

Article

ESG Capitalism from a Law and Religion Perspective

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Abstract: In an age of fear, insecurity, and multiple and overlapping crises, the fortunes of ESG—the idea that companies should include environmental, social, and governance standards of good performance—are now steadily growing. This is all the truer in the West, where corporate financial misconduct and, more worryingly, corporate political activities impacting democratic processes, have become a matter of evident concern. Business scholars and policymakers are, however, still uncertain about which corporate activities merit an ESG label, with pressure groups pushing for their own ESG definitions and standards according to their agendas and beliefs. Against this background, this paper contributes to this Special Issues' guiding question of how religions can act as agents of civic mobilisation by critically examining their role in addressing sustainability topics due to religious concerns from a legal perspective. This current paper hopes to create a preliminary intellectual bridge between two apparently unrelated fields of research (law and religion; corporate governance) that could help scholars in both areas to develop expertise and sophistication in applying their respective specialities to an otherwise unfamiliar area.

Keywords: FoRB; ESG; faith-based environmentalism; faith-based companies; comprehensive anti-discrimination law; law and religion; corporate governance

1. Introduction

When the COVID-19 pandemic struck in early 2020, the outlook for labour markets grew more fragile and uncertain. Core to this, as the International Labour Organization (ILO) argued in its 2022–23 *Global Wages Report* ([International Labour Organization \(ILO\) 2022b](#)), has been an overall decrease in the purchasing power of workers and businesses (small enterprises especially) due to a toxic mix of low growth and high inflation. To make matters worse, pandemic-related mass layoffs and surging unemployment have, in turn, caused a flare-up in social inequalities in access to education, health services, housing and employment.

Against that, it is clear that this cost-of-living crisis is now taking a heavy toll on those who were already marginalised well before the pandemic hit: the elderly, the poor¹, the disabled, migrants, and the indigenous.² Things heat up even more when it comes to these latter groups, with growing concerns about the 'spill-over effects' that COVID-19 is having on ethnic and faith-based enclaves, exacerbating intersecting forms of discrimination, exclusion, inequality, and political divides. Migrant workers and religious minorities, in particular, are already experiencing deep patterns of pandemic-related human rights violations in many countries, as former United Nations (UN) Special Rapporteur on freedom of religion or belief (FoRB), Ahmed Shaheed, warned in his remarks before the 75th Session of the UN General Assembly.³

Seeing "foreigners" as a social sore, the sinister trend that international ([United Nations General Assembly 2021](#), para. 34) and regional ([Steering Committee on Anti-Discrimination, Diversity and Inclusion \(CDADI\) 2020](#)) human rights bodies are now highlighting is, in fact, a tendency to tap into populist nerves and scapegoat "Muslims", "immigrants", and "Asians" in particular for the spread of the virus. However, be that as it may, the level of



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evidence that is available on present-day coronavirus-related xenophobia and racism is still poor since initial COVID-19 response efforts have concentrated more on mitigating the economic rather than the human rights impact of the crisis.

At any rate, while economic recovery and service provision remain essential, it is undeniable that the social harms caused by the virus, including escalating identity-based inequalities, are now increasingly being pushed to the forefront of public consciousness (in this sense, see [Bapuji et al. 2021](#)). As a result, there is now an ongoing and vibrant discussion at the UN level about adopting “comprehensive anti-discrimination legislation” to improve the design of already existing equality laws and increase representation for minority groups within public and private spaces.⁴ UN Secretary-General António Guterres recently emphasised that implementing such legislation in a comprehensive manner is a top priority in the wake of the COVID-19 crisis ([United Nations General Assembly 2021](#)), particularly given the additional challenges posed by “multiple and overlapping crises⁵” such as armed conflicts and climate-fuelled natural disasters.

For one thing, a renewed approach to equality issues requires defining positive laws that are broad enough to identify and address new forms of discrimination that may arise and taking subsequent steps in the legislative process to adopt these laws ([United Nations Human Rights Office of the High Commissioner \(OHCHR\) 2023](#), p. xii). For another, and future legislative action aside, a commitment to a “comprehensive” approach to minority rights is also one that the public and private sectors are being asked to make internally, at the governance level, by adopting pre-emptive strategies and programmes to foster freedom from discrimination within their organisations ([United Nations Human Rights Office of the High Commissioner \(OHCHR\) 2023](#), pp. 116–19).

What is more, taking private-sector businesses as a focal point, a consensus is now emerging among many entrepreneurial leaders and scholars on the broad impact that anti-discrimination laws have not only in terms of human progress but also economic growth. Seen in this way, increasing research is now examining how implementing good practices in corporate governance generally⁶, and anti-discrimination tools in particular ([Brummer and Strine 2022](#)), can lead to long-term firm value and financial performance. In the words of Nazila Ghanea, the bottom line is quite straightforward: “[t]reating employees well and creating a harmonious work environment is profitable and beneficial to the retention and flourishing of staff as well as for flourishing of the business” (see [Clark and Vovk 2022](#)).

