Responsabilité, fraternité et développement durable en droit:

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Substantiating the Principle of Sustainable Development with the Principle of Fraternity: The Case of Corporate Social Responsibility

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SUBSTANTIATING THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT WITH THE PRINCIPLE OF FRATERNITY: THE CASE OF CORPORATE SOCIAL RESPONSIBILITY

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This article explores how fraternity, a basic principle of human society, gives substance to the principle of sustainable development, under a relationship already acknowledged by the Canadian Supreme Court Honourable Justice Charles D. Gonthier. It does so by evaluating the moral value of fraternity both as an intrinsic motivation to ensure the realisation of the human being as such as well as a mode of behaviour resulting in the satisfaction of human needs. Both sides of the concept are reflected in the idea of sustainable development, whose final end is the respect of human dignity and its realisation within the community. Against this background, the article expands on the context of this relationship in the dimension of corporate social responsibility (CSR). It elaborates on the manifestation of fraternal values in the corporate commitments to social and environmental responsible behaviour and finds that CSR serves as a 'business bridge' between fraternity and sustainable development.

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Introduction

Globalization poses issues of adapting to new realities. The economic, ecological and social interdependence has introduced new types of problems thereby prompting a request for "new solutions necessitating collective action".[1] Global actors have already proclaimed the principle of sustainable development as the answer to these challenges. It calls upon states, intergovernmental organisations, businesses, NGOs and individuals, to integrate and reconcile the various interests of an economic, environmental and social dimension, in a way that leads to the prosperity of humankind. Corporations,[2] as the main drivers of globalization, have a leading role in its direction. They may either contribute or not, to the achievement of a fair equilibrium between economic growth, promotion of human rights and protection of the environment.

Against this background, the Canadian Honourable Justice C.D. Gonthier highlighted the linkage between 'fraternity' – borrowed by the French Revolution cry yet re-visited so as to comprise the broadest line of relevant human feelings and behaviour – and two interrelated concepts, namely sustainable development and corporate social responsibility. He believed that the moral values embedded in fraternity, to mention but a few, empathy, compassion, fairness, justice and responsibility, underlie the principle of sustainable development[3] and at the same time they "must inspire corporate social responsibility".[4]

This article aims at shedding light onto a new way of achieving sustainable development, namely the fraternal approach of corporations. The combination of words 'fraternity' and 'corporation' might easily be regarded as oxymoron (just like the stance that 'business ethics' is a

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[1] Kemal Baslar, *The Concept of the Common Heritage of Mankind in International Law* (The Hague: Kluver Law International, 1998) at 12 [footnote omitted] [Baslar].

[2] Throughout this paper, the words "corporation", "company" and phrases "transnational corporations", "multinational corporations" shall be used interchangeably, unless otherwise indicated.

[3] Hon. Mr. Justice Charles D. Gonthier, "Fraternity: A Global Value Underlying Sustainable Development" in Marie-Claire Cordonier Segger & Judge. C.G. Weeramantry, eds., *Sustainable Justice: Reconciling Economic, Social and Environmental Law* (Leiden, The Netherlands: Koninklijke Brill 2005) [Cordonier Segger & Weeramantry] 33 at 33 [Gonthier, "Fraternity and Sustainable Development"].

[4] Hon. Charles Doherty Gonthier, "Foreword" in Michael Kerr, Richard Janda & Chip Pitts, *Corporate Social Responsibility: A Legal Analysis*, ed. by Chip Pitts (Markham, Ont.: LexisNexis, 2009) at x [Kerr, Janda & Pitts].

contradictio in adjecto).[5] Nevertheless, a positive link between the two seems viable in the light of an economic science advancing 'its human face'. By elaborating and further developing Justice Gonthier's inspirational ideas, this paper hopefully shall prove the truism of his belief on the strength of fraternal values in achieving challenging objectives of our generations.

The work is divided into three chapters. The first one offers an overview of the various meanings attached to fraternity and further highlights some of the fraternal constituents and facets. It also gives a theoretical flavour to some arguments on the value of fraternity. The second chapter turns the attention towards the role of sustainable development in addressing common concerns of humankind. It elaborates on the inherent link between fraternity and sustainable development and how the former permeates the principles of the latter. It finally illustrates the presence of fraternal values in the international documents promoting sustainable development, and in particular, the ILA Declaration on the Legal Principles of Sustainable Development.[6] The case of CSR is the focus of the third chapter. I describe its role in advancing sustainable development while also tracking elements of fraternity in the various CSR approaches. By employing traditional deontologist and consequentialist theories and using some practical reasoning, I finally explore how fraternity is manifested in CSR commitment and behaviour by giving CSR the role of a 'business bridge' to the achievement of sustainable development.

I.   The Principle of Fraternity and Its Moral Value

A. *A Brief Account on the Notion of Fraternity in Social Relationships*

The concept of fraternity is present in social relationships. It exists simultaneously in our historical experience, philosophical and religious vision, political and economical approach and legal framework. Because of that, it has been charged with several connotations. Justice Gonthier, a

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[5] Finding a positive link between fraternity and corporate behaviour may seem ambitious in the light of the traditional view that the profit-making concern is the focus of corporate strategy, and any issues of human rights and environmental protection account as externalities.

[6] ILA Resolution 3/2002: *New Delhi Declaration of Principles of International Law Relating to Sustainable Development*, in ILA, Report of the Seventieth Conference, New Delhi (London: ILA, 2002) online: ILA <http://www.ila-hq.org/en/committees/index.cfm/cid/25> [*ILA Declaration*].

distinguished proponent of the values of fraternity for humanity, already reiterated several meanings of fraternity, including its understanding as part of liberty and equality, its inclusion within the concepts of communalism or socialism, its expression in Christian values and even its normative content that "one should not have greater advantages unless this is to the benefit of the less advantaged."[7]

A brief note on the various stances about fraternity, is worthy of emphasis in our endeavour to read its main message from different angles, and from there to draw some of the core qualities that constitute the essence of fraternity as a principle of humanity.

The roots of fraternity are traced within Greek philosophy which saw it as a necessity of life and politics.[8] And yet, one of the elements often subsumed into the notion of fraternity – 'the golden rule', is believed to have been elaborated as early as by the ancient Chinese philosopher, Confucius (Century VI-V B.C.).[9]

A reflection of fraternity as such or of some of its elements is also found in the majority of world religions. From such a perspective, it implies "an ethic in intra-personal relations which is essentially a means to the goal of human excellence."[10] Some years ago, the Declaration Towards a Global Ethic of the World Religions' Parliament, proclaimed the golden rule, i.e. our duty to "treat others as we wish others to treat us", as a common principle for the many religions represented

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[7] Charles D. Gonthier, *Liberty, Equality, Fraternity: The Forgotten Leg of the Trilogy, or Fraternity: The Unspoken Third Pillar of Democracy* in (2000) 45 McGill L.J. 567 at 572 [footnotes omitted] [Gonthier, "Fraternity"]; Gonthier, "Fraternity and Sustainable Development", *supra* note 3 at 39-40.

[8] Wilson, C. McWilliams, *The Idea of Fraternity in America* (Berkeley, California, USA: University of California Press, 1973) at 28 [McWilliams].

[9] James D.D. Legge, ed., *The Chinese Classics,* trans. by James D.D. Legge (New York: Hurd and Houghton, 1870) at xi. Other authors maintain that it is unclear when this stipulation was first described as a golden rule leaving open the possibility of its earlier existence. Neil Duxbury, "Golden Rule Reasoning, Moral Judgment, and Law" (2008-2009) 84 Notre Dame L. Rev. 1529 at 1531 [footnote omitted] [Duxbury].

[10] McWilliams, *supra* note 8 cover page. For the Judaic and Christian basis, see Angelo Mattioni, "Solidarietà Giuridicizzazione della Fraternità" in Anna Marzanati & Angelo Mattioni, eds., *La Fraternità come Principio del Diritto Pubblico* (Rome, Italy: Città Nuova Editrice, 2007) 7 at 8-11 [Marzanati & Mattioni] (maintaining that it is in Judaism that the concept of fraternity evolved as an idea that all men are created by God, thus being part of a universal fraternity). See also Danny Kruger, *On Fraternity: Politics beyond Liberty and Equality* (London: Civitas, Institute for the Study of Civil Society, 2007) at 1-4 [Kruger, *Fraternity*] (noting that in Catholicism, Pope Benedict XVI considers fraternity, as a core object of his work). In Islam, human fraternity means, among others, desiring for one's brothers what one desires for oneself, hence the idea of 'zakat' or giving alms, is institutionalized as manifestation of solidarity among men. Abdelwahab Bouhdiba & Muḥammad Maruf Dawalibi, eds., *The Different Aspects of Islamic Culture: The Individual and Society in Islam* (France: UNESCO Publishing, 1998) at 58, 104 [Bouhdiba & Dawalibi]; Mohammed Bedjaoui, "Are the World's Food Resources the Common Heritage of Mankind?" (1984) IJIL 459 at 465.

therein.[11]

Fraternity is considered to be inherently related with the French Revolution's cry "Liberty, Equality, Fraternity", where, for the first time in the modern era the concept is used politically.[12] Some authors have been sceptical about the idea of fraternity as introduced by the famous motto.[13] Others have accepted partially the principles building from there. For example, there is wide recognition of the principles of collective action and social responsibility, as constituents of the principle of fraternity.[14]

Beyond this initial recognition, there seems to be a dispute about which political spectrum, left or right owns the grounds of fraternity.[15] Some contend that the values of the Revolution have defined the socialist thought,[16] with the radicals of the political left emphasizing that fraternity is about radical collectivism, community, solidarity and mutual aid.[17] Nevertheless, their view on fraternity faces opposition by the conservatives, who in turn argue that the left-wing is approaching the problem by "widening divisions between classes, generations and cultures" and housing "everyone together and equally" in the state. The alternative answer from the right-wing is "not equality, but fraternity"; the belief that 'it is not our common submission to the central state that will help us live together, but our various and overlapping memberships of a far larger and more

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[11] Religious Tolerance, *Declaration Towards a Global Ethic*, online: Religious Tolerance <http://www.religioustolerance.org/parliame.htm>. See generally Duxbury, *supra* note 9 at 15-31.

[12] Antonio Maria Baggio, ed., *Il Principio Dimenticato: La Fraternità Nella Riflessione Politologica Contemporanea* (Rome, Italy: Città Nuova Editrice, 2007) at 5. See also Mattioni in Marzanati & Mattioni, *supra* note 10, 7 at 17. In fact the existence of a much longer historical perspective on each pillar of the cry is evident in "the libertarianism of religious dissenters, the egalitarianism of the Levellers, and the fraternity of the guilds", Paul Spicker, *Liberty, Equality, Fraternity* (Great Britain: The Policy Press, 2006) at 1 [Spicker].

[13] Baumann considers the "failure" of the Revolutionary fraternity and its "doubleness" in that on the one hand it has become a 'deliberate hypocrisy' - an excuse for the true, inner fraternity that unites *sans-cullotes* but excludes as "aristocrats all those who disagree", while on the other hand "it is still in earnest". Fred E. Baumann, *Fraternity and Politics, Choosing One's Brothers* (London, UK: Praeger Publishers, 1998) at 55, 65, viii. Long before that J.F. Stephen, maintained that when used collectively the words liberty, equality, fraternity, do not show any state of society which a reasonable man ought to regard with enthusiasm or self-devotion. James, F. Stephen, *Liberty, Equality, Fraternity and Three Brief Essays* (Chicago & London: The University of Chicago Press, 1991) (first published respectively in 1973 and 1862) at 52-53. Another author finds that the French revolutionaries understood fraternity as "rhetoric or a more emotive way of saying equality. Brothers are equal" therefore he finds it as a "misapplied concept". Kruger, *Fraternity*, *supra* note 10 at 46.

[14] Spicker, *supra* note 12 at 1.

[15] Danny Kruger, "The Right Dialectic" *Prospect Magazine* (24 September 2006), online: Prospect Magazine <http://www.prospectmagazine.co.uk/2006/09/therightdialectic/>.

[16] Spicker, *supra* note 12 at 159, citing also P. Self, "Socialism" in R. Goodin & P. Pettit, eds., *A companion to Contemporary Political Philosophy* (Oxford: Blackwell, 1993) at 339.

[17] Spicker, *supra* note 12 at 163.

diverse range of associations."[18] Still, it is maintained that such disagreement is "based in a different understanding of society", thus not necessarily in a negation of fraternal values.[19]

The concept seems to find place also in economics. Bruni and Sugden have explored the roots of fraternity in market transactions, viewing them as "instances of a wider class of reciprocal relationships in civil society, characterized by joint intentions for mutual assistance".[20] They claim that it is possible for market transactions to be oriented in a fraternal fashion while also being compatible with market efficiency.[21] They reiterate Genovesi's *civil* economy thesis on the lack of any fundamental distinction between market relationships and those of other domains of civil society.[22] According to them *reciprocity* is the fundamental characteristic of market relations while simultaneously being the governing principle of civil society.[23] In this vein, they re-build an alternative perception of market interactions "whose orientation is characterized by the eighteenth-century word *fraternity*."[24] Under this reasoning, they equate fraternity with reciprocity, trust and mutual respect as the fundamental standards of markets.[25]

The foundations of fraternity to some extent differ on the basis of various disciplines it has been subjected to,[26] but at the same time many values it promotes, permeate the various traditions. Thus, it has been suggested that fraternity enjoys "a consensus that if not universal, is certainly

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[18] Kruger, *Fraternity*, *supra* note 10 at 6, 8, 10 (further holding that for the conservatives, the values of fraternity are to be found in "the spirit of unofficial co-operation, aimed not at general formulations or national policies but at specific actions and local needs" or to put it simple this is the "communal [but] not official" political philosophy).

