary firms. These firms are 'judgment-proof' whenever the extent of liability is higher than the equity they own, whilst courts only exceptionally revert liability to the parent firm via the doctrine of 'piercing the corporate veil.'"

[45] "While new supply chain regulations have widely been interpreted as an important step for hardening corporate accountability, recent studies have criticized their lack of stringency . . . , discussed challenges in the harmonization of policies among EU Members States when implementing EU regulations . . . , the merely symbolic compliance of companies with due diligence obligations . . . , and the often weak enforcement of such regulations . . . . and [focused] less on the unlikely but arguably required prospect of approaching GVCs from a structural perspective."

[46] Highlighting the gap between domestic labor law regulation and the particular levels of worker and human rights precariousness characteristic of globally integrated value chains.

[47] "Supply chain diversity needs to be understood in relation to contingency, experimentation, negotiation, and unstable commitments."

[48] Arguing—with Robert Hale—that law shapes the concrete interactions and power dynamics of actors.

and deepening degrees of socioeconomic and political inequality is noteworthy, given how it has garnered widespread attention to what often would have been depicted as technical forms of governance and administration. Especially in a context in which significant decision-making power regarding access and distribution has over time been placed in private hands and subsequently become subjected to market logics, critical scholars in LPE, finance, and pensions have been able to carve out the key role that law has been playing in facilitating and consolidating such developments. And it is this intervention that is proving helpful if not transformative in illuminating the legal foundations and complicity not only in the extenuation of persisting forms of inequality and environmental degradation in and around global value chains, but also in the financialization of the range of activities, actors, and components across the chain (Ferrando 2020). Building on this and extending the critical scrutiny of agency and power into the formative epistemologies of accounting, on the one hand, and into the digital infrastructures of technical regulation, on the other, scholars have been pushing toward a detailed anatomy of the relationship between law and power (Feichtner 2018; Feichtner and Gordon 2023; Doganova 2024; Streinz 2019; Fisher and Streinz 2022).

IX. The CSDDD and the Financial Sector

The intervention made by the CSDDD on the transnational scene of hard/soft regulations with regards to human rights and climate-related violations hardly occurred in a vacuum. As international commentators compare the CSDDD with ongoing national efforts to mitigate or eradicate modern slavery across global value chains (Felbermayr et al. 2024, 29;[49] Choudhury 2024[50]), what comes into view is a broader yet still fragmented fabric of supply chain governance of intersecting soft and hard law norms.

As noted before, the challenges of these efforts have long been well known, and they are bound to increase given the realization that supply chain activities have inevitable and dramatic climate change impacts. Even, or perhaps especially, in a context in which one may be inclined to settle on a compromise that at least compels corporations to "do better" in terms of transparency, it is important to recall the actual stakes. These are, according to irrefutable science, extraordinarily high and should be considered, as Leo Strine argues in his article in this special issue, nonnegotiable facts. In other words, sustainable global supply/value chain governance must be imagined beyond traditional concepts of workplace conditions and salaries and instead be framed to address the Anthropocene and Capitalocene dimensions of human, including corporate, activity of both nonfinancial *and* financial entities against the background of proven climate change of dramatic proportions (Haraway 2015; Moore 2016; Edelman 2020; Macdonald 2023, 608; Li et al. 2023, 6; Hertzig and Moon 2013, 1874[51]).

That, in turn, necessitates coherence and synergies between regulatory acts originating from the same rule-maker as in the case of the EU but also with a view to norms addressing supply chain actors who by default operate across different jurisdictions. This, one might say, is much easier said than done. While the significance and impact of both the UN Guiding Principles and the OECD Guidelines for the elaboration of national and regional supply chain and sustainability laws is widely recognized

[49] "The CSDDD closely follows the Corporate Sustainability Reporting Directive (CSRD) [and] . . . is part of a wider trend to shift responsibility for enforcing international law beyond governments to individuals and businesses."
[50] "[C]ompared to the CSDDD or comparable legislation in European countries, the law falls short."
[51] "CSR is portrayed as having failed to tackle the systematically unsustainable behavior that has been prevalent in the finance sector. [A]n even more severe view . . . suggests that CSR has legitimized a fundamentally irresponsible social agenda of extending credit to people who could not repay loans and then risked even greater financial difficulty."

(McCorquodale and Nolan 2021, 456;[52] Bosch 2024; Rühl 2022, 2[53]), their legal nature as international soft law translates into greater variety in how they shape subsequent regulatory efforts on national and supranational levels (Sinnig and Zetzsche 2024, 14; see also Momsen and Schwarze 2018). As for the climate change transition plan included in the Directive, the compromise includes "the requirement for companies to set emissions reduction targets and implement plans to transition their business to align with the 1.5°C temperature goal." This obligation, however, does not apply to a significant part of the financial sector (Client Earth 2023). Notably, the financial sector has, despite its deep and longstanding implication in virtually every aspect of the climate change-inducing global economy, and moreover through its driving accounting, valuation, and measuring epistemologies that are making "nature investable" (Sierra Club 2023; Arjalies and Gibassier 2023; Muniesa and Doganova 2020; Sullivan 2018), repeatedly held only to varying and distinctly limited forms of disclosure requirements. Under the Directive, notably, firms are only obligated to provide due diligence reporting if it concerns a company covered under the Directive and only with regard to its own organization's upstream activities. Effectively excluded therefore are the financing services provided to companies that are in fact engaging in climate change-increasing activities (Reclaim Finance 2024[54]).