The fact that a former Rapporteur on freedom of religion or belief (FoRB) shared this perspective is important and warrants further consideration. As much as anything, her statement serves as a reminder that there is now increasing interest in reconciling human rights with the profit-oriented purpose of corporations even outside the fields of business law and corporate governance. In this connection, if it is true that “human rights and corporations cannot be considered two separate and distinct discussions” ([Campos 2022](#)), Ghanea’s statement could also be seen as an open invitation to faith-based actors to join this singular conversation. Some of them are already getting in on the act.

For instance, as early as November 2019, Pope Francis launched a global Council for Inclusive Capitalism, a non-profit coalition between the Vatican and major business leaders and investors all over the world. Inspired by the mandates of Catholic social doctrine, this network avows a new model of capitalism that goes beyond a narrow profit-maximising conception of the corporation to address broader and non-financial societal challenges, including workplace concerns (see [Address of His Holiness Pope Francis to the Members of the Council for Inclusive Capitalism 2019](#)). What is interesting to note here is that this faith-based partnership has some overlapping elements that can be found in secular models of “stakeholder capitalism”.

This is a type of corporate governance endeavouring to maximise, in principle, at least, the interests of customers, employees, communities, and the general public at large through environmental, social, and governance strategies (ESG). Drawing another parallelism with Pope Francis’ initiative, in 2019, the global elite of American CEOs convened a meeting of

the Business Roundtable to announce that the new purpose of the corporation would be to prioritise ethical conduct and stakeholder interests (see Murray 2019).

While some saw this radical overhaul of corporate governance as a final blow to “shareholder capitalism” (the idea that corporations should maximise benefits for investors above all), others, however, dismissed it as just empty rhetoric. The very fact the Roundtable discussion mentions shareholder wealth among its targets, critics argue, means that stakeholder capitalism is still tied to a profit-maximising logic at the behest of investors more interested in *financial* speculation than value *creation*.⁷ In this way, they continue, the funding of ESG causes boils down to a mere branding strategy intended to improve the *public* legitimacy of *private* and (still) self-interested business activity.⁸ In this view, there is a risk that large profits derived from ESG activities will continue to be distributed as dividends among shareholders only instead of being invested in underlying issues such as income, wealth, and employment inequalities.

In actual fact, “greenwashing⁹”, the act of making false or misleading claims about the social benefits of corporate actions, products, or services, is one of the most controversial issues within the ESG movement today. As will be seen later, this is because it is difficult to establish clear and consistent taxonomies for what really constitutes socially responsible business practices.¹⁰

Against this background, this paper aims to offer an initial theoretical guide on how ESG can be co-opted to serve speculative and anti-social objectives using a law and religion perspective as a methodological lens. Hence, the goal is to craft an intellectual bridge between two seemingly unrelated fields of research (law and religion; corporate governance) in order to shed light on new legal questions at the intersection of business, religion, and the law.

Towards that aim, this paper begins with a brief history of ESG (Section 2) and then discusses the possible law and religious implications surrounding this concept. To elaborate on this, Section 3 explores the connection between the “R” part of the legal category “freedom of religion or belief” (FoRB) and the environmental component of ESG. Looking at how some religious actors have filed their business activities under the “E” of this acronym, the goal is to highlight how faith-based readings of the environment do not always harmonise with the “S” and “G” of ESG. As will be seen, the significant attention that these two letters place on *social* and *governance* standards, such as non-discrimination and inclusion in the makeup of corporate entities, can ratchet up tensions between religious norms and secular rules. Section 4 concludes by taking the case of the European Union as a “unique laboratory¹¹” where the boundaries between the religious and the secular sometimes become blurred. This framework might lead to creative interpretations where, as will be seen, the “B” component of FoRB could be assembled with the “G” part of ESG to undergird business policies that are out of line with all three dimensions of corporate sustainability.

2. The ESG Movement

ESG (short for environment, social, and governance) is an “umbrella term” that started its ascent in the late 1970s due to several “soft-law” initiatives by the UN and has witnessed rapid growth in popularity since then.

With that being said, a word of caution needs to be made. This analysis is meant to be merely illustrative, not exhaustive, and, therefore, does not attempt to map all ESG-related initiatives that have been prompted at the UN level over time¹². Instead, the goal is just to provide context for a movement that, interestingly enough, from a law and religion perspective¹³, is now fostering companies to develop a “social conscience¹⁴” and proactively address foundational gaps in human rights, labour standards, and the environment.

International human rights law, with the UN as one of its principal standard-setters along with many other regional bodies, has, in fact, historically been grounded on the idea of an advanced social welfare system¹⁵ that has been progressively mobilised to shape

international corporate governance. In the process, the UN became the venue for a series of discussions; initiatives; and, eventually, partnerships in business and human rights, starting with the finance industry and later expanding to include all types of non-financial commercial enterprises, small and large.

At its nascent stage, a key catalyst for the idea of ESG was the 1977 ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*.¹⁶ Acknowledging the vital role of multinational enterprises in promoting greater economic (and social) stability worldwide, this document made the very first call for a *tripartite* collaboration (between governments, workers, and their employers) to enhance the overall quality of industrial life.