[19] Spicker, *supra* note 12 at 165.

[20] Luigino Bruni & Robert Sugden, "Fraternity: Why the Market Need Not Be a Morally Free Zone" (2008) 24 Economics and Philosophy 35 at 35. The authors present their account on fraternity by comparing Adam Smith's ideas with those of another leading figure in eighteenth-century economics, Antonio Genovesi of the University of Naples, according to whom market relationships are fraternal. *Ibid*. at 36.

[21] *Ibid*.

[22] *Ibid*. at 46.

[23] *Ibid*. at 63 [emphasis added].

[24] *Ibid*. at 36.

[25] Taking the example of caring relationships, the authors do not negate the existence of 'intrinsic motivation' and 'self-sacrifice' (they indeed do exist and may even provide an additional value), but for them "they should not be used to define *genuineness* in [such] relationships." As they further hold, "[w]e might be *pleased* or *grateful* to find such motivations in others with whom we interact; but, in a free and equal society, we must accept that much of the sociality we will enjoy will be in relations of mutual assistance and fraternity." *Ibid*. at 62.

[26] The notion of fraternity has been elaborated by disciplines that vary from sociology to biology, from religious to illuminist culture and natural law through to secularization. It has even moved beyond its philosophical concept of uniting all the people by becoming "an object of particularistic use" e.g. in the framework of masonry which adopts 'fraternity' so as to unite members of qualitatively and quantitatively limited groups and later on of the citizens of polis, where fraternity harmonizes liberty and equality. Mattioni in Marzanati & Mattioni, *supra* note 10 at 8-17.

generalized."[27] The "core principles it advances" such as cooperation, commitment, responsibility, fairness, trust and equity[28] remain generally accepted by the various cultures, making it "a *general heritage of the community feeling*".[29]

Legally speaking, this ability of fraternity to "survive the ages"[30] and remain acceptable even today, has led modern states to give legitimacy to the principle of fraternity as such or otherwise its related values.[31] Its direct inclusion is noticed in the Universal Declaration of Human Rights and the French Constitutions.[32] Other expressions of fraternity, such as solidarity, social justice, welfare state, human dignity, tolerance, inclusion, responsibility are an essential part of contemporary constitutions and national laws.[33]

Beyond this general overview of the presence of fraternity in the various social relationships, the next section aims at identifying the values that, although not always exclusively attached to it,[34] constitute the principle of fraternity or otherwise form its many facets.

B. The Constituents and Facets of Fraternity

Fraternity presents a number of constituents and facets. They manifest fraternal motivations and behaviours while representing qualities that have been present throughout the existence of humankind. The contribution of Justice Gonthier, adding to the earlier work of other authors, proves

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[27] *Ibid*. at 12 [emphasis added].
[28] Gonthier, "Fraternity", *supra* note 7 at 572.
[29] Mattioni in Marzanati & Mattioni, *supra* note 10 at 12 [emphasis added] [translated by author].
[30] McWilliams, *supra* note 8 at 1, cover page.
[31] Mattioni in Marzanati & Mattioni, *supra* note 10 at 12-13, 25.
[32] "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". *Universal Declaration of Human Rights* (*UDHR*) GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810, (1948), 71 at 72, Art. 1. See also the French Constitution (1848) where for the first time 'fraternity' obtains legal acknowledgement and the French Constitution of 1946 where 'fraternity' finds its 'definite settlement'. See Mattioni in Marzanati & Mattioni, *supra* note 10 at 17.
[33] Mattioni in Marzanati & Mattioni, *supra* note 10, at 42-43, 17. The author explains that the idea of solidarity (as an expression of fraternity) both in its vertical and horizontal dimensions (i.e. as a duty of the state to its citizens and as a duty of citizens among them) is reflected in contemporary constitutions (e.g. Italian Constitution (1947)). The presence of core values of fraternity in the Canadian public and private law is elaborated also by Hon. Justice C.D. Gonthier in his lecture delivered at the McGill Faculty of Law in 2000. Gonthier, "Fraternity", *supra* note 7 at 569, 576-589; Gonthier, "Fraternity and Sustainable Development" *supra* note 3 at 39.
[34] Some moral values that interact with fraternity as elaborated below interact with liberty and equality and are not exclusive to fraternity. See generally Charles Doherty Gonthier, "Sustainable Development and the Law", Introductory Note (2005) 1 McGill J.S.D.L.P. 11 at 13 [Gonthier, "Sustainable Development"]; Gonthier, "Fraternity" *supra* note 7 at 573-574.

valuable in identifying many of them. He viewed fraternity as "the necessary adjunct of liberty and equality that imports these values into a community."[35] To him, the core values of fraternity are advanced in pursuit of building such a community and comprise compassion, empathy, dedication, commitment, inclusion, community, fairness, equity, trust, security, cooperation and responsibility.[36] Much earlier, McWilliams, an American proponent of the idea of fraternity, also believed that "[f]raternity presumes *society*."[37] The same idea is reflected in the perceptions of a contemporary author who views it as "the quality of relationships among the communities we inhabit" and the sphere of belonging and membership.[38]

Regarding values of affection, intimacy and friendship, there appear to be different views. McWilliams believed that more than affection, fraternity means kinship, a concept which "always implies limitations to the individual", thereby responsibility.[39] The American philosopher Perry also perceived the idea of self-limitation as subsumed with the concept of fraternity. He too rejected that fraternity could equate with intimacy and friendship, as these virtues "must depend on the accidents of propinquity and temperament".[40]

Adding to the above, Spicker suggests that the central focus of fraternity addresses important "ideals" of collective action, cooperation and mutual aid,[41] as well as solidarity and social responsibility.[42]

Furthermore, McWilliams considered that fraternity is founded on "shared values and goals".[43] In Justice Gonthier's view these imply that fraternity is not simply about people working together, but about people doing so while aware that such joint work is made for a common goal.[44] He argued that "communities are not simply the result of individuals pursuing rational self-interest. Nor are

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[35] Gonthier, "Fraternity", *supra* note 7 at 573.
[36] *Ibid*.; Hon. C.D. Gonthier, "Foreword" in Kerr, Janda & Pitts, *supra* note 4 at x.
[37] McWilliams, *supra* note 8 at 5.
[38] Kruger, "The Right Dialectic", *supra* note 15.
[39] McWilliams, *supra* note 8 at 9, 10, 12.
[40] For him fraternity implies "courtesy, fair-mindedness, and the admission of one's own limitations". Ralph Barton Perry, *Puritanism and Democracy* (New Work: Vanguard Press, 1944) at 580-81.
[41] Spicker, *supra* note 12 at 120-130 (finding them characteristic of the left-wing political movements).
[42] *Ibid*. at 130-136 (finding them as mirrored in the conservative political spectrum).
[43] McWilliams, *supra* note 8 cover page.
[44] Gonthier, "Fraternity", *supra* note 7 at 575.

they just a means of providing collective goods. [They] exist, in no small part because of a desire to belong to a family. Fraternity is an expression of brotherhood and sisterhood–of shared interests and beliefs."[45] From the realm of philosophy, Edel also views fraternity as representing "a range of attitudes from mere recognition of others with accompanying tolerance, through sympathy and friendly interest, to active co-operation and the development of common goals for mutual striving."[46]

This idea of the "common goals for mutual striving" was extended to the future generations by the Justice Gonthier's argument that fraternity is also about "providing a sense of continuity with the past and the future."[47] He borrowed the concept of "diachronic fraternity" from Archbishop Lustiger, to explain the relationship between generations as necessary for the continuance of a community.[48] He used fraternity and solidarity interchangeably as he believed that at the core of fraternity is the moral obligation arising out of "the need to protect, and stand in solidarity with, the interests of those yet unborn."[49]

This aspect of fraternity as a value that extends over time to future generations, is accompanied by a spatial facet of the same. At times it has been suggested that fraternity is limited to the boundaries of a community, i.e. exclusive to a number of persons and social space.[50] Nevertheless

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[45] *Ibid*. at 573.

[46] Abraham Edel, *The Theory and Practice of Philosophy*, with a new introduction by Irwing L. Horowitz & Peter Hare (New Brunswick, New Jersey, USA: Transaction Publishers, 2009) (originally published in New York, Harcourt Brace and Co., 1946) at 294 [Edel].

[47] Gonthier, "Fraternity", *supra* note 7 at 569 (referring also to the explanation of Perry on the extension of fraternity to the "broader and less personal relations of fellow citizenship and fellow humanity").

[48] The concept of diachronic fraternity relates with the people's desire to build an inter-generational relationship. Gonthier, "Fraternity", *supra* note 7 at 573 (referring to Archbishop Jean-Marie Cardinal Lustiger, "Liberty, Equality, Fraternity" (adapted from Erasmus Lecture on Religion and Public Life, New York City [undated], online: My Right Page <http:/adasboro.tripod.com/lustiger.html>.)

[49] Gonthier, "Sustainable Development", *supra* note 34 at 13; Gonthier, "Fraternity", *supra* note 7 at 33; Hon. Justice Charles D. Gonthier, "National Environmental Governance and the Role of Law" (Remarks delivered to the Global Judges Symposium, Johannesburg, South Africa, 19 August 2002) at 6, online: United Nations Environment Programme <http://www.unep.org/law/symposium/Speeches.htm> [Gonthier, "Environmental Governance"]. But see Spicker, *supra* note 12 at 120, 130-131 for a slightly different view on the concepts of fraternity and solidarity.

[50] McWilliams, *supra* note 8 at 7 (maintaining that fraternity "is limited in the number of persons and in the social space to which it can be extended); Spicker, *supra* note 12 at 9 (explaining that the idea of fraternity as related to the French Revolution, could be viewed as narrow or even exclusive); Kruger, "The Right Dialectic" *supra* note 15 (arguing that fraternity concerns neighbourhood, voluntary association, faith, and all the other elements of identity that relate us to some and distinguish us from others); *Supra* note 26 (viewing the nature of fraternity as particularising individuals of some group from individuals of some other groups).

the broadening of the fraternal contours date back centuries with the various religious teachings.[51] In modern times, this perception holds true for many.[52] In Perry's view, fraternity "must underlie the closer family, neighbourhood, or vocation; but it must be extended to the broader and less personal relations of fellow citizenship and fellow humanity."[53] Edel also joins this chorus by stating that "fraternity calls for the development of a whole-human ethic and the planning of well-being in terms of the two billion people of the globe."[54] A comprehensive understanding of this universal value of fraternity is advanced by the contribution of Justice Gonthier: "To the extent that fraternity is based on shared values and goals, the class of people with whom one shares a fraternal relationship, may be limited. On the other hand, fraternity may be universal in its object. Many of the goals advanced by international organizations involve fraternal concepts."[55] He further explains that the extent of fraternal relations depends on "the nature of the interest in question". It involves a notion of "limited fraternity" where there is no general obligation on *all* individuals to treat a particular individual in a certain manner as expected to be treated within the limited fraternal community (e.g. family). However it sometimes involves a notion of a wider level of a wider fraternity, which calls for a general obligation on *all* individuals to a certain conduct.[56] One would name it a "global fraternity".

One illustration of the general obligation on *all* individuals to behave fraternally (as manifested at least in some of its facets e.g. cooperation, reciprocity, etc.), can be drawn from G. Hardin's famous fable that resulted with "the tragedy of the commons".[57] It describes how the individuals' unlimited self-interest can lead to the tragic effect of overusing a commons for both the individual

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[51] E.g. in the Christian doctrine: "the duty of solidarity that exists for persons is valid also for peoples". Gaudium et Spes cited in Mattioni in Marzanati & Mattioni, *supra* note 10 at 39. In Islam fraternity finds expression, *inter alia*, in the statement that all men make up a single nation - the mankind. Bouhdiba & Dawalibi, *supra* note 10 at 104, 291.

[52] As Kruger admits, "[i]t is through common interest with and affection for the people closest to us, be they of the same station or the same locality or united on some different principle altogether, that we discover our interest with and affection for people in general." Kruger, *Fraternity*, *supra* note 10 at 6; As Spicker explains about the understanding of fraternity as related to the French revolution, "to be fraternal was to *be bound to other people*, by ties of *obligation or commitment*", and although this could be a narrow and exclusive idea, in a broader understanding, what it implied was the "brotherly love, or the love of humanity." Spicker, *supra* note 12 at 119.

[53] Perry, *Puritanism and Democracy*, *supra* note 40 at 580-81.

[54] Edel, *supra* note 46 at 295.

[55] Gonthier, "Fraternity", *supra* note 7 at 575.

[56] *Ibid*.