The CSDD does, however, include a review clause, based on which an inclusion of the financial sector in the Directive's obligatory scope may be established at a later point in time. This is noteworthy given the key role that finance plays in the facilitation, maintenance, and expansion of environmentally harmful and effectively unsustainable economic activity. The limited time horizons applied to monetary policy and credit markets conflict with the bounded rationalities of long-term invested assets by some of the world's largest institutional investors—pension funds (Carney 2015;[55] New Climate Institute 2021[56]). As Professor Janis Sarra highlighted in 2022, "Pension funds are large diversified institutional investors with long-term investment horizons, so they cannot diversify away from systemic risk such as climate change and income inequality, and that system-level investment lens needs to be keenly attuned to intergenerational responsibilities as part of their fiduciary duties" (Sarra 2022).

X. The CSDDD and Transnational Climate Reporting

From a formalist-institutionalist perspective on global supply chain law, each new contribution that a legislative body makes to the transnational fabric of supply chain law and governance may be considered an element of expanding and deepening sustainability governance. In that respect, the CSDDD complements a number of other existing and emerging EU norms under the umbrella of the

[52] "The United Nations Guiding Principles on Business and Human Rights 2011 ('UNGPs') is the key international document on business and human rights and incorporates the concept of HRDD in its framework. Although it is not legally binding, it is considered as the 'global authoritative standard on business and human rights,' and has influenced other international standards (discussed below) and has also been considered in national courts."

[53] "The German Supply Chain Act – as other national legislations in the field – goes back to the UN Guiding Principles for Business and Human Rights, the so-called Ruggie Principles."

[54] "[F]inancial actors will only have to ensure due diligence on their non-financial activities. This includes, for example, ensuring that advertising brochures are printed on paper from sustainable forests and that the plastic of bank cards can be recycled. However, there is nothing on financial support, such as investments in fossil fuels. This is a huge missed opportunity to regulate financial services."

[55] "The horizon for monetary policy extends out to 2–3 years. For financial stability it is a bit longer, but typically only to the outer boundaries of the credit cycle—about a decade. In other words, once climate change becomes a defining issue for financial stability, it may already be too late."

[56] "Beyond the creation of new financial products, uncertainty about the economic impact of climate change, pricing and hedging for climate risk, further complicates the estimation of risk premia and the overall social cost of climate change."

EU's Green Deal agenda (European Commission 2019a). The limitations, however, that have been identified as regards the CSDDD and its preceding national supply chain transparency laws are noteworthy. In addition to the repeated pattern of limited application scope and what remains a soft touch on corporations that are actually and consciously maintaining—directly and indirectly—unacceptable work conditions, the CSDDD perpetuates an ambiguous relationship between governance instruments aimed at actors in the "real" versus those in the "financial" economy. In that regard, the Directive as a regulatory instrument occupies an ambiguous place in relation to norm instruments specifically targeting financial actors. As mentioned, the EU Directive postpones the adequate and consequential inclusion of financial actors in its applicatory scope for the time being. That, in turn, means that it complements but does not directly interact with existing and still-evolving norms addressing the financial sector as regards the disclosure of climate change-relevant activities. The numerous standards and rules that pertain to disclosure requirements for financial actors mark a vibrant regulatory space with norms being promulgated by governmental and private actors alike. The former notably include, inter alia, the EU Taxonomy[57] (Minas 2022, 385–36), the Corporate Sustainability Reporting Directive (CSRD)[58] (Baumüller and Grbenic 2021, 371[59]), and the Sustainable Finance Disclosure Regulation (SFDR).[60] Premised on the objective of channeling capital toward more sustainable investments while curtailing greenwashing practices, the SFDR requires Financial Market Participants (FMPs) and Financial Advisors (FAs) to disclose information pertaining to environmental, social, and governance (ESG) activities at both the entity level (Level 1) and the product level (Level 2).[61] In January 2023, the CSRD replaced its predecessor, the Non-Financial Reporting Directive (NFRD),[62] with the aim of creating a regulatory instrument to tighten companies' reporting requirements of their operations and across their entire supply chains (Truant et al. 2024, 2; Ecochain 2024[63]). Another important feature is the CSRD's significantly expanded scope of application, now covering around fifty thousand undertakings compared to the NFRD's 11,700 (Cleary Gottlieb 2021).

As part of its aim of creating more standardization and transparency for ESG disclosures, the CSRD introduced the European Sustainability Reporting Standards (ESRS)[64] to provide a common methodology and comparability across companies and sectors. As evidenced in the following section, this development requires closer scrutiny.

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[57] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the Establishment of a Framework to Facilitate Sustainable Investment, and Amending Regulation (EU) 2019/2088. OJ L 198/13. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852&from=EN.

[58] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting. OJ L 322/15. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464.

[59] Highlighting the systematizing and standardizing role played by the CSRD in relation to the SFDR and Taxonomy.