It was not until 1999, however, that this antecedent led then Secretary-General Kofi Annan to invite over fifty CEOs of leading investment institutions to unite under a so-called “Global Compact”. On the whole, this UN-led initiative was premised on the belief that championing private–public cooperative ventures could finally give a “human face to the global market” (see [Press Release 1999](#)). But more than this, at the heart of these public–private cooperative efforts was also an essential trade-off: “[i]n exchange for business support of UN values, Annan offered support for free trade and open markets.” ([Parglender 2021](#)). In 2004, this course of action resulted in the publication of two reports—one titled *The Materiality of Environmental, Social and Corporate Governance Issues to Equity Pricing*¹⁷ and the other titled *Who Cares Wins: Connecting Financial Markets to a Changing World*¹⁸. These documents ultimately coined the acronym and concept of ESG, while making the case that incorporating environmental, social, and governance concerns in investment policy leads to greater stability in global financial markets and, ultimately, better outcomes for society as a whole (see [United Nations and Swiss Department of Foreign Affairs 2004](#)).

Building on these efforts, the ESG movement was thus premised on a strategic “alignment of interests” ([Parglender 2021](#)) between the UN and the investment community, which sparked considerable optimism and resulted in further dedicated initiatives. Of note is the 2005 *Freshfields Report*, which came to be regarded as “the single most effective document for promoting the integration of environmental, social and governance (ESG) issues into institutional investment” ([United Nations Environment Programme Finance Initiative \(UNEP/Fi\) 2006](#)). This document ultimately laid the groundwork for the launch of the UN Principles for Responsible Investment (PRI) at the New York Stock Exchange in 2006 (in this sense, see [Wilson 2021](#)).

Additionally, and following in the footsteps of the *Who Cares Wins* report, the PRI also contained significant language signalling a desire to mainstream environmental, social, and governance considerations well beyond the finance industry. For proof, Objective 3 of the PRI states “We will seek appropriate disclosure on ESG issues by the entities in which we invest” (see [Principles for Responsible Investment \(PRI\) n.d.](#)). Tentative steps were thus taken to involve new market actors in the ESG movement by addressing sustainability concerns directly to business entrepreneurs rather than to their investors. This is how ESG progressively began to evolve into something new: from a set of metrics for investment analysis and decision-making to a corporate governance mechanism guiding companies towards enhanced *social* (and, relatedly, *financial*) performance.¹⁹

Further UN “soft-law” initiatives have perfectly captured this new “corporate function²⁰” of ESG. The UN Guiding Principles on Business and Human Rights (UNGPs), which the Human Rights Council endorsed in 2011, are a notable case in point.²¹ Although not legally binding, the UNGPs made great strides in aligning the actions of several international and regional standard-setters around a converging interest in corporate human rights due diligence. As a result, several bodies have begun incorporating core UNGPs into their policies, such as the International Organization for Standardization (ISO) ([International Organization for Standardization \(ISO\) 2010](#)); the Organisation for Economic Co-operation and Development (OECD) ([Organisation for Economic Co-Operation and Development \(OECD\) 2011, 2015](#)); the European Union (EU) ([European Commission 2022](#)); and the Council of Europe (CoE) ([Committee of Ministers of the Council of Europe \(CoE\) n.d.](#)). Most

notably, and to complete this picture, this ongoing global policy process ultimately resulted in the negotiation of the third revised draft of a binding treaty on business and human rights in October 2021, aimed at addressing the shortcomings of the “soft approach” to the topic (see [Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights \(OEIGWG\) 2021](#)).

All in all, and as anticipated in the introductory bits of this section, what emerges from this analysis is a highly networked web of international actors that are now prompting companies to align their business operations with socially responsible values, be they political, philosophical, or ethical, hence the following question: what happens when ESG-concerns are grounded in religious beliefs?

Legal research has gone to great lengths to explain how for-profit businesses can nurture and invoke a “religious conscience” under the law (see [Schwartzman et al. 2016](#); [Temperman 2019](#); for a critical perspective, see [Corsalini 2023](#)). But following up on this, and more challenging still, how can examining the way that certain companies address sustainability topics due to religious concerns help disentangle potential rhetorical and misleading constructions of ESG? This is discussed in what follows.

3. The “Faith-Based” ESG Movement

As a preliminary step in answering the above research question, it should be recalled that at the heart of ESG lies an underlying definitional problem that merits further explanation at this stage. In broad terms, the “E” of this acronym addresses climate change-related concerns, while the “S” stands for human capital in corporate supply chains, including issues related to labour standards and workplace health and safety. Finally, the “G” encompasses matters of internal governance, such as corporate decision-making, shareholder rights, disclosure of information, and business ethics (see [Câmara 2022](#)).