[57] Garret Hardin, "The Tragedy of the Commons" (1968) 162 Science 1243 at 1244.

and its community. The example is taken of a limited pasture and a group of herdsmen using it, yet it is easy to project it into our earth and the various actors playing a significant role for the existence and development of humanity (states, international organizations, corporations, NGOs, local communities). This explores the *need for cooperation* and *self-limitation* between such actors so as to avoid tragedies resulting from unlimited self-interest and instead to instil in them the notion of common interests. Aspects of fraternity, such as cooperation, reciprocity, shared values and goals, become an underlying norm of conduct for governing the commons. They reflect our reaction to two drivers: the first being *the commons*[58] (an objective driver) and the second being *our interests* in the commons (a subjective driver which, disregarding their particularities due to our different individualities, constitutes a common concern to each and all of us).

And still this illustration does not seem to fully explain other aspects of fraternity, such as, affection, solidarity, dedication, empathy, compassion, to mention but a few. This observation leads us to an example that relates with the concept of common heritage of humankind developed by states.[59] This concept is driven by two developments: the 'technology parameter'[60] and the 'scarcity parameter'.[61] They underline a salient element, the inequality between states to pursue their self-

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[58] A commons is defined as "a natural or manufactured resource with two defining characteristics", the first being that the use of a common by one person diminishes the amount of commons available for others, and the second being the difficulty of excluding potential users. Commons include the atmosphere and ocean waters, rivers, forests, beaches, lakes, soil, fisheries, public highways, parks, public squares, mining territories, etc. Brigham Daniels, "Emerging Commons and Tragic Institutions", (2007) 37 Envtl. L., 515 at 523-524 [footnotes omitted]; Stephen R. Munzer, "The Commons and the Anticommons in the Law and Theory of Property" in Martin Philip Golding & William Atkins Edmundson, eds., *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Malden, Mass.: Blackwell Publishing, 2005) 148 at 150-151; Tibor R. Machan, ed., *The Commons: its Tragedies and Other Follies* (Stanford, California: Hoover Institution Press, 2001) at xv, xvi, xvii.

[59] The ILA Declaration defines the common concern of humankind to include the protection, preservation and enhancement of the natural environment, particularly the proper management of climate system, biological diversity and fauna and flora of the Earth and the common heritage of humankind to include the resources of outer space and celestial bodies and of the sea-bed, ocean floor and subsoil thereof beyond the limits of national jurisdiction. *ILA Declaration*, *supra* note 6 principle 1. Other elements are proposed to add to this list such as "the environment of the Earth and its constituent parts like soil and water resources, plant and animal resources, human beings and their societies, cultural heritages, raw materials, energy resources and information." Ian Brownlie, "Protection of the Global Heritage" (1981) 75th Proc. American Soc. of Int'l Law 31 at 33.

[60] The technological advancement would assist developed states to more opportunities to explore and exploit natural resources located in the international space and hence put the developing states that were lacking such knowledge and equipment, in a disadvantageous position. This would lead to the transformation of those areas that were legally regarded as *res communis* (commonly owned by all states), into the *de facto* national properties of the developed countries. Baslar, *supra* note 1 at 43-44 [footnote omitted].

[61] The scarcity of natural resources along with the inequality in capabilities to access them, ask for reconsidering the way entitlements over such resources are to be built. *Ibid.* at 46.

interest of exploiting scarce resources. And while the first solution that one can think of includes cooperation of states in sharing the commons,[62] the need for some ethical principles to underlie them is more visible.[63] It involves compassion towards the vulnerable states, solidarity with the generations to come, a fiduciary duty for their management[64] etc. It is maintained that the concept of common heritage of mankind disassociates with the tenet of technocratic positivism – the desire of progress at all costs, and rather it "aims to achieve sharing, caring and sustainable management of natural resources and to protect them for future generations."[65]

Following the above, it is obvious how fraternity comprises an array of features that develop a simple word into a crucial principle for the existence and progress of humankind. It acquires a moral value for the society. And if we understand morality as "a system of rules governing both conscience and conduct", [66] some questions arise in relation with the moral value of fraternity.

C. The Moral Value of Fraternity

With the purpose of giving some theoretical flavour to the understanding of fraternity as a moral value, the construction of the end-means dichotomy is considered useful. Do we consider fraternity a moral value because its underlying principles are desirable *per se*, regardless of the desirability of consequences (an 'end') or do we consider it a moral value because, regardless of the principles on which it is based, it produces desirable consequences (a 'means')? In other words, is fraternity an intrinsic value depending on its internal properties, or is it instrumental, thus serving as a means to achieve another end?[67] Or perhaps it meets the criteria of both values,[68] or even further,

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[62] "Since there is hardly ever enough room for all under a regime of *laissez-faire*, scarce natural resources and inequality in capabilities demand international cooperation, the sharing of and participation of all States in the use of international spaces." Henry A. Wassenbergh, "Parallels and Differences in the Development of Air, Sea and Space in the Light of Grotius' Heritage" (1984) 9 Air & Space Law 163 at 169.

[63] See e.g. Baslar, *supra* note 1 at 57 (suggesting that "some ethical principles and egalitarianism should maximize common interest and take care of future generations.").

[64] *Ibid*. at 67-68.

[65] *Ibid*. at 25 [footnote omitted], 26.

[66] Honourable Charles D. Gonthier, "Law and Morality" (2003) 29 Queen's L.J. 408 at 412-413 [Gonthier, "Law and Morality"].

[67] Jonnette Watson Hamilton & Daniel Shea, "The Value of Equality in the Supreme Court of Canada: End, Means or Something Else?" (2010) 29 Windsor Rev. Legal & Soc. Issues 125 at 131-132 [footnotes omitted] [Hamilton & Shea].

it is a "constitutive" value, based both on "the internal properties and because it is a necessary constituent of a more encompassing final good."[69] These are all questions that arise out of a theoretical discussion which need not be exhausted here in detail. Nevertheless it will prove useful to illustrate how fraternity, as construed by the various contributors, manifests either independently or not, each of the values mentioned above; a final value, an instrumental value and a constitutive value.

Taking from Justice Gonthier's contribution, if we understand the values of fraternity as "advanced *in pursuit of* building a community",[70] it seems that they dominantly serve as a means to achieve another end, the existence and prosperity of a community. In another observation, Justice Gonthier has maintained that "[w]hen we consider environmental measures, we act not in rational self-interest, for we as individuals often would not see the fruits of our sacrifice. Instead, we take these steps so as not to harm future inhabitants of this Earth–in essence, we are protecting the next generations. Forging a relationship between generations in a community is not rooted in liberty or equality, but rather, fraternity."[71] In this case, fraternity appears as an intrinsic value that motivates individuals to approach certain behaviour regardless of whether or not they receive something in return. At the same time the consequences here seem to matter too, as long as "we take these steps *so as* not to harm future inhabitants" thereby fraternity receives an instrumental value as it is the means that "forges the relationship between generations".

The same reasoning is developed when fraternity is considered as one of the values constituting the "essential expression of the dignity and respect for the human person and therefore ... essential

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Their article takes a similar approach in exploring the value of equality as perceived by five Supreme Court of Canada Judges between 1989 and 2005. Regarding the perceptions of Hon. Judge C.D. Gonthier on the value of equality, they conclude that his is dominantly a consequentialist approach, with the value of equality lying mainly in "what it can do to increase a final end such as welfare or individual choice." *Ibid*. at 135-136.

[68] But see Michael J. Zimmerman, "Intrinsic vs. Extrinsic Value" in Edward N. Zalta, ed., *The Stanford Encyclopedia of Philosophy* (Stanford: Metaphysics Research Lab, 2007) online: Stanford Encyclopedia of Philosophy http://plato.stanford.edu/archives/fall2007/entries/value-intrinsic-extrinsic> (maintaining that most often they are seen as mutually exclusive).

[69] Hamilton & Shea, *supra* note 67 at 132. The concept of "constitutive value" I borrow from their work.

[70] Gonthier, "Fraternity", *supra* note 7 at 573. Another example is found in the statement that "[t]he pursuit of the peaceful resolution of conflict … is at the heart of the spirit of fraternity", Gonthier, "Fraternity and Sustainable Development", *supra* note 3 at 43.

[71] Gonthier, "Fraternity", *supra* note 7 at 573.

to the integrity of a community and of democracy."[72] Under this view, fraternity is perceived as having both an intrinsic value (human dignity as a final end) and an instrumental value (as an essential means in achieving "the integrity of a community and democracy"). One could even take this to imply a constitutive value, in that fraternity also provides an essential basis for the integrity of community, this latter being another final value.

This pluralistic approach to the values of fraternity, overcomes the inflexibility of the traditional value theories based on the exclusive end-means dichotomy. At the same time, if this approach is read through the lens of practical reasoning – concerned with the desirability of actions both in terms of subject-matter and consequences,[73] – it confirms the positive value of fraternal motives and behaviours in addressing common concerns for humankind.

These conclusions prove useful for the analysis that follows in the next two chapters, commencing with the relationship between fraternity and sustainable development.

II.   Fraternity in Sustainable Development

A. *Sustainable Development: The Response to the Common Concerns of Humankind*

The common concerns of humankind[74] can be regarded as the main challenge triggering the quest for sustainable development. Such a challenge, that affects each and all of us, arises in the light of the global ecological, social and economical interdependence.[75] At the same time, its roots go deep into the notion of human dignity each of us is endowed with and whose respect is essential to our well-being.[76]

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[72] Gonthier, "Fraternity and Sustainable Development", *supra* note 3 at 44.

[73] Hamilton & Shea, "The Value of Equality", *supra* note 67 at 143-144 [footnote omitted].

[74] This is to refer to the broadest understanding of global heritage. See *supra* note 59.

[75] Friedman captures five main problems leading to common concerns: the growing demand for even scarcer energy supplies and natural resources; a massive transfer of wealth to oil-rich countries and their petrodictators; disruptive climate change; energy poverty, sharply dividing the world into electricity have and have-nots and rapidly accelerating biodiversity loss. Thomas L. Friedman, *Hot, Flat, and Crowded, Why We Need a Green Revolution – and How It Can Renew America*, Release 2.0, Updated and Expanded (New York, USA: Picador, Farrar, Straus and Giroux, 2008) (rep. in 2009) at 63-64.

[76] See e.g.: *Declaration of the United Nations Conference on the Human Environment*, UN Doc. A/C. 48/14 (1972), 11 ILM 1461 (1972), principle 1 [*Stockholm Declaration*] as one of the first international documents crystallizing the concept of sustainable development, providing: "Man has the fundamental right to freedom, equality and adequate

In searching for responsive strategies to these problems, 'development that can last' has been endorsed as the principle that seeks to merge economic and environmental priorities in decision-making, consider short-term and long-term costs and benefits, and reduce the differences in income and access to resources between rich and poor countries.[77] It is addressed not only to states, though they are primarily responsible for its achievement, but also to international organisations, corporations, NGOs and local communities whose actions or omissions are significant for its advancement.[78]

The last few decades have witnessed the acceptance of the principle of sustainable development by a prevailing majority of our 'civilized nations'. The 1962 General Assembly Resolution on Economic Development and the Conservation of Nature is considered as the document where the General Assembly for the first time brought together the concepts of 'natural conservation' and 'economic development', asking states to integrate natural resource protection measures into their plans of economic development.[79] The full release of the phrase, giving it a more general application,[80] is owed to the 1987 Bruntland Report and the 1992 United Nations Conference on

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conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."; *Johannesburg Declaration on Sustainable Development*, in Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 Aug.– 4 Sept. 2002, A/CONF.199/20 (New York: United Nations, 2002) para. 2 [*Johannesburg Declaration*] providing: "We [the representatives of the peoples of the world] commit ourselves to building a humane, equitable and caring global society, cognizant of the need for human dignity for all".

[77] Gro H. Brundtland *et al.*, *Our Common Future: The Report of the World Commission on Environment and Development* (Oxford: Oxford University Press, 1987) at ix [*Brundtland Report*] (defining sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"); Jurgen Schmandt & C.H. Ward, "Challenge and Response" in Jurgen Schmandt & C.H. Ward, eds., *Sustainable Development: The Challenge of Transition* (Cambridge: Cambridge University Press, 2000) 1 at 4.

[78] E.g. *Brundtland Report, ibid.* (stating that sustainable development "should become a central guiding principle of the United Nations, Governments and private institutions, organizations and enterprises.").

[79] Rebecca M. Bratspies, "Reconciling the Irreconcilable: Progress Toward Sustainable Development" in Rusell A. Miller & Rebecca M. Bratspies, eds., *Progress in International Law* (Leiden: Martinus Nijhoff Publishers, 2008) 813, at 818, referring to UN GA Resolution on *Economic Development and the Conservation of Nature*, GA Res. 1831(XVII), UN GAOR, 17th Sess., Supp. No. 17, UN Doc A/RES/1831(XVII) (1962) 21. For earlier developments of the principle see: Separate Opinion by H.E. Judge C.G. Weeramantry, Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia), [1997] I.C.J. Rep. 7, 140; M.C.W. Pinto, "The Legal Context: Concepts, Principles, Standards and Institutions" in Friedl Weiss, Erik Denters & Paul de Waart, eds., *International Economic Law with a Human Face* (The Hague, The Netherlands, Kluwer Law International, 1998) 13 at 16 [Pinto in Weiss, Denters & Waart]; Marie-Claire Cordonier Segger & Ashfaq Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford: Oxford University Press, 2004) at 17 [Cordonier Segger & Khalfan].