[60] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on Sustainability-Related Disclosures in the Financial Services Sector, OJ L 317/1. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2088&from=EN.

[61] Sustainable Finance Disclosure Regulation, 2021, Art. 4 and Art. 7, respectively.

[62] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as Regards Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups. OJ L 330/1. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0095.

[63] Enlarging its applicatory scope from eleven thousand to fifty thousand companies in Europe.

[64] Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 Supplementing Directive 2013/34/EU of the European Parliament and of the Council as Regards Sustainability Reporting Standards. OJ L 2023/2772. https://eur-lex.europa.eu/eli/reg_del/2023/2772/oj.

A. The Mirage of Climate Change Reporting: From Materiality to Double Materiality

As noted by one commentator: "Unlike financial reporting, corporate sustainability reporting has developed its own, novel approach to materiality" (Mezzanotte 2023, 634). The key here is a *double-materiality* standard that complements the materiality standard with its focus on the impact of environmental risk on the financial value of a company ("financial materiality"/"single materiality") (Stiroh 2022, 3). In contrast, the double-materiality standard addresses *the company's impact on its environment, including humans and nonhumans affected by its operations* (EFRAG Sustainability Reporting 2024, para. 35[65]). As Simon Wong notes, "'Double materiality' seeks to broaden corporate sustainability reporting from its former investor-centric focus on how sustainability factors impact a company and its financial prospects (single 'materiality' or 'financial materiality') to an equal emphasis on how the firm is impacting society and the environment ('impact materiality')" (Wong 2023). These in turn must be brought to a level of compatibility and interoperability with the reporting standards issued by the International Sustainable Standards Board (ISSB), which was created in 2021 by the IFRS, the International Financial Reporting Standards Foundation (EFRAG Sustainability Reporting 2024; European Commission 2024). The IFRS Foundation operates as a nonprofit in the public interest to set standards for corporate disclosures and, particularly, to promote transparency and accountability. Both the ISSB and the IASB, the International Accounting Standards Board, operate under the umbrella of the IFRS, with the ISSB having been created to complement the longer-going accounting standards-setting activity of the IASB with a concrete focus on ESG.

The IFRS Sustainability Disclosure Standards (ISSB Standards) were drafted after the ISSB had issued its Standards in June 2023. The European Financial Reporting Advisory Group (EFRAG), followed suit to work on reporting standards that would echo the ISSB Standards' specific focus on climate-related reporting and elaborated the European Sustainability Reporting Standards (ESRS). The ESRS were made mandatory under the EU's Corporate Sustainability Reporting Directive (CSRD), which was introduced to replace the Non-Financial Reporting Directive (ISS Corporate 2023[66]). Of central importance is the understanding of materiality. The definition of financial materiality in ESRS is aligned with the definition of materiality in IFRS S1 General Requirements for Disclosure of Sustainability-Related Financial Information. Both sets of standards include common defined terms, and most of the disclosures in ISSB Standards related to climate are now included in the ESRS. With a focus on the "entity's prospects," IFRS 1 mandates a reporting entity to disclose information about its sustainability-related risks and opportunities, based on which users of the entity's financial reports are in a position of optimally assessing how the entity's interactions with its stakeholders, society, the economy, and the natural environment—across the entity's value chain—can be expected to affect the entity's cash flows, its access to finance, or cost of capital over the short, medium, or long term.

In line with longstanding financial reporting standards, under the ISSB Standards, information is *material* if omitting, misstating, or obscuring that information could reasonably be expected to influence decisions that primary users (mostly investors, also including lenders and other creditors) of

[65] "Impact materiality and financial materiality are often intertwined . . . . The undertaking's impacts on people or the environment, combined with changes to strategy—including in investments—as well as in management decisions made to address such impacts, may give rise to risks and opportunities. Material risks and opportunities generally derive from impacts and dependencies."

[66] "Both sets of rules, while representing substantially different perspectives on the core concept of materiality signal an unprecedented level of awareness globally of the urgency of addressing and seeking to mitigate the unfolding climate crisis. Yet the scope of ESRS extends far beyond the topic of climate change—in line with the EU's broad environmental and social commitments under the sustainable growth strategy."

general-purpose financial reports make on the basis of the reporting entity's financial statements and sustainability-related financial disclosures. Noteworthy is not only the wide range of available standards the reporting entity must draw on when preparing its IFRS 1 disclosure, but also the combination of official standards and emerging reporting practices by peer companies in the industry or geographical regions (McMillan 2024). This will further boost the sustainability consultancy business while, hopefully, encouraging more concrete and sensitive stakeholder engagement that goes beyond etiquette rubber-stamping (David-Chavez and Gavin 2018; Reyes-García et al. 2024). By contrast, IFRS 2 focuses on climate-related risks and opportunities. "The objective of IFRS S2 is to require an entity to disclose information about its climate-related risks and opportunities that is useful to users of general purpose financial reports in making decisions relating to providing resources to the entity." (IFRS 2023) Following, as is the case for IFRS 1, the mandate of the TCFD—the Taskforce on Climate-Related Financial Disclosures (disbanded in 2023, with the IFRS assuming its functions)—IFRS 2 requires reporting entities to distinguish in their report between the four aspects of governance, strategy, risk management, and metrics and targets. The specification under "strategy" in IFRS 2 is telling: "With respect to strategy, a reporting entity is required to (i) use climate-related scenario analysis to assess climate resilience, (ii) consider the applicability of the industry-based disclosure topics and metrics and cross-industry metric categories, (iii) disclose its current and anticipated changes to business model, current and anticipated direct and indirect mitigation and adaptation efforts, climate-related transition plan, and plans to achieve climate-related targets, and (iv) disclose expected changes to its financial performance and cash flows given its strategy to manage climate-related risks and opportunities" (McMillan 2024, 4).