In more practical terms, however, legal and business scholarship has not yet reached a consensus on what constitutes an ESG product or activity, and there is still some confusion about which issues fall under each pillar of this acronym ([Curtis et al. 2021](#)). For example, at the EU level, the European Commission has notably developed a classification system aimed at providing companies, investors, and policymakers “with appropriate definitions for which economic activities can be considered environmentally sustainable” ([European Commission 2020](#)) and, therefore, claim an ESG label.

In response to this development, critics have, however, noted that such an EU taxonomy risks multiplying terminology “that might be confusing or unwieldy” ([Pollman 2022](#), p. 44) and, in the worst-case scenario, give way to companies exaggerating their ESG credentials. Seen in this way, some believe that it would be best to keep plans for an ESG taxonomy in the pipelines for now ([Meager 2022](#)), as they are currently causing “more interpretational disputes than clarity” ([Pollman 2022](#), p. 44).

While this is true, in the author’s opinion, weak definitional foundations of ESG could, however, generate just as much confusion. It would not be unreasonable to think that ambiguous definitions of this term could, in fact, become an all-out political football, with pressure groups accusing each other of aligning apparently neutral environment, social, and governance concepts with their own agendas and beliefs.²²

There is something of a bandwagon effect occurring now around this hypothesis in the US, with growing numbers of Republicans across corporate America disparaging ESG initiatives as “woke capitalism”²³. This term echoes a widespread feeling among conservative fringes that ESG is purely a political “strategy” (in this sense, see [Pence 2022](#)), whereby progressive companies commit to the sustainability paradigm just to increase financial gains and impose their left-wing agendas on the democratic process. Calling out companies for supporting left-wing organisations and their stated aims, such as, say, Black Lives Matter and its mission to “disrupt the Western-prescribed nuclear family structure²⁴” is thus emblematic of an emerging, counterposed (and equally political) “anti-woke” movement²⁵.

In short, the critique from these quarters is that corporate progressive activism boils down to a mere marketing tactic that self-interested capitalists leverage to increase their social standing before the public eye (in this sense, see (Douthat 2018)). And the greater the social influence of “woke” CEOs through the endorsement of mainstream political causes, the greater the strength of their brands and, relatedly, the pervasiveness of their visions, values, and *truths* about society.

From this angle, entrepreneur and scholar Vivek Ramaswamy went as far as to trenchantly argue that “woke” capitalism is a “new religion²⁶” that, among other things, tends to punish conduct and speech that do not fit within its progressive political posturing. All this in a church-like fashion²⁷. Here, the author’s concerns are directed at large media companies, such as Twitter banning accounts associated with Donald Trump (see [Twitter Inc. 2021](#)) or other “woke” companies dismissing their staff for aligning with conservative views, such as novelist J.K. Rowling’s controversial statements on biological sex (see [Daisley 2020](#)).

All in all, what emerges from this analysis is that, in the same way that definitional opacity in ESG might expose it to left-wing political manipulation, conservative groups can, similarly, try to rearrange the meaning of ESG in the interest of their own political agendas. But more than this, and mixing metaphors, the latter groups have even begun to conduct the ESG debate in language with strong religious overtones. Whereas some niche literature has thus started to approach ESG as if it were itself a religion, this paper, however, takes a different tack. It considers conventional *religions* (of Christian denomination) in their approaches to the ESG topic and the legal implications thereof, as will be discussed in the following sections.

3.1. “Faith-Based” Environmentalism

Assume for a moment that the environmental component of ESG is viewed through the lens of an asserted “pro-life” religious belief to care for the Earth and all the human life upon it, including the unborn.²⁸

As counterintuitive as this might sound, this association between environmentalism and reproductive health was recently mainstreamed within Christian circles by Pope Francis himself with his 2015 *Laudato Si* encyclical²⁹. In it, he trenchantly argued that “concern for the protection of nature is incompatible with the justification of abortion³⁰.” Framed this way, the encyclical appears to promote a holistic understanding of “nature³¹”, where narratives about Earth’s ecology crisscross with narratives about human biology, ultimately presenting heterosexual reproduction as the most “natural” way to ensure the survival of the species.

Despite *Laudato Si*’s profound concerns about the human footprint and global poverty³², the vantage point of Pope Francis’ moral vocabulary is, however, reflective of conservative Christian voices that have notoriously criticised abortion, environmentalism, and the relationship between the two. To better understand this mindset, sociologist Stephen Ellingson sought to explain that this contrarian view follows from historical interpretations among Christian elites that environmental activism is often implicated with liberal causes at odds with Biblical values (such as abortion and gay marriage).³³

This notwithstanding, social science scholarship, including Ellingson’s work, is now registering growing instances of religious engagement in environmental challenges, with both the Vatican leadership (in this sense, see [Berry 2022](#)) and faith-based civil society groups (whether Catholics or not³⁴) front and centre.