[80] Pinto in Weiss, Denters & Waart, *ibid.*

Environment and Development (UNCED),[81] resulting with the Rio Declaration[82] and Agenda 21.[83] The global agenda proceeded with the 2002 World Summit on Sustainable Development (WSSD) and its Johannesburg Declaration[84] and Plan of Implementation.[85] The process of its integration into international and domestic legal and non-legal instruments keeps pace.

During this process, the concept evolved as well. Initially, it served as a conservation principle concerned with "the sparing and economical use of non-renewable resources, and the indefinite maintenance of the productivity of renewable resources".[86] The Johannesburg Plan of Implementation broadened its focus so as to comprise an "integrated environmental, social and development agenda, with attention for poverty eradication, sanitation and health."[87] As provided by the Johannesburg Declaration, the commitment to sustainable development means acting "united by a common determination to save our planet, promote human development and achieve universal prosperity and peace."[88]

The significance of this concept has caused many to advocate that sustainable development is a human right *per se* (belonging to the third generation of human rights), thereby invoking the duty of all the actors on the social scene to protect it, respect it and provide remedy in case of its violation.[89] Vasak, the author of this third category called them 'solidarity rights' as he was inspired by the concept of fraternity in the French Revolution's motto.[90] He believed that if perceived under

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[81] Cordonier Segger & Khalfan, *supra* note 79 at 15.

[82] *Rio Declaration on Environment and Development*, Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/6/Rev.1, (1992), 31 ILM 874 (1992) [*Rio Declaration*].

[83] *Agenda 21*, Report of the United Nations Conference on Environment and Development, I (1992) UN Doc. A/CONF.151/26/Rev.1, (1992) 31 ILM 874 [*Agenda 21*].

[84] *Johannesburg Declaration*, *supra* note 76.

[85] *Johannesburg Plan of Implementation*, Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 4 Sept. 2002, UN Doc. A/CONF.199/20, online <http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm> [*Johannesburg PoI*].

[86] Pinto in Weiss, Denters & Waart, *supra* note 80 at 16.

[87] Cordonier Segger & Khalfan, *supra* note 79 at 26-28.

[88] *Johannesburg Declaration*, *supra* note 76 para. 35.

[89] I borrow the phrase from Prof. Ruggie's Framework on Human Rights, *infra* note 137 and accompanying text.

[90] This construction is based on Vasak's three generations of human rights, inspired by the three themes of the French Revolution; the first generation included the civil and political rights defined in the International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. FAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976) and corresponded to the ideal of *liberty*; the second generation included those rights defined in the International Covenant on Economic, Social and Cultural Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force 2 Jan. 1976) and corresponded to the ideal of *equality*; the third generation comprises

'fraternity', these rights could overcome a 'deficiency' deriving from the first and second generations which were concerned with the individual as such and not with the individual's necessity to participate in his own community.[91] The need arises significantly in the light of the confirmed global interdependence with problems of peace keeping, environmental protection and sustainable development.[92] Their role is to bring in a notion of solidarity and cooperation manifesting the *concerted* efforts of all the actors on the social scene.[93] Besides the ongoing discussion regarding the international legal status of these rights,[94] in our context it is worth highlighting how the fraternal spirit and behaviour serve the individual to assert himself in the community while at the same time reflecting an essential prerequisite for the responsive endeavour to the global challenges, namely sustainable development. This relationship between fraternity and sustainable development becomes the focus of the next section.

B. Sustainable Development and Fraternity: An Inherent Relationship

Sustainable development is defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[95] It implies development that can integrate the three interrelated and interdependent agendas: economic growth, environmental protection and social justice. At least two concepts appear salient: the concept of 'needs' as a property that serves to realising *each and all* human beings, and the concept of 'self-limitation' both sector-wise (to not prefer one agenda over the other) and time-wise (i.e.

'new' human rights such as the right to development, to a healthy environment and to peace which corresponded to the ideal of *fraternity*. Carl Wellman*,* "Solidarity, the Individual and Human Rights" (2000) 22 HR Quarterly 639 at 639 [footnotes omitted]. More broadly it comprises the right to self-determination; the right to economic and social development, the right to participate in and benefit from the common heritage of mankind, the right to sustainable environment and the right to humanitarian disaster relief. *Encyclopædia Britannica Academic Edition*, 2011, "human rights" by Burns H. Weston [*Encyclopædia Britannica*].

[91] The first generation rights were designed to protect the individual from the state's wrong actions, and the second generation rights aimed at enabling the individual to expect from the state beneficial actions. Wellman, *ibid*. at 642.

[92] *Ibid*. They emerged in the context of several global concerns i.e. the need for peace after the World Wars, for freedom from colonialism, for reducing strong economic inequalities between countries and preserving a healthy environment; the negative impact of technological advancement on the shared commons etc. *Ibid*. at 640-641.

[93] *Ibid*. at 643. Their essential characteristic which also distinguishes them from the other two generations is the extension of the duty to realize them beyond the state actors.

[94] They seem to be "more aspirational than justiciable in character and … their status as international human rights norm remain ambiguous." *Encyclopædia Britannica*, *supra* note 90.

[95] *Brundtland Report*, *supra* note 77.

intergenerational equity).

These key issues are highlighted in one of Justice Gonthier's contributions as to how sustainable development can be achieved.

> Fraternity is the heart of sustainable development. It calls for not imposing solutions determined by one's own agenda rather than regard for the needs as experienced and perceived by the recipients. Where there is no fraternal impulse in the development endeavour, there is no true understanding and commitment to the problems of those in need.[96]

The message received is that sustainable development should be pursued because of *everyone's' needs*, defined as "the deepest motivational factors shared by human beings (like security, subsistence, creation, affection, meaning and contribution)".[97] To do so in an interdependent world with limited resources, we should *limit our freedoms*. In other words we should be aware of our responsibilities as opposed to our rights. And in most cases, this is not simply a judgement of *reciprocity*, but also a judgement where it is instilled a sense of *affection* and *commitment* to the vulnerable (*those in need*).[98] By reading this message through the lens of fraternity, one finds that it has an intrinsic value when concerned with the human dignity as such. At the same time, the spirit of fraternity that is reflected in human behaviour, is seen as the indispensable condition for the individual's existence and development within the human society, and for which again sustainable development has a core role to play. In this vein, the drivers for fraternal behaviour, to mention but a few, solidarity, equity, fairness, reciprocity but also affection, empathy and care, form the substance of sustainable development; they are an inherent part of it. Fraternal behaviour itself, as expressed in cooperation, inclusion, responsibility, etc., is the value

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[96] Gonthier, "Environmental Governance", *supra* note 49 [emphasis added].

[97] Felix Rauschmayer, Tell Muenzing & Johannes Frühmann, "A Plea for the Self-Aware Sustainability Researcher: Learning from Business Transformation Processes for Transitions to Sustainable Development" in Felix Rauschmayer, Ines Omann & Johannes Frühmann, eds., *Sustainable Development: Capabilities, Needs and Well-being* (London: Routledge, 2010) 121, at 124 [endnote omitted] [Rauschmayer, Muenzing & Frühmann].

[98] "Vulnerability manifests an asymmetrical imbalance between the weak and the powerful, and in this context, it demands an ethical engagement of the powerful to protect the weak." It reveals the "deepest point of morality". Jacob Dahl Rendtorff, *Responsibility, Ethics and Legitimacy of Corporations* (Denmark: Copenhagen Business School Press, 2009) at 174.

that constitutes the real promise for the achievement of such a global common goal.[99]

C. Fraternity, the Common Denominator of Sustainable Development Principles

In addition to the above analysis, it is deemed appropriate to illustrate how the various fraternal constituents are reflected in the texts of the main international documents on sustainable development, thereby manifesting their indispensable role for its advancement. The presence of some key fraternal elements is already noticed in the Stockholm Declaration, the Brundtland Report, the Rio Declaration and the Johannesburg Declaration. These include concepts such as the *need* for promoting sustainable development for the *sake of the human dignity*[100] and for *the mankind's common interest* to prosper;[101] *equity* in sharing costs and benefits while *caring for the vulnerable*;[102] *good faith*;[103] *cooperation*;[104] *inclusion*;[105] *responsibility*;[106] and *solidarity*.[107]

Of particular interest is the ILA Declaration. It provides a synthesis of seven legal principles relating to sustainable development as identified and elaborated by the ILA[108] and addressed to states, international organisations, corporations, local communities and NGOs.[109]

I delve into this document for two main reasons. The ILA Declaration can be regarded as an example *par excellence* for illustrating in a fairly comprehensive way how the principle of fraternity

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[99] As some authors maintain, a shift to sustainable development approaches can be successful only if it "becomes part of [one's] consciousness, values and priorities." Rauschmayer, Muenzing & Frühmann, *supra* note 97 at 125.

[100] *Johannesburg Declaration*, *supra* note 76 para. 2

[101] *Stockholm Declaration*, *supra* note 76 para. 7, principles 1, 2, 5, 11, 15, 18; *Brundtland Report*, *supra* note 77 paras. 1, 2, 4; *Rio Declaration*, *supra* note 82 principle 3; *Johannesburg Declaration*, *supra* note 76 paras. 2, 3, 6, 9, 16, 35, 37.

[102] *Brundtland Report*, *supra* note 77 para. 4; *Stockholm Declaration*, *supra* note 76 principles 12, 23; *Rio Declaration*, *supra* note 82 principles 6, 7,11, 15, 23,

[103] *Rio Declaration*, *supra* note 82 principle 27.

[104] *Stockholm Declaration*, *supra* note 76 para. 7, principle 22, 24; *Brundtland Report*, *supra* note 77 paras. 15, 16; *Rio Declaration*, *supra* note 82 Principle 5, 9, 12, 13, 14, 18, 19, 24, 27; *Johannesburg Declaration*, *supra* note 76 paras. 16, 17,18, 21, 23, 26, 35.

[105] *Brundtland Report*, *supra* note 77 para 17, *Rio Declaration*, *supra* note 82 principle 10, 20, 21, 22; *Johannesburg Declaration*, *supra* note 76 paras. 20, 25, 26, 34.

[106] *Stockholm Declaration*, *supra* note 76 para. 7, principles 1,4,19, 21; *Rio Declaration*, *supra* note 82 principles 2, 7, 13, 16; *Johannesburg Declaration*, *supra* note 76 paras. 5, 6, 27, 29.

[107] *Johannesburg Declaration*, *supra* note 76 para. 17.

[108] *ILA Declaration*, *supra* note 6. It reflects the work of the ILA Committee whose contribution builds also on the prior work of the UNCSD and others. Marie-Claire Cordonier Segger & C.G. Weeramantry, eds., *Sustainable Justice*: *Reconciling Economic, Social and Environmental Law* (Leiden: Martinus Nijhoff, 2005) at 9 [Cordonier Segger & Weeramantry].

[109] *ILA Declaration*, *supra* note 6 sec. 2.3, 3.1.

inspires and builds all of its provisions, thereby becoming their common denominator. The second reason relates with its capacity to offer "substantive guidance" for integrating environmental, economic and social development objectives and regimes.[110] Some of its principles have binding power (*lex lata*), while others are reflected in soft law (*lex ferenda*) or remain aspirational.[111] By gaining legal acceptance or otherwise going through a legitimising process,[112] their implementation is more promising, thus their advancement more realistic.[113]

The spirit of fraternity is primarily manifested in the concept of the *common heritage of humankind*,[114] a concern shared by both fraternity and sustainable development. The challenges triggering it are related to the competing economic, financial, social and environmental interests. These in turn are evidence of the concept of interdependence as addressed by the Principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives.[115] The quest for integration and interrelationship instils a sense of *self-limitation* to the behaviour of all actors, and while subsumed into the concept of fraternity, it also appears essential for the achievement of sustainable development. As the work of Justice Gonthier inspires, in the light of these common concerns of humankind, societies can still learn to work together for a common future which "must understand and respect environmental limits, use resources more sustainably, and address long-standing global inequalities."[116] These duties towards

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[110] Cordonier Segger & Khalfan, *supra* note 79 at 102; Cordonier Segger & Weeramantry, *supra* note 108 at 9. This is so despite the ILA's lack of international law-making or codifying powers and the contestation of the international legal status of the said principles. *Ibid*.

[111] Andrew Newcombe, "Sustainable Development and Investment Treaty Law" (2007) 8(3) ICSID Review 357 at 360. See also the survey of international treaty and customary sources of international law made by the Center for International Sustainable Development Law and indicating that many principles are becoming "more widely accepted after the 2002 Johannesburg World Summit on Sustainable Development". M.C. Cordonier Segger *et al.*, "Prospects for Principles of International Sustainable Development Law: Common but Differentiated Responsibilities, Precaution and Participation" R.E.C.I.E.L. (2003) 12:1 at 45-69.