How effective the consolidated approach pursued by the ISSB will turn out to be in relation to developments across different jurisdictions remains to be seen, not least with a view to both lobbying and litigious pushback in many cases against an arguably ambitious standard setter. Unsurprisingly, a crucial point of contention beyond the scope of materiality-based reporting lies in the recent shift to also include double materiality as a reporting category. Within the financial sector prevails a wide range of opinion regarding the operability and the actual implementation of the double-materiality standard. The skepticism is part of a larger concern with the lack of reliable, actionable, and sufficiently precise data on which investors and consumers may base their decisions (ISS Corporate 2023[67]). Arguably, such concerns would seem very different, if the—existing—rich research and continuing anthropological ethnographic engagement with climate change-vulnerable communities were taken into account (Granderson 2014; Reyes-García et al. 2024).

This debate reveals the challenges that face an environmental protection/climate law approach from within a self-referential universe of risk management, which has a nearly century-old pedigree along with a set of measures and criteria that have since been established and tried. As noted by Stiroh: "The importance of a double-materiality perspective becomes larger in a broader framework with macroprudential objectives that incorporate financial sector externalities. The macroprudential intuition is straightforward: incorporating the impact of a bank's activities on other banks' risks increases the aggregate impact of the financial services that contribute to climate change. The current framework for globally systemically important banks (GSIBs), however, does not seem like the appropriate approach to deal with the financial risks of climate change" (Stiroh 2022). The financial

[67] "The lack of access to reliable data is widely viewed as a key obstacle in sustainable finance. While the new disclosure rules seek to address this, they should not be expected to generate large volumes of immediately comparable data from the start. Both IFRS Sustainability Disclosure Standards and ESRS include a large amount of narrative and descriptive indicators that require further analysis."

accounting practice to apply discounting methods to assess the future value of present-day investments has dramatic effects on operationalizing *both* materiality and double-materiality standards when it comes to the assessing climate change-related risks (Polasky and Dampha 2021; Doganova 2024).

B. Climate Reporting, Legal Risk, and Corporate Purpose

Again unsurprisingly, and closely related to the alleged challenges arising from including a double-materiality standard in mandatory reporting systems, there is much discussion regarding the still largely uncharted territory of *legal risk* in responding to the new requirements. The concerns driving the discussion center around "financial stability" and "uncertainty" and, in that vein, largely reiterate the status quo understanding of material risk, which comes down to investors' anxiety regarding the development of their holdings. As if climate change "never happened," these concerns naturally extend from the stock taking across the financial sector after the global financial crisis, when—to the surprise of absolutely no one—it was "discovered" that the financialization of real estate on a globally expansive and locally invasive scale generated "systemic risks" (Legg and Harris 2009, 363). The really arising challenge is how to adapt existing risk management parameters to account for climate change in a way that breaks the spell of nature's assetization. The "navigation" of climate-related risk, ESG mandates, and public expectations—which is all the hype in the bubbling attention economy of financial circles, business consultancies, and sustainable governance and finance pundits—follows the playbook of "ethical" and "responsible" reform, while deliberately falling far short of actually altering the foundations of a profit-geared, future-discounting financial system in any meaningful way.

The embrace of double materiality thus has yet to prove its worth for a truly transformative ecological agenda. The political cards appear to be clearly stacked against such an agenda, not only in the reeling postpandemic climate of high inflation and deepened social insecurity, but also in acknowledgment of the fundamentally complex relationships between firms and their social and natural environments (Mezzanotte 2023, 635–36; European Commission 2019b, 6–8). While the innovation of the double-materiality standard treats this relationship as a simple reversal of perspective, namely of the hitherto governing one of (simple) materiality, it remains largely unsaid what it would *actually* mean to take into account, that is, to problematize, the place of the corporation *in* and its impact *on* the world. The seemingly unending string of disappointing compromises as outcomes of efforts to bring this structural conditionality of financial capitalism into the purview of ESG and sustainable reporting regulators underscores the deep divide between what is being theorized across a range of critical scholarship in political economy, data studies, geography, and law and what seems possible in the realm of political bargaining.