Research in this area describes how this trend coincided with large-scale political and legal changes, such as the inception of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992. From here, faith-based environmental activism plateaued in the 1990s to sharply rise in the 2000s generally, as well as in the years leading to COP 21 (the UNFCCC gathering that produced the 2015 Paris Agreement on Climate Change) in particular, as Evan Berry explains ([Berry 2022](#), pp. 123–24). In this framework,

Berry, however, notes that it is still unclear whether this increase in faith-based action is due to sincere and pragmatic concerns for addressing the eco-crisis or whether it just represents an opportunity for political influence.³⁵

Speculations aside, however, it is noteworthy that research is highlighting innovative shifts in mainstream theologies that are now enabling faith-based actors to construct positive narratives about their role in environmental protection (genuine or not as they might be). Within Christian circles, alternative readings of Genesis 1:28, for instance, often referred to as the *Dominion Mandate*, offer a notable case in point. Without lapsing into simplistic idealism, this Biblical mandate to “replenish the earth and subdue it”³⁶ gives some sense of a theological grip to establish unfettered human dominion over nature and its resources (in this sense, see White 1967; Mazzoni 2019). Acknowledging the deep ambivalence of this passage, which appears to exculpate the cruel exploitation of animals and the environment with God-given approval, some faith-based groups have thus begun to put the *Dominion Mandate* under radical reconsideration.³⁷

In this connection, Ellington collected an account of more than sixty American evangelical “religious environmental movement organizations” (REMOs) turning against the anthropocentric bias of Genesis 1:28 in favour of a “green religious ethic (Ellingson 2016, p. 6)” that advocates for the wise use of natural resources, the core idea being that humanity is endowed with “stewardship”, that is, the responsibility of men to care for the environment that naturally flows from their God-given power to dominate and rule the Earth (ibid. p. 9).

More recently, and looking at what religious movements could offer in Europe, Marco Ventura also stressed the Janus-faced nature of their potential impact on environmental security, highlighting how the eco-crisis represents both an opportunity and a “liability” (Ventura 2022) for religions. Hence, his argument goes, in the same way that religious actors should be “acknowledged as actual providers of literacy on the ecological crisis and security threats”, they should similarly be “challenged (. . .) about what they could and ought to improve (ibid. p. 33)” in their ecological activism. Following up on this, an inquiry on the kind of commitment that religions can bring to the table of environmentalism undoubtedly presents challenges that might also interest scholars engaged in analysing the ESG trend from the perspective of law and religion interactions.

Without pretending to be exhaustive, the first challenge is for churches and their corporate offshoots. Here, the question is how to reconcile faith-based interpretations of the “E” component of ESG (which might include conservative elements such as anti-abortion and anti-LGBTQ+ views) with the “S” and “G” parts of this concept (which also embrace *social* anti-discrimination principles in corporate *governance*). This puzzle becomes even more important in light of recent developments at the UN level that, along with those mentioned in the introductory bits of this paper, also encompass the 2022 ILO report *Care at Work: Investing in Care and Leave Services for a More Gender Equal World of Work*.³⁸ This document presents, in fact, a compelling call for strategies and action to fulfil the labour rights of non-traditional families, including same-sex parents, that appears to foresee even more severe conflicts between employment law and the internal laws of faith-based organisations in the future.

In addition, there is a challenge for scholars in religious studies and political science. In today’s “dark times”³⁹ for democracies, in fact, never before has there been the urgency to discern the effects that religions as a “social technology through which moralities are inculcated in populations (Berry 2022, p. 126)” have on shaping public and political opinions, including on environmental concerns.

After all, contentious and ideologically divided party politics throughout history have often flirted with religious arguments as a response to the threats they see. In an interesting turn of events, the case of Italy seems to reinforce this picture, with some among its secular players mobilising religion for political action.

For instance, Nicola Procaccini, head of the Environment and Energy Department for *Fratelli d’Italia* (a party led by Italian Prime Minister Giorgia Meloni) stated explicitly that

caring for the environment is equivalent to caring for foetal life from its inception, be it animal or human (see [De Benedetti 2022](#)).

If it is unclear how much of this statement is rhetorical and how much involves real action; the fact remains that Meloni's agenda is now seriously vowing "to make climate change a right-wing issue ([di Sario 2022](#))". And with a goal of maximising environmental (and, allegedly, foetal) development and an assumption that this should begin with supporting local territories and the businesses within them, this project is now offering a unique mix of climate, pro-life, and free enterprise policies to the Italian public (*ibid.*).

Putting all these ingredients into a cohesive whole, readers might be now left wondering if the "E" component of ESG also includes reproductive issues and associated pro-life/pro-choice behaviours. If so, should this be taken to mean that churches and business companies objecting to abortions on conscientious grounds deserve to be treated as ESG champions?

And as to the latter, how could recognising or allowing them to invoke an ESG-friendly "religious conscience" become a licence for their CEOs to carry out self-interested projects that ill-serve genuine sustainability goals? Some elements that can help answer these questions can be traced, at least in part, to the US judicial level, as the next sub-section explains.

3.2. "Faith-Based" Companies

In the US, debates over businesses' capacity to hold ESG-related religious beliefs and values emerged in the aftermath of the high-profile 2014 case *Burwell v Hobby Lobby Stores, Inc* ([Burwell v Hobby Lobby Stores Inc 2014](#)). With this ruling, the United States Supreme Court (USSC) acknowledged for the first time ever that family-owned commercial businesses have a right to freedom of religion or belief under the law (in the form of a statutory provision: the Religious Freedom Restoration Act—RFRA).