[112] As Judge Weeremantry holds, "[i]nternational law arises initially from the realm of aspirations. All of its principles are formulations of aspirations, gradually hardened into concrete law. ..." H.E. Judge Christopher G. Weeramantry, "Foreword" in Cordonier Segger & Khalfan, *supra* note 79 at ix – x.

[113] See generally Cordonier Segger & Khalfan, *supra* note 79 at 102-171.

[114] Section 1.3 of the Declaration defines both the *humankind common concern* and *common heritage*. *ILA Declaration*, *supra* note 6. However, the broader concept of common heritage is deemed more appropriate for this analysis. See *supra* note 59.

[115] *ILA Declaration*, *supra* note 6 sec. 7.1.

[116] Marie-Claire Cordonier Segger, "Sustainability, Global Justice, and the Law: Contributions of the Hon. Justice Charles Doherty Gonthier" (2010) 55 McGill L. J. 337 at 339 [Cordonier Segger, "Sustainability, Global Justice and Law"].

each other and the environment are embodied in the concept of fraternity.[117]

Another related constituent is the *duty of responsibility*, as extended to several actors (states, corporations and other components of civil society) and in its several dimensions (state to state, state to individuals/communities, state to natural environment, corporation to state, to individuals/communities and to natural environment etc.). This is prevalent in Principle 1 (the sustainable use of natural resources),[118] Principle 2 (equity and the eradication of poverty),[119] Principle 3 (common but differentiated responsibilities),[120] Principle 4 (precautionary approach to human health, natural resources and ecosystems)[121] and Principle 6 (good governance).[122]

The concepts of *equity* and *fairness* are advanced by Principle 2.[123] *Fairness* is also noticed in Principle 6, in the framework of corporate socially responsible investments that develop global markets aimed at a fair distribution of wealth among and within communities. A notion of *solidarity* is present in Principles 3[124] and 4.[125] It arises not only out of a sense of fairness and equity, but also because of *empathy* and *compassion* for those in need.

The quest for *cooperation* permeates mainly Principles 2[126] and 3[127] along with *participation*

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[117] *Ibid*. at 340.

[118] Principle 1 provides for the duty of states to ensure sustainable use of natural resources, so as to contribute to the development of their peoples by taking into account the needs of future generations. It also extends its application to "all relevant actors" who have a role in avoiding wasteful use of natural resources. *ILA Declaration*, *supra* note 6.

[119] Principle 2 provides for the "primary responsibility" of each state to advance equity within its own population and to ensure the eradication of poverty as well as for the "further responsibility" of all States to assist other states in achieving such objective, if in a position to do so. *Ibid*.

[120] Principle 3 imposes common but differentiated responsibility to states and other relevant actors to co-operate in the achievement of sustainable development, while admitting that primary responsibility stands with developed countries. Emphasis is given also to the responsibility of corporations pursuant to the polluter-pays principle. *Ibid*.

[121] Principle 4 endorses the precautionary approach, as key to sustainable development, and which should encompass accountability for harm caused including, where appropriate, state responsibility. *Ibid*.

[122] Principle 6 addresses how good governance calls for corporate social responsibility as a condition for the achievement of sustainable development (Sec. 6.3). *Ibid*.

[123] Sec. 2.1 provides for the intra-generational and inter-generational equity while evoking the concept of fairness in relation to the level of the common patrimony to be enjoyed by the future generations and the Earth's natural resources to be accessed by the current generation. *Ibid*.

[124] Sec. 3.1 holds that the differentiation of responsibilities is "principally based on the contribution that a State has made to the emergence of environmental problems" (fairness). Still, it must also pay heed to the state's "economic and developmental situation" (solidarity) (Sec. 3.2). Sec. 3.3 evokes the idea of care for the vulnerable. *Ibid*.

[125] One can read a sense of solidarity in the precautionary approach, if a subject (often a corporation) decides to not use the lack of scientific certainty as an excuse to proceed with an activity that is potentially harmful to human health, natural resources and ecosystems, thus acting for the sake of such constituents (Sec. 4.1). *Ibid*.

[126] Sec. 2.3 addresses the duty to cooperate for the eradication of poverty and for global sustainable development as well as for the attainment of equity in the development opportunities of developed and developing countries. *Ibid*.

[127] Sec. 3.1 asks for a global partnership between the states, international organizations, corporations, NGOs and civil society and imposes on them a duty to co-operate in the achievement of global sustainable development. *Ibid*.

and *inclusion* as reflected in Principle 4,[128] Principle 5 (public participation and access to information and justice)[129] and Principle 6.[130]

Following the above, one can see how fraternity, as a moral value is manifested throughout the principles of sustainable development. Its elements constitute the intrinsic motivation for advancing sustainable development (i.e. when expressed by notions of caring for the vulnerable and the future generations) and at the same time they represent an instrumental value for achieving such a goal.

This finding is valuable because the moral values, on which the ILA and other declarations rest, constitute the basis for them to gain legitimacy and become enforceable.[131] On the other hand, moral values have the particular feature of being respected by the societies where they belong, regardless of any authoritative force of law. As such, they suggest the potential application of these documents due to the general consensus of the societies they are addressed to. This latter proves useful especially in the case of sustainable development. Its particularities as an integrative and reconciliatory principle, along with its placement into a multi-dimensional and multi-actor setting, indicate that in order for it to succeed both as a global policy and a principle of law, it is needed more than a black-letter law support.

Cooperation between states, NGOs' public pressure for corporate *responsibility*, *fairness* among business actors in a competitive free market and others, are all fraternal values that enhance the objective of sustainable development. The following chapter focuses at one of the actors – corporations and only at one dimension of their relationships – the one with the society and the natural environment. It analyses the corporate commitment to social and environmental responsibility, as a mechanism that advances sustainable development.[132]

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[128] Sec. 4.4 emphasises the need to involve all interested parties in the consultation procedures related with decisions on precautionary measures and comply with due process (transparency, administrative and judicial review). *Ibid*.

[129] Sec. 5.1 addresses the right of stakeholders to participate in decisions affecting them. *Ibid*.

[130] Sec. 6.3 requires among others the "full participation of women in all levels of decision-making" as an essential prerequisite for the development and codification of international law relating to sustainable development. *Ibid*.

[131] "Law must have a moral basis if it is to be respected". Gonthier, "Law and Morality", *supra* note 66 at 408.

[132] Cordonier Segger, "Sustainability, Global Justice and Law", *supra* note 116 at 352, suggesting that the analysis towards a sustainable development approach, is being done, not only through legal instrumentalities, but also "through voluntary measures, such as the growth of ethical investing standards, ... and the design of responsible investment codes in nearly every sector of the global economy."

III. Corporate Social Responsibility: A Fraternal Commitment to Achieve Sustainable Development

   A. The Case of Corporate Social Responsibility

The case of CSR is chosen with the aim of illustrating whether and how several fraternal values are reflected in the CSR commitments and as such constituting the corporate contribution to the advancement of sustainable development. This choice was made for several reasons.

Firstly, transnational corporations (TNCs) and other business enterprises have significant influence on the economies of most countries and the international economic relations. Such a role arises in particular since they are perceived as more powerful than governments themselves. The end of the 20th century proved that the majority of the world's largest single economic entities were business corporations, instead of nation-states.[133] Their power is perceived as enormous with regard to their revenue, which is deemed often larger than the national budgets of states.[134]

Secondly, the various global developments such as climate change, global economic crises and humanitarian disasters are indicators of interdependent economies, populations and ecosystems, where corporate behaviour affects not only shareholders but the society at large.[135] Business activities are therefore associated with economic, social and environmental impacts on the societies they operate.[136] While having the capacity of fostering economic growth and technological improvement, through their business practices they may also either violate or respect both human

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[133] According to a 2000 study of the biggest 100 economies in the world, corporations filled 51 rankings and countries only 49 of them. Similar results appeared in a 2003 follow-up survey. Sarah Anderson & John Cavanagh, *Top 200: The Rise of Corporate Global Power* (Washington, D.C.: Institute for Policy Studies, 2000) at 3, online: Corpwatch < http://www.corpwatch.org/article.php?id=377> and Sarah Anderson & John Cavanagh, *Corporate v. Country Economic Clout: The Top 100* (Washington, D.C.: Institute for Policy Studies, 2003).

[134] Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern, Norm Construction in a Globalizing World* (Ashgate Publishing Limited: England, 2010) at 20 at 32 [Segerlund].

[135] Bryan Horrigan, *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business* (UK: Edward Elgar Publishing, 2010) at 3 [Horrigan].

[136] According to the Global Reporting Initiative (GRI), *economic impact* means an organization's direct and indirect impact, on the economic resources of its stakeholders and on economic systems at the local, national and global levels; *social impact* implies the one on the social system within which it operates, including labour practices, human rights and other social issues; *environmental impact* is the impact on living and non-living natural systems, including eco-systems, land, air and water. Examples include energy use and greenhouse gas emissions. GRI, *Sustainability Reporting Guidelines*, 2002, online: GRI <http://www.globalreporting.org/ReportingFramework/>.

rights[137] and the natural environment.[138]

Under this view, CSR plays a crucial role by ensuring that the direct and indirect impacts caused by corporations in their normal course of business are positive for both the people and the natural environment. Therefore, they are not simply drivers of economic growth, but rather the "business contribution to sustainable development".[139]

An additional reason is Justice Gonthier's belief that the social responsibility of enterprises is animated by the value of fraternity.[140] To him, fraternity is founded on the recognition that where there are relationships, there are responsibilities.[141] As such it is the principle that advances the goals of commitment and responsibility, therefore making positive steps in the community.[142] This hint triggers further exploration of the relationship between fraternity and CSR and how this in turn translates into a positive contribution for the achievement of sustainable development.

B. The Role of CSR in Advancing Sustainable Development: Some Common Themes

Although CSR is used as the acronym for corporate social responsibility, in most contexts it corresponds to the corporate *social and environmental* responsibility.[143] Two definitions are reiterated herewith for a conceptual introduction of CSR. The World Business Council on Sustainable Development (WBCSD) views it as "the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community

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[137] For a comprehensive account on the relationship of business with human rights, see the work of the UN Secretary-General Special Representative on the issue of human rights and TNCs and other business enterprises, John Ruggie, online: Business and Human Rights Resource Centre <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

[138] One of the early institutional considerations of the influence of TNC activities on "the *quality* of the physical environment, with implications for the long-run sustainability of growth" is traced in the 1992 World Investment Report on Transnational Corporations as Engines of Growth. UN, *World Investment Report*, *Transnational Corporations as Engines of Growth* (New York: UN, 1992) ST/CTC/130, at 223 *et seq.*, online: UNCTAD <http://www.unctad.org/en/docs/wir1992_en.pdf>.

[139] This is part of the Canadian Government CSR definition. Industry Canada, "Corporate Social Responsibility", online: Industry Canada <http://www.ic.gc.ca/eic/site/csr-rse.nsf/eng/home>.

[140] Gonthier, "Sustainable Development", *supra* note 34 at 17.

[141] Gonthier, "Fraternity", *supra* note 7 at 574.

[142] *Ibid*. at 570. See also Hon. C.D. Gonthier, "Foreword" in Kerr, Janda & Pitts, *supra* note 4 at vii-x.

[143] See Thomas Clarke, "The Materiality of Sustainability: Corporate Social and Environmental Responsibility as Instruments of Strategic Change?" in Dexter Dunphy and Suzanne Benn, eds., *Corporate Governance and Sustainability: Challenges for Theory and Practices* (New York, Routledge, 2007) 219 at 219 [Clarke].

and society at large to improve their quality of life."[144] The EU Commission defines CSR as "[a] concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with stakeholders on a voluntary basis."[145]

The ideas of integration and stakeholder inclusion have saliently indicated the real meaning of CSR today. One author even calls it 'Radical CSR 2.0' so as to differentiate it from the 'Old CSR 1.0' identified with "public relations, philanthropy or incremental improvement". CSR 2.0 is defined as the integrated approach of business to consistently create shared value in society through economic development, good governance, stakeholder responsiveness and environmental improvement, in a way that business "builds, rather than erodes or destroys, economic, social, human and natural capital."[146] In a similar vein (although probably with another view on the intrinsic motivations for CSR), Porter and Kramer propose that CSR should be superseded by Creating Shared Value (CSV), given that the former mostly focuses on "reputation and has only a limited connection to the business, making them hard to justify and maintain over the long run" whereas the latter "is integral to a company's profitability and competitive position."[147] For purposes of this paper though, we stick to the acronym CSR so as to comprise the most advanced understanding available to date.

CSR is considered as part of the answer in addressing "great societal and global problems"

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[144] Richard Holme (Rio Tinto), Phil Watts (Royal Dutch/Shell Group), *Corporate Social Responsibility: Making Good Business Sense*, online: WBCSD <http://www.wbcsd.org/DocRoot/IunSPdIKvmYH5HjbN4XC/csr2000.pdf> at 8-11 [*CSR making good business sense*].

[145] Definition by the European Commission, COM (2001) 366 cited in Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, *Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility*, Commission of the European Communities, Brussels, 22.3.2006, COM(2006) 136 final, at 2. Online: EC <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm>.