A further sobering illustration of the remaining challenges was recently provided when, as noted above, the US Securities and Exchange Commission issued its long-awaited Disclosure Rules on March 6, 2024 (Securities Exchange Commission 2024a). "Pro-environment" critics highlighted the lack of ambition of the Rules, especially with regards to the SEC failing to mandate a reporting requirement stretching across the entire supply chain (IFRS 2023, 19) ("climate-related physical risks"), despite its best, original intentions. Ultimately, under immense pressure from within the corporate and financial sector, the Commission gave up on its initially proposed approach to include "Scope 3," supply chain–based greenhouse gas emissions disclosure (Field and Hanawalt 2024;

Deloitte 2024). The final Disclosure Rules reiterate the SEC's longstanding focus on materiality in the traditional sense of *financial* materiality (McFarland 2009, 291–92; C. Williams 1999, 1261[68]).

Meanwhile, the Rules specifically build on the SEC's 2010 Guidance, which set out the necessity to expand the scope of risk factors to consider the impact of climate change on the company's business or financial condition (Securities and Exchange Commission 2024a). Notably, the SEC describes materiality in its Disclosure Rules of March 6 in the following way: "[A] matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote or such a reasonable investor would view omission of the disclosure as having significantly altered the total mix of information made available. The materiality determination is fact specific and one that requires both quantitative and qualitative considerations."[69]

As was widely expected, the SEC's release of its Reporting Rules in March 2024 prompted an enormous wave of immediate litigation, which is further delaying the implementation of the Rules for an unknown length of time. Yet, the scope of the March 2024 Rules—that is, the exclusion of Scope 3 emissions—and their uncertain fate are not merely a local event. The US debate on climate reporting in the financial sector in that respect unfolds in a context that is on the one hand shaped and rendered somewhat complicated by the concurring corporate governance debate around "corporate purpose," triggered in large part by the 2019 "manifesto" by the Business Roundtable, a collective of the largest US stock corporations (Business Roundtable 2019; Lund and Pollman 2023; Akintunde and Janda 2023, 43–44[70]), and, on the other, by the prevalence of somewhat overlapping and insufficiently coordinated climate-reporting standards across different jurisdictions.

The debate around corporate purpose has since turned transnational, rekindling semirecent discussions around the alleged rise and fall of shareholder valueism, the varieties of capitalism, and the ups and downs from CSR to ESG (Hill 2024). Meanwhile, the SEC's governance of climate-related reporting duties is equally understood as a transnational event, with lessons or warnings received and weighed globally in real time. In Europe, the introduction of the double-materiality standard constitutes a significant development and complements that of the standards developed by the ISSB, which in June 2023 issued its first two IFRS Sustainability Disclosure Standards (IFRS n.d.). While the disclosure requirements of IFRS S1 are designed to enable companies to communicate to investors about the sustainability-related risks and opportunities they face over the short, medium, and long term, IFRS S2 sets out specific climate-related disclosures and is designed to be used with IFRS S1 (Hennaux 2023).

Parallel and building on the momentum achieved by the Non-Financial Reporting Directive over the past decade, but also in an effort to address the NFRD's shortcomings in providing a more robust and applicable reporting standard, the EU advanced its work on the CSRD and the SFDR and eventually mandated the European Financial Reporting Advisory Group (EFRAG) to develop disclosure standards that became the European Sustainability Reporting Standards (ESRS), in force as

[68] Discussing the SEC's hearings on establishing an Advisory Committee on Corporate Disclosure in 1974 to collect public input regarding the questions "How should the standard of 'materiality' be defined under the federal securities laws?" and "Should the SEC require corporate filings to contain more information regarding environmental and other socially-significant matters not traditionally considered of direct relevance to investment or shareholder voting decisions?"

[69] Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 C.F.R. 210, 229, 230, 232, 239, 249. https://www.sec.gov/files/rules/final/2024/33-11275.pdf.

[70] Arguing for a mandatory statement of purpose in corporate articles.

of 2024. ESRS 1 ("General Requirements") identify a set of general principles that are to be applied when reporting according to ESRS but do not themselves set specific disclosure requirements. Meanwhile, ESRS 2 ("General Disclosures") are mandatory for all companies under the CSRD and identify the information that must be disclosed for all sustainability matters if they are material. Where a company identifies an aspect of its operation as not materially relevant in relation to climate change and in turn not warranting disclosure, it is required to provide an explanation.

XI. Modern Slavery and Climate Change as Analytical and Regulatory Regimes: Toward a Sustainability Law Imaginary?

The example of climate change reporting in relation to the unwieldy field of climate change law and governance bears important lessons. The complexity of "modern slavery law" and its elaboration both as an analytical and as a regulatory regime extends into the shape and structure of associated policy discourses and regulatory intervention proposals. Notably, in contrast to the seeming ubiquity of "supply chain governance," "climate change," "sustainability," and "ESG" being varyingly introduced as fighting words, as contested policy goals (EcoWatch 2024; Wolman 2024), and as catchall vocabularies to address the complexities of global inequities, vulnerable work demographics, and a green (and just) transition (Newell and Mulvaney 2013; South to South Just Transitions 2022; Goldthau et al. 2020[71]), the regulatory landscape that has been emerging under its auspices is at best a patchwork of fragmented, sometimes conflicting rules and standards (Szablewska and Kubacki 2023, 2; Hampton 2019, 240–41[72]). Attending to these dynamics is an increasingly intricate scholarly literature highlighting the shortcomings of existing framing approaches that categorize supply chain governance and labor violations predominantly as a "developing country" problem (Crane et al. 2019, 87) or arguing for a more differentiated understanding of knowledge impasses in relation to the actual operation of supply/value chains in concrete contexts of affected communities (Knöpfel 2021, 1037; Szablewska and Kubacki 2023, 7). As keen observers of CSR- and ESG-related regulation have long been emphasizing, a critical interrogation of not only *whether* but *how* law, and which law, is being mobilized may yet have significant impact on how lawyers can understand their discipline and the interventions that can be made in its name (Sjåfjell and Mähönen 2024;[73] Choudhury 2023, 180[74]). The role that financial valuation methods have been playing in shaping a thus integrated rather than decoupled economic and financial system is being emphasized by lawyers and sociologists in an effort to dispel the myth that a return to a nonfinancialized economy is possible simply by taming the "excess" and "greed" of financial actors (Feichtner and Gordon 2023 Doganova 2024). What follows is that for an effective and transformative sustainability agenda it will be key to acknowledge the fundamental connections between value chain and climate change/financial reporting governance.