According to the Court, the underlying logic was that profit-maximising entities are corporate "persons" ([Burwell v Hobby Lobby Stores Inc 2014](#), p. 2768). That is, just like churches and other faith-based non-profits, they should derivatively enjoy the FoRB rights of their *physical* and religiously motivated owners. Based on this, unprecedentedly, two Christian businesses with a conscientious objection to abortions won a religious exemption allowing them to exclude birth control coverage from their employee health insurance plan. This finding marked a pivot point in American business law and politics, with far-reaching corporate and constitutional law implications that the author has already noted elsewhere (see [Corsalini 2023](#), pp. 158–63).

Re-proposing them here would, however, risk going beyond the scope of a discussion on ESG and reproductive health issues. Instead, more important for the purposes of this article is a passage from the Court that, in an odd move, was the first to make a legal association between environmentalism; religion; and, relatedly, the "pro-life" views of the defendant companies in *Hobby Lobby*.

Writing the majority opinion for the Court, it was Justice Alito who pushed for this argument. With language "used by today's ESG-focused shareholders⁴⁰", he stated that if for-profit corporations "may take costly pollution-control and energy-conservation measures that go beyond what the law requires (. . .) there is no apparent reason why they may not further religious objectives as well ([Burwell v Hobby Lobby Stores Inc 2014](#), p. 2771)".

This statement captured the imagination of several scholars, who applauded the decision in *Hobby Lobby* as a notable endorsement of corporate social responsibility (see, for example, [Johnson and Millon 2014](#); [Neitz 2015](#)). From that moment on, entrepreneurs would be legitimised in advancing, so it was felt, non-monetary (and environmental-like) objectives such as the promotion of religious freedom in business for the good of all.

This analysis fails, however, to recognise that *Hobby Lobby* also represents the successful attempt by some corporate religious objectors to avoid legal regulation (a state-required obligation to provide female employees with contraceptives) and thus advance "self-interest above social concern" (in this sense, see [Sepper and Nelson 2021](#)).

In actual fact, as a matter of logic, there were more financial profits to glean from externalising the costs of doing business (those arising from supplying birth control coverage) onto the state, or worse, the workforce itself⁴¹. Saddling employees with these kinds of expenses seems at odds with an environmental vision of reproductive issues that, if comprehensively concerned with all life on earth, should also include the physical and mental health of abortion-minded women.

4. Conclusions—What Lessons for Europe?

What can Europe learn from this debate on ESG and its intersection with reproductive health and corporate religious freedom?

One lesson is that, in the absence of clear definitions, ESG risks becoming a transformative concept that corporate actors could easily mobilise to further entrench short-term, self-interested business operations. As noted, faith-based actors also sometimes fit into this speculative equation, hence the need to assess whether their “corporate conscience” truly represents a genuine expression of “religious social responsibility⁴²” towards enhancing long-term sustainable value creation. The same goes for other “ideologically oriented” actors since a business entity might have morals also rooted in the non-religious beliefs of the human members holding their offices.

This is a powerful lesson from a line of Justice Kennedy’s concurring opinion in *Hobby Lobby*, where he notably argued that freedom of religion or belief also includes the right “to establish one’s religious (or nonreligious) self-definition in the political, civic, and economic life.⁴³” This, in turn, seems to send the signal that it might also be difficult to deny FoRB coverage to business entities that hold secular beliefs.

Overall, treating corporate religious beliefs the same as secular ones is a lesson that has already been learned and metabolised on the other side of the Atlantic generally, and at the European Union (EU) level in particular⁴⁴. The latter is, in fact, a “unique laboratory” (Ventura 2020), as Marco Ventura puts it, where the pressure of regulating religion in light of new social and cultural expectations is now pushing the Court of Justice of the European Union (CJEU) to make such an expansive understanding of FoRB even more explicit⁴⁵.

In its latest 2022 decision on religious discrimination in the workplace, *LF v SCRL* (Case C-344/20 n.d.), the Court of Justice of the European Union (CJEU) clearly made this point. The words “religion or belief” contained in Directive 2000/78EC (a piece of EU anti-discrimination law) cover “both religious belief and philosophical or spiritual belief” (ibid. para 45), the Court stated. Moving from this assumption, the CJEU then went on to consider that “in the context of balancing the diverging interests of a worker and his or her employer, philosophical and spiritual beliefs enjoy the same level of protection as religion or religious belief” (ibid. para 56).

Against this, now consider the case of an employer who does not see a worker as a good fit for their business model. Could a corporation’s claim of being exempted from anti-discrimination laws to justify the employee’s dismissal be based on the belief in a “profit-optimising philosophy⁴⁶”? And in a perspective diametrically opposed to *Hobby Lobby*, could this economic belief be associated with social justice objectives to obtain FoRB coverage?

