The corporation has evolved remarkably from its centuries-old origin as a legal response to risky financial ventures into a ubiquitous part of our social fabric. Today, corporations as legal persons are largely indistinguishable from other social actors with whom they participate in their communities. When the corporation was aimed at extending the “civilized” world, both at home and abroad, spreading the risk to society as a whole through limitations on liability was seen as a necessary prerequisite – some have said a necessary evil. In recent years this privileged status of corporations – together with methods of accounting that fail to take into account the aggregate social, environmental, and other costs of corporate activity – has begun to be questioned.

Interest in corporate social responsibility (“CSR”) as a discipline is increasing exponentially as the vigorous debate over the role of the corporation in society continues unabated. Together with similar topics such as corporate governance and accountability, CSR is emerging into its own after having long been associated with other fields. For many years, CSR was taught as a topic within related courses on management, business economics, or corporate ethics. It is now more commonly taught as a separate course in countries such as India, Canada, Russia, and Argentina, while universities in the U.K., U.S., Spain, Switzerland, and elsewhere offer master’s degrees in CSR. Nevertheless, CSR is also strongly associated with commercial training courses offered by consulting companies to corporate staff, particularly in the developing world. It is this dual identity that proves confounding.

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One of the obstacles to CSR separately entering the realm of academic study has been the absence of a comprehensive textbook. One of the first and most ambitious entries in the field is Corporate Social Responsibility: A Legal Analysis by Michael Kerr, Richard Janda and Chip Pitts. This substantial and impressively researched volume pulls together, in thirteen chapters, most of the current thinking on this subject and puts forward a compelling, if perhaps preemptive, intellectual framework for the examination of CSR as a set of legal principles.

But what is CSR? This turns out to be a complex question. Despite growing acceptance of CSR as a field of study, fundamental differences remain as to its scope and content. Doubters question whether it is a matter of the accountability of corporations towards society and therefore governed by the law; they consider CSR to be a merely voluntary undertaking. Perhaps as a result of heavy lobbying, most definitions adopted by governments have tended toward the voluntary approach. Even in academia, the need to rely for course readings on articles from business ethics and management-related journals has given strength to the notion that CSR is a social luxury to be considered only after good economic performance is guaranteed. According to this view, CSR as a measure of a corporation’s performance can be swallowed whole, but the business community fears a redefinition of its duties.

Kerr et al. do not shy away from confronting the doubters head on. In a nice overview entitled “What Is Corporate Social Responsibility?”, they place CSR in the context of corporate ethics, corporate stewardship, corporate citizenship, and corporate accountability, and draw attention to the dual nature of CSR – as a reciprocal obligation of corporations within a social milieu, and as a self-imposed ethic. Yet the fact that this kind of apologia seems to be necessary is telling in itself. After framing the question as whether CSR is concerned more with the legal or the moral dimensions of corporate behavior, and analyzing the linkages of CSR with other related concepts, including the concept of sustainable development, the authors conclude that CSR is valuable as a legal concept incorporating legal responsibilities. A concept introduced here that has repercussions throughout the book is the idea that a corporation has a “sphere of influence” wherein it operates and exercises its responsibilities.

This skilled introduction and the rather thin following chapter on “Drivers of CSR” pale in comparison, however, to what will likely prove to be the most valuable part of the book in the long run – the chapter on “The Conceptual Foundations of CSR.” This wide-ranging and impressive examination of the history, purposes, and evolution of the corporate structure from a CSR perspective illuminates the challenging task undertaken by the authors, their means of solving the basic conundrum regarding the conceptual nature of CSR, as well as the pitfalls encountered along the way. Whereas the opening chapter looks at CSR as a moral or legal creation, this chapter goes into much more depth, examining the philosophical underpinnings of the corporation from concession and contract perspectives, and concluding that a constitutionalist theory of the corporation most completely addresses the corporation’s role in society. To paraphrase, the authors view the corporation as a cultural vessel for a series of agencies whose performance is measured against its provision of “team justice.” It follows that a combination of external regulation and internal hierarchy creates a corporate culture that may flourish to the extent that its constitution is perceived as legitimate by a range of stakeholders.

1 Michael Kerr, Richard Janda & Chip Pitts, Corporate Social Responsibility: A Legal Analysis (Markham: LexisNexis, 2009) [Kerr, Janda & Pitts].
The otherwise comprehensive historical overview oddly leaves out a discussion of the period in the 1980s when state anti-takeover legislation arose in response to leveraged buyouts and asset stripping. This period teaches lessons about the delineation of fiduciary duties and the relationships between corporations and communities. But this is a minor oversight when compared with other interesting observations found in this section, such as the irony that corporations, which Ronald Coase viewed as an innovation to overcome the transactional costs of market pricing, became the self-defined embodiment of the movement toward free markets and the main advocates of the identification of the market itself with the furtherance of the public interest.

This chapter also includes an incisive discussion of the major challenge facing the authors – dealing in one volume with an ill-defined topic involving the “interplay between formal regulatory regimes and voluntary initiatives” that “creates a blurred line of demarcation between the law and ethics” of corporate behaviour. It is admirable that Kerr et al. attempt to tackle this interplay, but it is difficult to produce a comprehensive view of such an amorphous subject. The solution – to view the corporation as a legal order unto itself – is only partly satisfactory, and the authors often fall back on the notion that corporations operate under a social license and therefore have to earn trust.