In practice, such efforts continue to be hard tested. Institutionally, the landscape is crowded and confusing to both experts and lay people. It is marked by an ever-faster emergence and dissemination of ESG-oriented governance instruments, norms, guidelines, best practices, and codes of conduct,

[71] Highlighting the lopsidedness of investments in renewable energies from the North to only a few countries in the South.
[72] "The complex interdependence of state and non-state actors has led to areas of governance at the intersection of business and human rights that are 'overlapping, contested and fluid.'"
[73] "[R]eforming company law is a key piece in the jigsaw puzzle of regulation for sustainable business."
[74] "[T]he root cause of many BHR problems is the way in which corporations operate, a *modus operandi* that is supported by state-sanctioned corporate law."

generated by enterprises, nongovernmental actors, and regulators (Sarra 2022[75]). The wider societal comprehension of this vast political field is contestable in an era of highly sectorialized and individualized personalized "news" consumption (Ejaz et al. 2023; McCaffrey n.d.) and a growing gap between what is being discussed at the dinner table around climate change and the actual plurality and specialization of ESG and sustainability-related rulemaking. As Jessica Camille Aguirre reported in the Sierra Club's *Sierra* magazine in fall 2023: "ESG has become an easy scapegoat because so few people know what it means. According to a Gallup poll released in spring, 37 percent of Americans reported that they are very or somewhat familiar with ESG, while nearly half reported that they are unfamiliar with it. One poll from Climate Power found that the majority of voters have never heard of it" (Aguirre 2023).

The apparent ubiquity of ESG governance norms belies the continuing global unevenness across that landscape. Climate change policy and proposals of a "green transition" continue to be generated with little to no regard to material continuities in the global South and certainly with insufficient participation of global South-based representatives. According to Christine Schwöbel-Patel, "this highly symbolic side of the mobilisation of international law hides the material continuities in the way in which international law is employed and mobilised to protect capital, capital accumulation, and wealth concentration in the green transition" (Schwöbel-Patel 2023a; Baars 2020; Kavuri and Ramanathan 2022, 175[76]). And Ioannis Kampourakis dryly reminds us that, with regard to the continuing drafting of norms focused on transparency instead of on material change, "enforcement always concerns the first-order obligation of non-financial transparency rather than the second-order obligation of sustainable corporate activity and incorporation of labour and environmental standards across supply chains. It is eventually up to the learning pressures exerted by the markets and civil society to trigger the envisaged corporate self-regulation and embedment of social values within corporate norms" (Kampourakis 2021b, 136).

This context is not circumstantial, nor should it be dismissed amid rising disillusionment around nonuniform ESG standards, the so-called "ESG alphabet soup" (Kinywamaghana 2021; Majdanska 2022; Esty et al. 2020, 3[77]), persistent greenwashing (Parguel et al. 2011; Yousfi and El Kateb 2023), as well as consumer passivism (Szablewska and Kubacki 2023, 6[78]). The alarming speed at which instances of false reporting and failure to act on the part of private actors continue to make the news is indicative not only of the continuing relevance of interrogating, particularly interrogating corporate (social and environmental) responsibility, but also of the frustrating inadequacy and inefficacy of existing rules.

[75] "ESG has evolved from a matter of principle where investors aligned in the 1970s around key social concerns such as apartheid in South Africa; to the notion of an investment product the 1980s; to development of social indices to track ESG and socially responsible investing in the 1990s; to this current moment in time, where we see some global convergence on the importance of sustainable development and effective ESG governance. The Principles for Responsible Investing (PRI) now have more than 2,500 signatories investing $90 trillion."

[76] "[F]ar less recognition has been accorded to the climate change jurisprudence emulated from the Global South."

[77] "ESG data and information made public are collected, moreover, by private data companies . . . and then redistributed (in wide-ranging and often fundamentally inconsistent ways) as sustainability metrics that are sold to the investor marketplace."

[78] "[E]ven when consumers have information about instances of modern slavery, they typically take little action."