For instance, assume that a defence company makes the moral argument that maximising profits to provide fine-grained logistics services to customers, thus ensuring safer communities, is the right thing to do both financially and morally⁴⁷. Seen in this way, the employer-company might want to avoid any social and welfare changes in its governance system that improperly divert its focus on profits, such as, say, religiously friendly workplace adjustments. Then, imagine that, at a board meeting, this company adopts a corporate policy of neutrality to justify the dismissal of a *hijab-wearing* employee refusing to take off the veil at work.

Should such a neutrality policy, allegedly aimed at maximising profits (and, relatedly, the quality of defence technologies that support other customer-companies in their efforts towards greater stability) be deemed compatible with the “G” part of ESG?

The high-profile CJEU decision in *Achbita v G4S Secure Solutions* (Case C-157/15 n.d.) (2017) contains elements that seem to answer this question in the affirmative. Of note here are some findings of Advocate General (AG) Kokott, upon which the CJEU largely relied. Since the defendant-company, G4S, is an “undertaking that provides (. . .) surveillance and security services (Case C-157/15 n.d., Opinion of AG Kokott para. 93)”, the AG noted, its employees “must be able to work flexibly” for its customer base, to the point of requiring workers to give up conduct and expressions that the defendant-company considered economically inefficient, such as wearing religious symbols at work. For that reason, the AG continued, the dismissal of the claimant-employee, Ms Achbita, was entirely consistent with the corporate policy of neutrality “which G4S has laid down as an occupational requirement” (ibid. para. 107).

Based on these findings, the CJEU ruled that G4S had a right to have non-discrimination laws not applied to it since the forced inclusion of a *hijab-wearing* employee would be at odds with its business vision and beliefs that are based on a “consumer welfare standard⁴⁸”.

As noted elsewhere, it was on these grounds that the Court, in a *Hobby Lobby*-like fashion, ultimately extended conscience exemptions, heretofore restricted to churches under Directive 2000/78/EC, to protect the business autonomy rights of a secular for-profit company.⁴⁹

In conclusion, it becomes clear from this analysis how a weak definitional foundation of ESG could create weird religious freedom implications. Engaging broadly and breaking silos between two seemingly unrelated fields of research (law and religion; sustainable corporate governance) is, therefore, critical to providing more clarity.

The goal of this paper was to demonstrate how these two fields are, in fact, in an increasingly complex, dialectical, and mutually reinforcing relationship. Noting areas of work that are closely linked, law and religion raises ethical–legal questions that could prompt a number of business scholars to think carefully and critically about the definitional ambiguity of ESG and its relationship with genuine sustainability. For its part, instead, corporate governance is now revealing a new “business turn” in American and EU law and religion, suggesting the theoretical possibility of extending to for-profit entities rights and immunities that have been traditionally confined to churches.

In addition, exploring the law and religious implications of ESG seems to cast a light on new and promising research paths ahead. For instance, the law and religious implications of ESG further emphasise how some business corporations are shifting, at least in principle, from being solely focused on private goals to being more oriented towards the public good in their functions.⁵⁰ Hobby Lobby’s promotion of FoRB as a right that is critical to the health of a diverse society or G4S’s development of defence technologies for the maintenance of communities and their living standards, seem to further reinforce this trend. To the extent that ESG-friendly businesses thus move closer to a “more communitarian vision of the corporation” (ibid. p. 222), should this justify more legal checks (rather than more legal immunities) on those entities that betray the very expectations of the communities that they are supposed to serve, despite their sustainable outlook?