[146] Wayne Visser, *The Age of Responsibility: CSR 2.0 and the New DNA of Business* (Chichester, UK: John Wiley & Sons, 2011) at 7 [Visser]; Michael E. Porter & Mark R. Kramer, *The Big Idea: Creating Shared Value* (January-February 2011) Harvard Business Review 62 [Porter & Kramer].

[147] Porter & Kramer, *ibid.* at 76. They suggest three key ways that companies can create shared value opportunities: a) by reconceiving products and markets, b) by redefining productivity in the value chain, c) by enabling local cluster development. One example where addressing societal concerns can generate productivity benefits to a corporation is when it invests in a wellness program. Societal benefits include healthier employees and corporate benefits include minimization of employee absences and lost productivity. *Ibid.* at 65, 68.

faced in our century.[148] In the words of the WBCSD, CSR "is firmly on the global policy agenda" with its priority issues being human rights, environmental protection, supplier relations and community involvement.[149] This understanding of the role of CSR in sustainable development has been reflected in various international documents such as the Agenda 21,[150] the Johannesburg Plan of Implementation[151] and from a regional perspective, yet with a strong influence in the international arena, the EU policies on sustainable development.[152]

The relationship between CSR and sustainable development is interestingly illustrated by some common themes running through both of them.[153] The acknowledgement of *needs* permeates both concepts. As already underlined, sustainable development builds on the idea of 'needs' which, in a human society, relates directly with the idea of 'self-limitation' in order to fulfill the needs. CSR too builds on these ideas as long as business needs both the natural environment and society in pursuing its activities, and in order to have them it must limit its prior objective (most often being profit-making). In this view, both are concerned with *integration* and reconciliation of three interdependent dimensions of development: economic, environmental and social. At the same time both aim at *inclusion*; sustainable development aims at inclusion of all members of humanity (regardless their wealth, their presence in the current generation, or their power)[154] and CSR aims at stakeholder engagement.[155] In view of these common elements, one can argue that both are a reflection of various human values, to mention one of them, fraternity. The linkage with such a

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[148] Horrigan, *supra* note 135 at ix, 3. Each company alone cannot be held socially responsible for advancing the cause of sustainable development in general, yet contributing to this duty within its sphere of influence (i.e. the people and situations that the corporation has a contractual, economic, geographic and political proximity with), it can add to the collective efforts of every company. See Kerr, Janda & Pitts, *supra* note 4 at 89, 10.

[149] WBCSD, *Meeting Changing Expectations: Corporate Social Responsibility* (Switzerland: WBCSD Publications, at 2, online: WBCSD <http://www.wbcsd.org/DocRoot/hbdf19Txhmk3kDxBQDWW/CSRmeeting.pdf>.

[150] *Agenda 21*, *supra* note 83 chapter 30.

[151] *Johannesburg PoI*, *supra* note 85 para. 49.

[152] EC, *Communication on Mainstreaming Sustainable Development into EU Policies: 2009 Review of the European Union Strategy for Sustainable Development*, (Brussels, 24.7.2009) COM (2009) 400 final, at 3, online: EC <http://ec.europa.eu/sustainable/docs/com_2009_400_en.pdf>.

[153] See for a similar and more comprehensive analysis of the linkages between CSR and sustainable development, Kerr, Janda & Pitts, *supra* note 4 at 17-19 as well as Chapters 4-11 (introducing and elaborating thoroughly on seven CSR legal principles as linked with the ILA Declaration seven legal principles of sustainable development).

[154] See e.g. ILA Declaration's Principle of equity and the eradication of poverty and Principle of public participation and access to information and justice. *ILA Declaration*, *supra* note 6.

[155] See e.g. the WBCSD definition of CSR, *supra* note 144 and accompanying text.

moral value is the focus of the next section.

C. Tracking Elements of Fraternity in CSR Commitments

From a quick view of representative CSR definitions,[156] some of the visible features noticed are *voluntariness*,[157] *integration* of social, environmental and other concerns; *co-operation* and *stakeholder inclusion*; *openness* and *transparency*, *ethical* behaviour etc. As one author suggests, "CSR is drenched in alternate notions of 'meeting societal preconditions for business', 'building essential social infrastructure', 'giving back to host communities', 'managing business drivers and risks', 'creating business value', 'holding business accountable' and 'sharing collective responsibility'."[158] Focusing on 'responsibility' (otherwise 'our ability to respond'), under a recent explanation, it means being *proactive*, *sensitive* to the interconnections and *willing* to do something constructive. It is about *reciprocity* in that "if we believe in the right to have our basic needs met, we have the responsibility to respond when poverty denies those rights to others."[159] It is also about *taking care of others* and most importantly about *sharing*, in that one cannot do everything alone rather than by acknowledging that all have a role to play for our common concerns.[160] These features already indicate some presence of fraternal elements in CSR. But how far does this manifestation go?

This section aims at tracking fraternal elements in some documents promoting CSR while further elaborating on its contribution to the advancement of sustainable development.[161]

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[156] For some of the definitions as taken from several reputable institutions and ranged in an ascending order from the least to the most demanding, see also Clarke, *supra* note 143 at 224.

[157] The concept of voluntariness in the context of this paper is to be understood as an expression of willingness (intrinsic motivation) and/or responsiveness of corporations to commit to certain behaviour.

[158] Horrigan, *supra* note 135 at 34.

[159] Wisser, *supra* note , at 4.

[160] *Ibid*. at 5.

[161] The effectiveness of these CSR commitments undertaken by the corporations is disregarded. For a recent review of the current state of CSR practices among the world's 100 largest TNCs and responsible investment among the 100 largest institutional investors, see United Nations Conference on Trade and Development (UNCTAD), *Investment and Enterprise Responsibility Review: Analysis of Investor and Enterprise Policies on Corporate Social Responsibility* (New York: United Nations, 2011), online: UNCTAD <http://www.unctad.org/en/docs/diaeed20101_en.pdf>. So is the disputed legitimacy of some of the actors producing the reviewed documents, in the light of the multilateral governance and establishment of public-private partnerships that are considered as being "increasingly directed toward serving the interests of business, rather than the goals of humankind as defined in international democratic forums." Benedicte Bull,

Elements of fraternity can be found in the very foundational stages of CSR.[162] From a more

contemporary perspective, a plethora of CSR instruments has developed over the last decades due

to the contribution of various actors of the national and global governance systems.[163] Some of the

initial ones are the *Sullivan Principles*;[164] the *Global Sullivan Principles of Corporate Social

Responsibility*;[165] the M*innesota Principles: Toward an Ethical Basis for Global Business*;[166] the

Principles for Business[167] and the *Set of Standards for Business Responsibility*.[168] In terms of their

international consensual basis and the broad representativeness of the main actors engaged in

drafting and promoting them, the following instruments are of more significance: the *OECD

Guidelines for Multinational Enterprises*,[169] considered as "a leading international instrument for

"The Global Elite, Public-Private Partnerships, and Multilateral Governance" in Jennifer Clapp & Rorden Wilkinson, eds., *Global Governance, Poverty and Inequality* (USA: Routledge, 2010) 209 at 209.

[162] The initial concerns about the idea of *just* and *fair* economic activity date as far back as the ancient Greek thinking. Nevertheless, it is only after the eighteenth century developments of a self-regulating market separating the economic activity from the social sphere, that their intrinsic relationship is re-evoked. One of the first actions opposing the negative impact of economic activities was the international labour movement made with the establishment in the 1840s of the Democratic Friends of All Nations. Its aim of achieving 'universal brotherhood' can be read as a quest to mitigate the then negative practices and differences at the working environment. Worth of emphasis is also the religious perspective on corporations holding that many concerns related with the effects of the industrial revolution could be solved by "organizing industry as a *cooperative effort to supply the needs of all* and *giving people an effective voice ...* and evaluating the right to property according to the degree to which ownership contributes to the development of *personality* and to *the good of the whole community*." Segerlund, *supra* note 134 at 38-39.

[163] For a recent comprehensive list of CSR initiatives by governments, intergovernmental organizations, NGOs, business organizations, multi-stakeholder organizations and individuals, see Segerlund, *supra* note 134 at 196-198. For a comprehensive list and analysis of CSR initiatives by countries worldwide, see Wayne Visser & Nick Tolhurst, eds., *The World Guide to CSR: A Country-by-Country Analysis of Corporate Sustainability and Responsibility* (UK: Greenleaf Publishing, 2010).

[164] These were developed by the Reverend Sullivan in 1977 as a code of conduct for companies operating in South Africa during the apartheid period. *The Sullivan Principles*, online: <http://muweb.marshall.edu/revleonsullivan/principled/principles.htm>.

[165] These were launched in 1999 by Leon Sullivan and the UN Secretary-General Kofi Annan. *The Global Sullivan Principles*, 1999, online: The Sullivan Foundation <http://www.thesullivanfoundation.org/about/global_sullivan_principles>.

[166] These were adopted by a group of business leaders under the auspices of the Minnesota Center for Corporate Responsibility with the aim of fostering the fairness and integrity of business relationships in the emerging global marketplace. The Minnesota Principles Towards an Ethical Basis for Global Business, Center for Ethical Business Culture, online: <http://mnethicsaward.org/wp-content/uploads/2010/11/MN_Principles_CEBC.pdf> [The Minnesota Principles].

[167] These were based on the work of the Caux Round Table, an international network of principled business leaders "working to promote a moral capitalism". The Caux Round Table, *Principles for* Business, online: <http://www.cauxroundtable.org/index.cfm?&menuid=2> [*Caux Round Table*].

[168] These were launched by the Social Venture Network whose aim was to foster a network of business and social entrepreneurs with the belief that "business can be a potent force for solving social problems". Social Network Venture, *Standards of Corporate Social Responsibility*, Edward Goodell ed., (San Francisco: 1999), at 1, online: <Social Network Venture http://www.svn.org/_data/global/images/campaigns/CSR_standards.pdf>.

[169] OECD, *Guidelines for Multinational Enterprises* (OECD: 2008), online: <http://www.oecd.org/dataoecd/56/36/1922428.pdf > [*OECD Guidelines*]. They are part of the OECD Declaration on International Investment and Multinational Enterprises, originally adopted in 1976 and revised in 1979, 1982, 1984, 1991 and 2000. Since May 2010,

the promotion of responsible business conduct"[170] with recommendations addressed by the OECD

adhering governments to MNEs operating in or from their countries; the *ILO Tripartite Declaration*

of Principles Concerning Multinational Enterprises and Social Policy[171] as one of the landmark

CSR-related instruments, offering guidelines to MNEs, governments, and employers' and workers'

organizations, in areas of employment, training, work and life conditions and industrial relations;

the *Ten Principles of the UN Global Compact* (UNGC) as a leadership platform, combining the best

properties of the UN with the private sector's building strengths and the expertise of a range of key

stakeholders and offering a unique strategic platform for participants to advance their commitment

to sustainability and corporate citizenship;[172] the *WBCSD Ten Messages* developed by this CEO-led

global association of some 200 companies dealing exclusively with business and sustainable

development[173] and the *Guiding Principles on Business and Human Rights* recently published by

the Secretary-General Special Representative the on the issue of human rights and TNCs and other

business enterprises.[174]

This paper focuses on one of these documents, namely the UNGC Ten Principles as they fairly

represent the consensus of a broad number of actors.[175] The Ten Principles build substantially on

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the OECD Guidelines are under updating process. Online: OECD <http://www.oecd.org/document/ 33/0,3746,en_2649_34889_44086753_1_1_1_1,00.html>.

[170] OECD, *Updating the OECD Guidelines for Multinational Enterprises*, 8 May 2011, Online: OECD <http://www.oecd.org/department/0,3355,en_2649_33765_1_1_1_1,00.html>. It is further maintained by the OECD that these guidelines are the most comprehensive instrument in existence today for corporate responsibility multilaterally agreed by governments. OECD, online: OECD <http://www.oecd.org/document/28/0,3746, en_2649_34889_2397532_1_1_1_1,00.html>.

[171] *ILO Declaration of Principles Concerning Multinational Enterprises and Social Policy*, adopted by the Governing Body of the International Labour Office, 204th Session (Geneva: November 1977) as amended at its 279th (November 2000) and 295th Session (March 2006) [ILO Declaration]. Its significance arises in light of the "unique tripartite structure of the ILO" as well as its competence and long-standing experience in the social field. See ILO Declaration.

[172] UN Global Compact, online: UNGC <http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html>.

[173] WBCSD, online: WBCSD <http://www.wbcsd.org/templates/TemplateWBCSD5/layout.asp?type=p&MenuId=NjA&doOpen=1&ClickMenu=Left Menu>.

[174] It was published on 21 March 2011 after six years of work on identifying and clarifying existing standards of practice related to business and human rights and recommending a "Protect, Respect and Remedy" Framework. It is suggested to provide concrete and practical recommendations for the implementation of such Framework. UN Human Rights Council, Seventeenth Session, Agenda item 3, A/HRC/17/31, online: Business & Human Rights Resource Center <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> [*Guiding Principles on Business & HRs*].