This paper has argued that as with #ModernSlaveryLaw both as a means of virtual scandalization and as an aspirational field of legal conceptual and doctrinal imagination (Caruana et al. 2021, 267[79]), climate change law, too, should be understood and engaged as potentially one of the most if not the most important conceptual and political challenge facing regulators, policy makers, but also educators today (Graham 2021, 410–11). Crisscrossing between political exigency, actually impactful norm creation, and scholarly discourse, climate change law lingers between an obvious and pressing task that needs getting done and an overwhelming challenge. Given lawyers' consciousness of tradition and history, their driving concern remains one of reform, not revolution. Law evolves in the smallest of steps, advancing from one incremental adaptation to the next. During all that, law is so deeply woven into the social, cultural, and economic fabric of the society in which it lays its claims to validity that the question of law's agency remains a key democratic concern (Stone 1966, 3[80])—as well as an educational one (Young 2021, 352; Chen 2023, 12[81]). Kim Bouwer and her collaborators recently noted that "[c]limate change is still perceived as a niche topic—studied by those interested in 'green' issues and neglected by everyone else—rather than the socially pervasive issue that it is" (Bouwer et al. 2023, 240). And Danielle Ireland-Piper and Nick James argue that "disagreement regarding the existence or causes of climate change or the need for climate change law does not affect the actual existence of such a body of law, and even the most climate change-skeptical of legal educators must accept that employers prefer to see graduates equipped with an understanding of current and future regulatory frameworks" (Ireland-Piper and James 2021, 321).

Climate change has been impacting infrastructures and human and natural habitats on so many different levels that it places attending governmental institutions under severe stress (Lindvall 2021, 8;[82] Povitkina 2018, 412[83]). Seeing the urgent development of problem-adequate *climate change law* as a democratic project is prompted by the overarching challenge posed by climate change (Klein 2014; Gonzalez 2020, 425;[84] Lindvall 2021, 9[85]) and, more specifically, how political strategies around, say, environmental policies can be seen in relation to an infinite number of societal functions and operations. The sensibility to this kind of interconnectivity is reflected in the expansion of discussions around climate change in recent years toward more comprehensive, critical engagements with system questions related to capitalism, finance, racism, and development (Gonzalez 2024, 483–84[86]).

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[79] "As a distinct term . . . 'modern slavery' has barely been incorporated into formal international law, and legal scholarship has tended to focus on related terms such as human trafficking and forced labor."

[80] "Insofar as a particular legal order is itself part of the social order in which it arises the interrelations involved include the influences of extralegal elements of the social order on the formation, operation, change, and disruption of the legal order, as well as the influences of the legal order (or particular parts, kinds and states of the legal order) on these extralegal elements."

[81] "The mainstream climate law pedagogy tends to underrepresent the role, voices, and approaches of marginalized peoples, communities, and states, including Indigenous approaches to human-Earth relationships."

[82] "If greenhouse gas emissions are not reduced and global warming kept within the targets set in the Paris Agreement, the impact on populations, infrastructure and nature will be dire, while governing systems and democratic frameworks will be brought under severe stress."

[83] "Democratic rulers are often shortsighted and focus on short-term gains rather than commit to long-term projects such as climate change mitigation."

[84] Discussing the US Department of Homeland Security's antimigrant, xenophobic rhetoric even with regard to climate refugees.

[85] "The complexity of climate change is one of the prime reasons why democracies have failed to deal adequately with the crisis."

[86] "Caused primarily by the greenhouse gas emissions of the world's most affluent populations, climate change is an injustice rather than a misfortune because it imposes its worst impacts on the racialized and impoverished states and peoples who contributed least to the problem and have the fewest resources to protect themselves from harm."

A key notion for this intersystemic critique is the *Anthropocene*, a term introduced by Paul Crutzen in 2000 to depict, specifically, the need to more adequately address the role of human actors in shaping the environment (Crutzen and Stoermer 2000, 484; Machin 2019). The discussion of man-made climate change disaster has, over the course of the last two and a half decades, spurred a rich and unsettling accounting for the level of human-caused devastation. A central feature of the relevant literature is its focus on a wide range of interconnected and interdependent sectors (Nagan and Otvos 2010, 194; Baker 2015, 566[87]). This is prompting key insights into the drivers and causes of anthropocentric climate change, which are themselves interwoven into longstanding practices of economic and financial policymaking, state transformation, and international development policies. It is through the adoption of such differentiated, interdisciplinary lenses that Anthropocene research has been able to reignite important critical analysis of financialized capitalism, neocolonialism, racism, and the elusive promises of a green and just "transition" (Gonzalez 2015, 411; Whyte 2017, 155).

In a key contribution, Rob Nixon noted that "if an awareness of the Great Acceleration is (to put it mildly) unevenly distributed, the experience of accelerated connectivity (and the paradoxical disconnects that can accompany it) is increasingly widespread" (Nixon 2011, 12). The emergence of Anthropocene studies with their respective claims and contestations of historical periodization versus political mobilization importantly serves to accentuate and render visible the connections between renewed concerns with environmental planetary degradation and pending destruction on the one hand and emboldened critiques of global capitalist organization, of which financialization as well as the North-South exploitation of human and nonhuman resources through global value chains are identified as key drivers, on the other (Carlarne 2022, 144–45; Haraway 2015; Moore 2016).