As with other emerging fields, the law of CSR is still struggling with basics, as demonstrated by the authors’ dedication of eight out of thirteen chapters of the book to an in-depth discussion of a set of seven CSR principles. The principles are as follows:

1. Integrated, Sustainable Decision-making;
2. Stakeholder Engagement;
3. Transparency;
4. Consistent Best Practices;
5. The Precautionary Principle;
6. Accountability; and
7. Community Investment.

The fact that the book has chapters on Transparency, Community Investment, and the Precautionary Principle is a demonstration of the relevance of CSR to a whole range of cutting-edge issues. Time will tell whether this delineation of principles will become a robust, authoritative framework.

Key to the authors’ viewpoint is the linkage between CSR and the concept of sustainable development. Much is made of the basic role of each in increasing our understanding of the need to develop mechanisms for integrated decision making that takes into account the three

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3 Kerr, Janda & Pitts, supra note 1 at 59 & 72-74.

4 Ibid. at 80.
pillars of sustainable development – economic, social and environmental. In introducing the seven principles, the authors contend that they are embarking upon a “re-contextualization” of sustainable development principles as applied to the corporation. The result is that the structure of the book has a certain resonance with key sustainable development documents such as the *Rio Declaration* and *Agenda 21*. Yet one worries that the authors make too great an attempt to slide CSR under the comforting mantle of sustainable development, without viewing CSR from its own unique perspective as a response to the current complex set of urgent governance challenges.

To their credit, throughout the book’s chapters the authors largely cover both regulatory and voluntary aspects of each principle. The authors have examined each of the principles by including a thorough analysis and discussion of cases from Canada, the U.K., the U.S., and Europe, as well as examples of legislation from further afield. Each chapter, moreover, deals with both the legal and moral dimensions of CSR. The chapter on “Principle 6 – Accountability”, for example, discusses the *Sarbanes-Oxley Act*, the *Alien Tort Claims Act*, and the *Foreign Corrupt Practices Act*, as well as the UN Global Compact, the Equator Principles, ISO Standards and the *OECD Guidelines for Multinational Enterprises*. This is one of the better examples in a somewhat uneven series of discussions on principles.

The Principle of Integrated, Sustainable Decision-Making is called the “keystone” of the whole panoply of CSR legal principles. Like several other principles, it derives in part from the work of the International Law Association (“ILA”) in identifying legal principles relevant to sustainable development, culminating in the 2002 *New Delhi Declaration on Principles of International Law Relating to Sustainable Development*, and from other documents such as the *Rio Declaration* and *Agenda 21*. The chapters on principles typically start with a justification of the particular principle followed by identification of the relevant limitations in corporate law and practice. In the case of this keystone principle, the examination focuses on the fiduciary duties and duty of care to third parties of corporate managers and whether acting in the “best interests” of the corporation should entail acting in the best interests of shareholders in terms of maximizing short term share value, or something broader. The Canadian cases of *Peoples v. Wise* and *BCE v. 1976 Debentureholders* are examined to show that, in some jurisdictions at least, the duty of directors is to act toward others in the interests of the corporation “as a good

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The leap from this legal obligation to integrated decision making in practice requires a departure from the law to voluntary codes and company policies; this is a leap that is taken repeatedly throughout the book.

Many of the principles found in the text are illustrated through environmental, legal, and soft norms. In the field of Stakeholder Engagement, environmental impact assessments and the practice of the Forest Stewardship Council are cited. In the chapter on Transparency, it is the pollutant release inventory, the greenhouse gas emissions reporting program, and the Extractive Industries Transparency Initiative. For Consistent Best Practices, the UNECE Civil Liability Protocol under the Water and Industrial Accidents Conventions is mentioned. A substantial chapter on the Precautionary Principle is appropriately focused on the impacts of corporate behavior on environment and human health. The environmental discourse, however, is only one strand of CSR. By bringing together other sources of CSR principles – labour law, corporate governance standards, workplace safety legislation, anti-bribery statutes, shareholder activism, community consultation – these matters can also be seen to bear upon sustainable development, and consequently help to create a broader understanding of the kinds of changes that will be needed to respond to current and future cycles of urgency. Whether or not such a broad, corporation-centred approach leads to a new lex mercatoria, as the authors posit in the penultimate chapter on the current status and future evolution of CSR, remains to be seen.

In Corporate Social Responsibility: A Legal Analysis, Kerr, Janda and Pitts have challenged others to follow in their footsteps by developing further the legal conception of CSR. This youthful area of the law is far from ripening to the stage where scholars and practitioners may haggle over the finer points and students study obscure appellate interpretations. Therefore, the book is, like its subject, a hybrid. It is a difficult challenge to pull together into a single arena the two main strands of CSR – that related to the evolution of legal norms that demand “good” corporate behaviour, and that related to codes and good practices aimed at enhancing the performance of corporations as self-conscious members of communities. Kerr, Janda and Pitts have taken a leap of faith in holding that hard law, soft law, and voluntary instruments can together establish a framework of principles governing corporate behaviour. It is a testament to their scholarship that they carry the reader most of the way along with them. This new

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9 Information on the Forest Stewardship Council available online: <http://www.fsc.org/>.


11 See the UNECE Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters (not in force), online: UNECE <http://www.unece.org/env/civil-liability/protocol.html>.

12 Kerr, Janda & Pitts, supra note 1.
textbook is a welcome addition and will have much use in the growing field of CSR studies. It has established the standard against which other CSR textbooks will be measured for years to come. The speed with which the field is developing should, moreover, result in a second edition within a relatively short period of time.