[175] It stands today as the largest corporate citizenship and sustainability initiative in the world with over 8,000 participants, including over 5300 businesses in 130 countries around the world. It involves all relevant social actors: companies, whose actions it seeks to influence; governments, labour, civil society organizations, and the United

the address of the former UN Secretary-General Annan to the World Economic Forum in 1999, inviting the business leaders to initiate together with the UN a "global compact of shared values and principles, which will give a human face to the global market." [176] The spirit and the word of several fraternal constituents are evident throughout the text of the speech, the Ten Principles developed thereafter as well as the explanations produced to the effect of their implementation. The speech prioritises notions of business *responsibility* and *solidarity* to humanity and in particular to its weak members.

> We have to choose between a global market driven only by calculations of short-term profit, and one which has a human face. Between a world which condemns a quarter of the human race to starvation and squalor, and one which offers everyone at least a chance of prosperity, in a healthy environment. Between a selfish free-for-all in which we ignore the fate of the losers, and a future in which the strong and successful accept their responsibilities, showing global vision and leadership. [177]

Moving to the Ten Principles and their explanations, the first two – allocated to the 'human rights area' of business operations – comprise the quest for supporting and respecting *human dignity* and *fairness*, along with the statement of *responsibility* of business community has to respect human rights, which gains particular importance in the cases where businesses operate in areas of weak governance. [178] One can also read the notion of *voluntariness* and *solidarity* in the business actions to respect human rights in these particular cases of poor legislation or weak implementation of the same. Corporations' *transparency and accountability*, [179] are also underscored as tools for implementing their social and environmental commitment to society. Other elements of fraternity

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Nations, as an authoritative convener and facilitator. UN Global Compact, online: UNGC <http://www. unglobalcompact.org/ParticipantsAndStakeholders/index.html>.

[176] See "Secretary General Proposes Global Compact on Human Rights, Labour and Environment in Address to World Economic Forum in Davos, Switzerland" Press Release SG/SM/6881, 1 February 1999, online: UN <http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html> [Kofi Annan Speech].

[177] *Ibid.* [emphasis added].

[178] *Ten Principles*, online: UNGC <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

[179] Principe 2, *ibid*. See also UNGC, *Blueprint for Corporate Sustainability Leadership* of the Global Compact Leaders Summit (UNGC: June 2010) at 11, online: UNGC <http://www.unglobalcompact.org/docs/issues_doc/lead/BluePrint_EN.pdf> [Blueprint].

are reflected in the third principle such as the promotion of *stakeholder inclusion*[180] and the recognition of collective bargaining rights so as to give *effective voice to employees as direct stakeholders* of the business enterprise in relevant decision-making by means of *cooperation* and *good faith.*[181] Emphasis is given also to *facilitating the input of people who may be excluded from participation* in processes that build decent work environment, such as women and informal sector workers,[182] to upholding the *elimination of all forms of forced* and *compulsory labour* and the *effective abolition of child labour*[183] and to the *elimination of discrimination*[184] as other contributions to the list of fraternal values in corporate behaviour. Among other things, these principles assist in the realisation of the *human dignity*, the meeting of the need for behaving pursuant a *golden rule* and the establishment of a sense of *solidarity*[185] with other members of the same human community (in particular with women and disabled employees). It is under this perspective, that these concerns are subsumed under the principle of fraternity.

Finally the environmental context principles highlight the quest for corporations to protect the environment by undertaking a precautionary approach, which serves at best to achieving *intra- and inter-generational equity*[186] while at the same time reiterating the notion of corporate *responsibility* for *environmental protection.*[187] *Stakeholder inclusion*, *transparency*, *dialogue*, and *openness* are also repeated in the light of the precautionary principle[188] and that of environmental responsibility.[189] This later offers an express linkage of such a corporate responsibility to the environment and to society at large, with the concept of sustainable development.[190] The notion of *voluntariness* is noticed in connection with the business initiatives to promote environmental responsibility by means of "adopting voluntary charters, codes of conduct or practice internally as

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[180] Principle 1, *ibid.* See also *Blueprint*, *ibid*.
[181] Principle 3, *Ten Principles*, *supra* note 178.
[182] *Ibid*.
[183] Principles 4, 5, *Ten Principles*, *supra* note 178.
[184] Principle 6, *Ten Principles*, *supra* note 178.
[185] *Ibid*.
[186] Principle 7, *Ten Principles*, *supra* note 178.
[187] Principle 8, *Ten Principles*, *supra* note 178.
[188] Principle 7, *Ten Principles*, *supra* note 178.
[189] Principle 8, *Ten Principles*, *supra* note 178.
[190] *Ibid*.

well as through sectoral and international initiatives to confirm acceptable behaviour and performance."[191]

It seems that these fraternal values build the core reason why corporations are invited to commit to CSR, i.e. improving the quality of life for communities in order for them to live in dignity. However this appears not to be sufficient to attract corporations in approaching CSR. Reasons are offered to business so that it can also win from such moves. E.g. Principle 8 provides that "[b]usiness gains its legitimacy through meeting the needs of society, and increasingly society is expressing a clear need for more environmentally sustainable practices."[192] The same is held under Principle 1 where addressing human rights issues is seen as bringing rewards for the company both at site level and globally, given that it builds good community relationships.[193] It is stated that "[s]ocially responsible organizations will typically have a *broader capability* and *often desire* to support the promotion of human rights within their sphere of influence especially in ways that link strategically to their core business activities."[194]

This goes in parallel, with the shift of the CSR approach, from a traditional one where it is perceived by companies as a duty to fulfill in order to look good ('doing good to look good'),[195] to a new strategic approach by means of which companies not only fulfil an obligation but mostly do so while also supporting their main objectives ('doing well and doing good').[196] In viewing these two approaches, through the lens of fraternity, questions are posed with regard to the real motivations

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[191] *Ibid.*

[192] *Ibid.*

[193] Principle 1, *Ten Principles*, *supra* note 178.

[194] *Ibid.*

[195] There is still a stance among companies holding that businesses are best at focusing on profit-making, leaving social concerns for individuals and families, government agencies and charitable institutions. Janet Morrison, *International Business, Challenges in a Changing World* (UK: Palgrave Macmillan, 2009) at 516 [Morrison] (referring also to the famous argument of M. Friedman that 'the business of business is business' and that the best way companies can serve society is by profit generation and shareholder primacy). He maintained that for as long as corporations carry out CSR activities for reasons of self-interest, the CSR doctrine is "a cloak for actions that are justified on other grounds rather than a reason for those actions." Milton Friedman, "The Social Responsibility of Business is to increase its Profits" New York Times Magazine (13 September 1970).

[196] This shift was described in the article of Craig Smith, "The New Corporate Philanthropy" (May-June 1994) 72(3) Harvard Business Review 105. Research and experience indicate that by doing good, companies have experienced a range of bottom-line benefits such as increased sales and market share, strengthened brand positioning, enhanced corporate image and clout, increased ability to attract, motivate, and retain employees, decreased operating costs and increased appeal to investors and financial analysts. Philip Kotler & Nancy Lee, *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause* (New Jersey, John Wiley & Sons, 2005) at 7-18.

behind the fraternal values manifested in CSR and whether they matter in terms of the final outcome. The next section turns the attention to such issues.

D. CSR as the 'Business Bridge' Between Fraternity and Sustainable Development

Upon exploring the presence of fraternal elements in CSR statements, it seems valuable to analyse, though not exhaustively, some theoretical aspects and practical results of two issues: the fraternal drivers for CSR and their role in advancing sustainable development.

In general terms, some believe that there is no 'sincere' link whatsoever between the business activity and CSR, it is instead being used only as a means to benefit the shareholders.[197] Others see it as valuable *per se*[198] and engage even in altruistic behaviour to pursue it, while a third group finds CSR both as a value in itself and as beneficial to both business and society.[199]

I illustrate these views by considering four alternative approaches that companies pursue, depending on how much weight they put to the economic, social and environmental goals in their strategic vision.[200] For two of them, CSR is considered additional to the economic goals ('bolted-on CSR') and for the other two it is integral to corporate strategy ('strategic CSR').[201]

In the case of bolted-on CSR, the companies' priority is the economic interest and any social commitment is expressed through engagement in charitable and community activities (philanthropy) or response to stakeholder pressures. Accordingly, the motives of their behaviour are not much deriving from "a sense of responsibility to society", rather than grounded on the need to enhance business reputation or mitigate negative impacts that stakeholders have in the course of business.[202]

On the other hand, strategic CSR stretches from the CSR-focused strategy to the integrated one.

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[197] *Supra* note 195 and accompanying text.
[198] Empirical research seems to indicate that many managers do approach ethical decision-making from what is effectively a deontological starting point. Kamel Mellahi, Kevin Morrell & Geoffrey Wood, *The Ethical Business, Challenges and Controversies* 2nd edition (UK: Palgrave Macmillan, 2010) at 15 [footnote omitted].
[199] *Infra* note 217 and accompanying text.
[200] These were developed by Morrison, *supra* note 195 at 527-531.
[201] *Ibid*. at 526.
[202] *Ibid*. at 527.

The former is considered as the "highest level in terms of social goals, representing an unequivocal commitment" to CSR because it places social and environmental responsibilities at the main focus of corporate goals, willing to pursue them at any cost. The driver here is "'altruism" an ethical principle signifying unselfish concern for others.[203] At the other extreme is the integrated strategy which balances economic and social goals. Companies see the benefits of stakeholder engagement and social investment, "but may also feel a moral responsibility to stakeholders" thereby improving corporate performance and being socially responsible."[204]

In all approaches the fraternal elements are present at the companies' strategic documents. Yet, their value might not be the same in the eyes of the executives.[205] In this realm and with the aim of understanding CSR approaches through the lens of ethics, some attention to the traditional consequentialist and deontologist ethical theories proves relevant.[206]

The *consequentialist theories* (represented by egoism and utilitarianism) base moral judgement on the intended outcomes of a certain action; if the outcomes are desirable, then the action in question is morally right. On the other hand, *the deontologist theories* (represented by ethics of duties and ethics of rights and justice), base moral judgement on the underlying principles of the decision-maker's motivation, an action is right because the underlying principles are morally right regardless of the desirability of the consequences it produces.

A CSR commitment can satisfy the criteria of a deontological theory, when its fraternal

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[203] *Ibid*. at 529. The author illustrates this model with the *changing role of philanthropy* (in that donors are moving away from the approach of one-off donation of money to a more active approach in particular causes and organizations supported by them) and most significantly with the *social enterprise* as a 'third sector' between charities and business run for profit. Using the Cabinet Office definition, the social enterprise is "a business with primarily social objectives whose surpluses are principally reinvested for that purpose or in the community, rather than being driven by the need to maximize profits for shareholders or owners." One of the most prominent legal forms it takes is the co-operative focusing on a variety of sectors and types of activities, from agriculture and banking to tenant or housing co-operatives. *Ibid*. at 533-534 [endnote omitted]. However, as maintained by the author, this model "is unlikely to appeal to many firms." *Ibid*. at 529.

[204] This latter case of business is seen as more common. Morrison, *supra* note 195 at 529. See also Visser, *supra* note 146 at 16-19.

[205] See *infra* note 216 on the discussions about individual, corporation or 'contextual' morality.

[206] This is so despite the various criticisms associated to them because they are still able "to provide us with a fairly *unequivocal solution* to ethical problems." Andrew Crane & Dirk Matten, *Business Ethics – A European Perspective: Managing Corporate Citizenship and Sustainability in the Age of Globalization* (Oxford, Oxford University Press, 2004) at 79 [Crane & Matten]. Criticisms are related with their limitations of being "too abstract", "too reductionist", "too objective and elitist", "too impersonal" as well as "too rational and codified". *Ibid*. at 95.

elements have an intrinsic value based on underlying principles of fairness, solidarity, inclusion etc. For instance, in the case of stakeholder inclusion, under a deontological approach the directors believe that employees are not only means (factors of production) but constituencies with their own goals and priorities, thereby acknowledging the "fundamental duty to allow these stakeholders some degree of influence on the corporation."[207]

If fraternal values constitute an intrinsic motivation for corporations[208] to commit to CSR, they are presumably integrated into their core business strategy, pushing them at best towards the Systemic CSR.[209] Thinking of its effects to the achievement of sustainable development, the probability of a positive outcome rises significantly. The positive link between CSR commitment and advancement of sustainable development is stronger under the integrated CSR approach, which pays attention to the three dimensions - economic, social and environmental in pursuance with the integration principle.[210]

Yet, we can also recall the altruistic pole of the CSR-strategy approach which places social and environmental responsibilities at its main focus and is willing to pursue them at any cost. This case, unless we are dealing with a social enterprise, might even lead to an undesirable result for the advancement of sustainable development, one of its aims being economic development. If the corporation, the main driver of such development, disregards the costs incurred by its CSR commitment to the extent that it is not financially profitable,[211] it will be driven out of the market, indicating – in principle – a failure of one of the sustainable development pillars.

Speaking about results, another scenario is explained from a consequentialist perspective.

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[207] Crane & Matten, *ibid*. at 88 [endnotes omitted].

[208] In this context I assume away discussions about individual, corporation or 'contextual' morality. *Infra* note 216.