XII. Conclusion: Polarization, Divisiveness, and Short Horizons—the Political Economy of Climate Change Governance

The key battles still lie ahead in terms of how climate change mitigation policies—including those under the label of ESG—are running up against the decades-old financialization of public services (Palley 2007; Stockhammer et al. 2021), pensions (Skerrett 2018; 2017; Curbelo and Sepp 2024), and company regulation (Braun 2021; Zumbansen 2023; Bruner 2022). Add to that the deeply rooted dependency on nonrenewable energy resources. As Zachary Folger-Lagande and Olaf Weber noted in a 2018 working paper for the Centre for International Governance Innovation (CIGI), "It is estimated that the indirect carbon emissions, which are caused in the financial sector by borrowers, investees and financed projects, are 50 to 200 times larger than the direct impacts of the financial sector . . . . . It is evident that a decarbonization strategy is needed for more than the fossil fuel industry, and will require significant changes to most economic sectors" (Folger-Lagande and Weber 2018) (internal citation omitted). Complementing these concerns, Janis Sarra, a cofounder of the Canada Climate Law Initiative (CCLI), emphasizes that the climate change impact of global value chain operations is intimately tied to the role of the financial sector, as is also reflected in the densifying web of financial disclosure and reporting "regulations . . . , [that are] aimed at discouraging greenwashing in the financial sector, and the proposal for an EU Corporate Sustainability Reporting Directive" (Sarra 2023). And as Florence Dafe and colleagues note, "In the age of financialization, core and peripheral economies alike have moved away from traditional growth strategies focused on fostering industry and have moved toward strategies that rely on expanding financial sectors and/or self-reinforcing cycles of debt growth and appreciating asset values" (Dafe et al. 2024, 536). The critical

[87] "The thread linking poverty, climate change and vulnerability is unmistakable."

engagement with concepts and practices of "valuation" plays a key role in the political battle over a sustainable future. As scholars have been building on sociological and anthropological studies of technology and finance to develop an interdisciplinary analytics of commodification and assetization, it is becoming ever clearer that the roots of fledgling attempts to solve climate change through market operations run deep (Lothian 2017; Moore 2016; Birch and Muniesa 2020; Feichtner and Gordon 2023).

Despite the complexity of this paradigmatic moment of transformation, the spaces for differentiation, let alone democratic, inclusive dialogue, are increasingly precarious (Mishra 2018; Drache and Froese 2022), which in turn feeds into further political fragmentation in already highly diversified arenas of hybrid, delegated, or outright appropriated private processes of policy- and rulemaking (Bowley and Hill 2022; Mattli and Büthe 2011). Ioannis Kampourakis, in a cutting analysis of regulatory evolution, has described this landscape with the formula of "the regulatory paradigm of shaping markets 'from within,' the aspiration of which is to embed public and social values in the operations of private corporate actors, while at the same time expanding the regulatory authority and scope of self-governance of such private actors" (Kampourakis 2021b, 120–21). What makes this analysis so prescient is the sobering verdict that much of the potentially transformative character of societal "self-regulation" appears to have merely resulted in further eroding the grip of democratic control over markets and market actors. This perception is shared among many of today's "valuation" scholars who build on the sociology and anthropology of extraction and "expulsions" and trace the deep lineages of depoliticizing allegedly natural economic states (Moudud 2023; Schwöbel-Patel 2023b; Desan 2020; Chadwick 2023). This points to the larger historical and epistemological context, in which current "advances" in corporate sustainability and climate change reporting have to be assessed.

While, from a predominantly legal-doctrinal perspective, the CSDDD experience directs our attention to the contested legal tools that may be used—or, developed—in relation to global value chains (Eller 2020; Beckers 2023; Reinke and Zumbansen 2019), the first months of 2024 opened a vista on the perilous political economy of transnational lawmaking in the area of labor and human rights and their embeddedness in the larger context of scrutinizing the political economy of the Anthropocene (Newell 2021; Saldanha 2020). By zeroing in on the CSDDD and the many national supply chain and modern slavery laws that have been emerging around and preceding the EU Directive, we are constantly pushing against the tenacity of political deadlocks and how these reflect on the larger context in which "progressive" lawmaking projects are struggling to survive from contestation through advocacy, coalition building, and lobbying on to parliamentary debate, vote, and implementation.

The avoidance of actual failure in finally passing the CSDDD during the EU Parliament's current mandate was widely noted as a success. Meanwhile, the intensive backroom bargaining that led to the distinctive amendments casts a shadow on what was at the start an initiative as much ambitious as it was inspiring. Its adoption goes some way toward providing a level playing field and regulatory coherence within the EU. But, given the CSDDD's reduced scope of application now, it is not self-evident which level of consistency across diverging national laws the Directive will establish going forward. If it were to serve as a foundation on which to pursue effective sector-specific due diligence regulation, then it would have certainly been desirable for it to be more substantive in its passed form. National modern slavery laws as much as the EU's CSDDD 2024 are landmark moments by which the current generation's commitment to critically assess the viability of growth- and greed-based capitalism will be judged in the future. They must be seen as historical opportunities to militate against the resurgence of political nationalism, xenophobia, self-centeredness, and the imminent threat of planetary destruction.

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