[209] According to Visser, the difference between the Strategic CSR and the Systemic CSR, is that this latter is not only about aligning the support of social and environmental issues with its strategy as long as such strategy is not changed, rather it is about focusing on the interconnections of society and ecosystems and changing the strategy to optimize the outcomes for the larger human and ecological system. *Visser, supra* note 146.

[210] See also Morrison, *supra* note 195 at 529 finding integrated CSR strategy as "consonant with recommendations on sustainability".

[211] Some authors strongly suggest that "commitments to the environmental and social bottom lines cannot *simply be* altruistic endeavours. If that were the case, superior financial performance would never be realized." Dung K. Nguyen & Stanley F. Slater, "Hitting the Sustainability Sweet Spot: Having it All" 2010 (31) 3 Journal of Business Strategy, 5 at 9 [emphasis added]. See generally Andreas Suchanek, "Business Ethics and the Golden Rule", Discussion Paper No. 2008-3, Wittenberg Center for Global Ethics, online: < http://www.wcge.org/downloads/DP_2008-3_Andreas_Suchanek_-_Business_Ethics_and_the_Golden_Rule.pdf>.

There may be no principled motivation for the corporation to commit to CSR (i.e. no duty of responsibility or a sense of being fair and just), nevertheless, there is clear interest in the outcome for the corporation itself (egoism) or for the greatest amount of people affected by the action (utilitarianism). Indeed, many arguments why corporations commit to CSR are put under the umbrella of 'enlightened self-interest'.[212] By using this consequentialist theory in the context of sustainable development, one can maintain that even in cases where no underlying principles intrinsically motivate corporations to engage in fraternal behaviour, their mere engagement in such a behaviour produces positive outcomes to the society.[213] This fits best with the argument made by utilitarianism given that collective welfare is produced by the CSR-friendly action, regardless of its motives. One might even argue that the overall value generated by the business community in this case is probably better than in the extreme situation of altruistic behaviour.[214]

A conclusion is drawn with respect to the moral value of fraternity as manifested in the CSR approaches. In the strategic CSR-focused approach, fraternal elements reflect an intrinsic motivation driving companies to CSR, thereby meeting deontologists' criterion for qualifying as a moral value. On the other hand, the case of Bolted-on CSR indicates a moral value of fraternity if viewed from a consequentialist theory perspective, as the outcome resulting by the CSR commitment is positive. Beyond these two, the case of integrated CSR approach seems more appealing. Fraternity constitutes a value *per se* in that it motivates companies to integrate CSR into their core decision-making strategies, yet it is not the only one. Indeed it stands parallel to the economic motivation. When a corporation implements its CSR commitments because it is

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[212] Crane & Matten, *supra* note 206 at 41. As one author suggests, key 'myths' informing CSR movement comprise the market ability to deliver both short-term financial returns and long-term social benefits, the change driven by the ethical consumer, the competitive 'race to the top' over ethics amongst businesses and the global competition of countries to have the best ethical practices. Deborah Doane, "The myth of CSR", Stanford Social Innovation Review, Stanford University Graduate School of Business, Fall 2005, 23-29 cited in Clarke, *supra* note 143 at 221-222. Other examples are provided by corporations investing in local education or health care with the aim of retaining satisfied employees who are viewed as mere factors of production for the corporation (i.e. means instead of ends), or behaving pursuant to certain CSR policies satisfactory to their customers so as to maintain or increase their number, or lobbying for voluntary action so as to forestall regulatory compliance. Crane & Matten, *supra* note 206 at 83, 41.
[213] See Morrison, *supra* note 195 at 527 (explaining that although the Bolted-on CSR orientations do not affect the core business, they still "may help to foster good community relations.").
[214] See Morrison, *supra* note 195 at 529.

intrinsically motivated to do so *and* at the same time ensures financial profitability, it can contribute at best to the advancement of the three dimensions of sustainable development: economic development, environmental protection and social justice. In this case, CSR realises satisfactorily its role of the 'business bridge' between fraternity and sustainable development. Taking from the analysis of the value of fraternity offered in Chapter 1, one can say that fraternity (whose elements are manifested in the CSR commitment and behaviour) can meet both theoretical approaches on its moral value, thereby leading to a compromise of the two.[215] But how practical can this be?

Although in practice it is difficult, sometimes impossible to determine corporate motives[216] and even if determined, they are hardly exclusive, various studies show that in our current times, corporations are combining both ethical and economic considerations as central motivations to their strategic decision-making. Based on some on-the-ground data, intrinsic motivations of business leaders have been a significant driver to their CSR commitment, yet not the only one. In the case of CSR reporting, the 2008 KPMG Survey found that *ethical and economic* considerations remain the overall drivers for reporting.[217]

Several studies are also providing corporate decision-makers with grounded arguments that responsible behaviour towards both the society and the environment can be aligned with their

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[215] Fraternity may also have constitutive value, if sustainable development is to be interpreted as an end value.

[216] Crane & Matten, *supra* note 206 at 42. This is foremost because of their status as a product of law, their complex organizational structures, multilevel decision-making, various stakeholders' influence etc. This is linked to issues of individual morality (corporations not having their own morality rather than the morality of their individuals), corporate morality (corporations, as fictional individuals have their own morality) or 'context' morality (individuals within companies have their own morality but this is restricted by their role within the company). See generally Lawrence E. Mitchell & Theresa A. Gabaldon, "If I Only Had a Heart: Or, How Can We Identify a Corporate Morality" (2001-2002) 76 Tul. L. Rev. 1645. See also Suchanek *supra* note 211 (suggesting that individuals are not simply moral beings but also subject to empirical, biological, psychological, social conditions).

[217] KPMG International, *International Survey of Corporate Responsibility Reporting 2008*, online: KPMG International <http://www.kpmg.com/NL/en/Issues-And-Insights/ArticlesPublications/Documents/PDF/ Sustainability/Corp_responsibility_Survey_2008.pdf> (concluding that "[m]otivations for reporting have *shifted away from reactive and risk management factors*, and *towards aspirational* and *innovative* ones". Indeed different from the 2005 results, where economic considerations accounted for 74% of the companies and ethical ones for 53%, the 2008 survey indicates the *jump up of ethical considerations from 53 to 69% while the economic considerations fell down to 68 % of the surveyed companies*). As explained in the 2005 KPMG Survey, the economic reasons were either directly linked to increased shareholder value or market share or indirectly linked through increased business opportunities, innovation, reputation, and reduced risk, whereas the ethical reasons were related to integrity and other values. KPMG International, *International Survey of Corporate Responsibility Reporting 2005*, online: KPMG <http://www.kpmg.com.au/Portals/0/KPMG%20Survey%202005_3.pdf>. See also Economist Intelligence Unit (EIU), *Managing for Sustainability*, February 2010, online: EIU <http://sustainabilityreport2009.enel.com/sites/all/files/enelcsr2009/Managing-for-sustainability_0.pdf> at 4, 5 (indicating significant presence of ethical considerations in business practice).

profit-making motivation. Porter and Kramer suggest that companies can achieve economic success by following "the principle of shared value, which involves creating economic value in a way that *also* creates value for society by addressing its needs and challenges."[218] As mentioned before, the concept of Creating Shared Value proposed by them "is integral to a company's profitability and competitive position."[219] Although these findings appear to evolve from the instrumentality of societal needs to provide businesses with a return on investment while also contributing to such societal needs, they nevertheless make a strong *additional* argument for those corporate executives who inherently believe in CSR.[220] They are about translating challenges to opportunities and as some authors put it, "if it could be proven that responsibility pays off, a strong push for dissemination of good CSR practices could be expected".[221] This in turn would translate into a positive outcome for the cause of sustainable development.

Fraternity as a substantive part of corporate social responsibility implies several things. It is an expression of human intrinsic feelings such as sympathy, solidarity and compassion. But it also reflects a reaction to some human needs when manifested in reciprocity (the golden rule), cooperation due to shared values and goals, etc. It is therefore a value in itself but also an instrument to achieve other end values, such as sustainable development.

This conclusion seems compatible with Justice Gonthier's contribution on fraternity. He

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[218] Porter & Kramer, *supra* note 146 at 64.

[219] *Ibid.* at 76. They suggest three key ways that companies can create shared value opportunities: a) by reconceiving products and markets, b) by redefining productivity in the value chain, c) by enabling local cluster development. One example where addressing societal concerns can generate productivity benefits to a corporation is when it invests in a wellness program. Societal benefits include healthier employees and corporate benefits include minimization of employee absences and lost productivity. *Ibid.* at 65, 68. See also *Visser, supra* note 146.

[220] As explained by Kerr, Janda & Pitts, *supra* note 4 at 17, CSR commitment can be understood to comprise both a 'reciprocal obligation' (CSR commitment in exchange for public trust and the social license to operate its business) and 'a self-imposed ethic' (voluntary). See generally i*bid*. Chapter 2.

[221] André Martinuzzi, Sabine Gisch-Boie & Adele Wiman, Research Institute for Managing Sustainability on behalf of the European Commission, Directorate-General for Enterprise and Industry, "Does Corporate Responsibility Pay Off?: Exploring the Links Between CSR and Competitiveness in Europe's Industrial Sectors", Research Institute for Managing Sustainability (RIMAS), Vienna University of Economics and Business, Vienna, Austria, November 2010. See also *Manifesto on Global Economic Ethic, Consequences for Global Businesses*, Declaration of UN Global Compact, Swiss Confederation, Novartis Foundation for Sustainable Development, Global Ethic Foundation, UN Headquarters (New York: 2009) 6 October 2009, online: <http://fairerglobalization.blogspot.com/2009/10/toward-global-economic-ethic-fraternity.html> [*Manifesto on Global Economic Ethic*] finding that market economy can still work as such under the rules of competition, while having "a solid ethical basis for the welfare of all." Some promising yet not very strong data on this link provides the 2010 EIU Survey, according to which only 24% of respondents agree that there is a strong link between strong financial performance and commitment to sustainability in the short term, compared with 69% who consider the link strong in the long term. EIU, *supra* note 217 at 6, 8.

believed that fraternity is part of human dignity and, if exercised, it could advance the idea of community, which in turn is indispensable for our existence and prosperity. Due to these properties, fraternity proves to be a principle underlying the whole idea of development that can last. On the other hand, he understood CSR as the approach "that integrates and balances the self-interest of the corporation, and those of its investors, with the concerns and interests of the public."[222] He was realistic in acknowledging the business responsibility towards shareholders; however, he believed in the power of fraternity as the intrinsic inspiration that corporations can and should integrate into their strategies. The concept of shared interests and values and the intrinsic motivation, explain best how CSR can represent the business bridge between fraternity and sustainable development.

Conclusions

Justice Gonthier believed that fraternity can act "a catalyst and source of inspiration for making our society more human."[223] He observed that it related substantially to sustainable development – the response to our global challenges. At the same time, he was convinced of the presence of fraternal values in corporate social responsibility.

The thrust of this article was to elaborate further on Justice Gonthier's endeavour to bring the moral value of fraternity to the attention of global actors. I explored the various meanings of the concept itself and delineated some of its core constituents and facets. This in turn provided the basis for a theoretical analysis of the values of morality, in the light of the end-means dichotomy and the practical reasoning made because of its pluralistic nature. It became evident that fraternity has different dimensions. It is a value *per se* because it respects human dignity, believing that it is right thing to do. As such it is manifested in empathy, care, compassion. It also has an instrumental value. In the light of an interdependent world, individuals realise that by behaving with reciprocity, fairness, good faith and justice to each other, they can achieve sustainable development. This goal, beyond any intrinsic motivations, is a matter of necessity. Fraternity may also bear a constitutive

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[222] Hon. C.D. Gonthier, "Foreword" in Kerr, Janda & Pitts, *supra* note 4 at vii.
[223] Gonthier, "Fraternity", *supra* note 7 at 589.

value; it is an integral part of sustainable development which can be viewed as a final purpose for humanity.

Fraternal values are present in the various international documents that promote CSR. A group of drivers push corporations towards such a commitment and behaviour. They stretch from self-interest to altruistic motivations and are hardly exclusive. In terms of the CSR approaches, these motivations are either annexed to the corporate strategy or integrated into its core. Reading them through the lens of the deontologist theory, I explored how fraternity indicates a moral value when constituting the intrinsic motivation of corporations towards CSR. Given that CSR is about the ability to respond, a consequentialist perspective was considered useful. Hence CSR has a moral value in the light of the positive outcomes of such a commitment for the advancement of sustainable development. From a practical viewpoint, we cannot afford to prioritise one theory exclusively over the other. The integrated CSR approach can explain best how fraternal values reflect both the sincere concern for the community and the self-interest of corporations.[224] Its success depends on the ability to make 'self-interest' compatible with the concern for the community and the various studies on shared goals and values are witnessing this. In the same vein, corporate social responsibility shall successfully serve as the business link between the fraternal spirit and action on the one hand and sustainable development on the other.

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[224] Recall art. 1 of the UNDHR proclaiming that "[human] beings are endowed with *reason* and *conscience* and should act towards one another in a spirit of brotherhood." *UDHR*, *supra* note 32 [emphasis added]. See also Gonthier, "Fraternity and Sustainable Development", *supra* note 3 at 44.