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Notes

- 1 This category also includes what is now more commonly referred to as “the precariat”. This term can be traced back to Guy Standing in (Standing 2021) (describing the precariat as a “class-in-the-making” that is generally subject to flexible labour relations and fragmented careers) 25.
- 2 The disproportionate impact of the pandemic on vulnerable groups has been recently addressed in UN GA, Response and recovery plans and policies on the coronavirus disease (COVID-19) pandemic from the perspective of the right to development at the national level. Report of the Special Rapporteur on the right to development Saad Alfarargi, July 2022, UN Doc. A/HRC/51/30.
- 3 See [Statement of Ahmed Shaheed UN Special Rapporteur on Freedom of Religion or Belief \(2020\)](#). More recently, the former Rapporteur explored this issue also in connection with the FoRB rights of indigenous people. See [United Nations General Assembly \(2022\)](#).
- 4 See [United Nations General Assembly \(2021\)](#), para. 34. For detailed guidelines on how to develop “comprehensive anti-discrimination legislation”, see [United Nations Human Rights Office of the High Commissioner \(OHCHR\) \(2023\)](#).
- 5 This formula can be traced back to [International Labour Organization \(ILO\) \(2022a\)](#).
- 6 For European and US perspectives on this theme, see, respectively, the collection of essays in [Charlotte et al. \(2022\)](#) and [Pollman and Thompson \(2021\)](#).
- 7 For an analysis that distinguishes shareholders into value-creators and financial speculators, see [Palladino \(2022\)](#).
- 8 For a similar argument, see [Hwang and Nili \(2020\)](#).
- 9 For a discussion on this hypothesis of corporate malpractice, see [Yu et al. \(2020\)](#).
- 10 This is what has led one scholar to clinically announce “the end of ESG” ([Edmans 2022](#)).
- 11 This term can be traced back to [Ventura \(2020\)](#).
- 12 For a comprehensive analysis of the genesis and evolution of ESG at the UN level, see [Pollman \(2022\)](#) and [Parglender \(2021\)](#).
- 13 The implications of this perspective will be discussed in the next sections of this paper.
- 14 The terms “conscience” or “consciousness” are gradually gaining ground in ESG literature. See [Schanzenbach and Sitkoff \(2020\)](#); [Larcker et al. \(2021\)](#) (discussing the possibility of injecting “social consciousness into both corporate and individual investment decisions”); and [Scherreik \(2000\)](#).
- 15 In this sense, see [Novak \(2017\)](#). This might also explain why, earlier in its history, “UN entities had expressed varying degrees of ambivalence about the market generally and globalization in particular” ([Ruggie 2003](#)).
- 16 This document was adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977) and amended at its 279th (November 2000), 295th (March 2006), and 329th (March 2017) Sessions. The 1977 version of the Declaration can be accessed at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2886/download> (accessed on 12 February 2023).
- 17 The report is available at https://www.unepfi.org/fileadmin/documents/amwg_materiality_equity_pricing_report_2004.pdf (accessed on 31 December 2022).
- 18 The report is available at https://www.ifc.org/wps/wcm/connect/de954acc-504f-4140-91dc-d46cf063b1ec/WhoCaresWins_2004.pdf?MOD=AJPERES&CVID=jqeE.mD (accessed on 31 December 2022).
- 19 This evolutionary trajectory of ESG is described in [Pollman \(2022, p. 30\)](#).
- 20 This term can be traced back to [Gadinis and Miazad \(2020\)](#).
- 21 For a comprehensive history of the UNGPs, see [Ruggie \(2013\)](#).
- 22 For a similar argument, see [Gadinis and Miazad \(2020, pp. 1401–15\)](#) (arguing that “[t]his definitional ambiguousness has given rise to a common misconception of ESG as a random and ever-sprawling assortment of objectives, influenced by fads and trends rather than hard business logic.”).
- 23 [Rhodes \(2022\)](#) (reconstructing the history and genesis of this term). For a radical critique of woke culture from a conservative perspective, see [Ramaswamy \(2021\)](#).
- 24 See Black Lives Matter’s mission statement at: <https://uca.edu/training/files/2020/09/black-Lives-Matter-Handout.pdf> (accessed on 5 January 2023).
- 25 This example could be traced back to [Ramaswamy \(2021, p. 45\)](#)
- 26 [Ramaswamy \(2021, p. 189\)](#). See also [Soukup \(2021\)](#) (describing Larry Fink, CEO of Blackrock, a world-renowned investment fund at the forefront of the ESG movement as a “religious fanatic, a believer in the search of the pure, fundamental practice of his faith”) 9.
- 27 [Ramaswamy \(2021\)](#) (dubbing “wokeism” as “the Church of Diversity”) p. 183.
- 28 This hypothesis can be traced back to [Brownstein \(2022\)](#).
- 29 In this sense, see [Stoll \(2015\)](#) (arguing that “*Laudato Si’* will surely accelerate” the trend of faith-based environmentalism).

- 30 This document is available at https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_encyclica-laudato-si.html (accessed on 6 January 2023).
- 31 In this sense, see Pasquale (2019) (arguing that *Laudato Si* “is concerned with the *intrinsic value* of nature”, thus appreciating it “in its own terms, rather than as a standing reserve of resources to be deployed to advance our own purposes”) pp. 123–24.
- 32 For instance, Pope Francis’ encyclical is widely celebrated in the collection of essays in Pasquale (2019).
- 33 Ellingson (2016). See also Hickman (2011).
- 34 For a comprehensive analysis of the role of non-Christian religious groups in responding to global climate challenges, see the collection of essays in Jenkins et al. (2017).
- 35 (Berry 2022). (arguing that “there are massive incentives for religious actors to take a public stance on climate change”) p. 131.
- 36 The full text of this Biblical injunction is “Be fruitful and multiply, and fill the earth and subdue it; and have dominion over the fish of the sea and over the birds of the air and over every living thing that moves upon the earth”.
- 37 This is discussed in Somos and Peters (2020).
- 38 The report is available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_838653.pdf (accessed on 17 February 2023).
- 39 This term is borrowed from Hunter et al. (2020).
- 40 Thus commented corporate law professor Kent Greenfield in a recent interview that appears in Lewis (2021).
- 41 The author already made this point in Corsalini (2023, p. 155).
- 42 This term should be traced back to Ján Figel’, former Special Envoy for the promotion of freedom of religion or belief (FoRB) outside the European Union (EU). See European Commission (2019).
- 43 *Burwell v Hobby Lobby Stores Inc* (2014) (Justice Kennedy concurring) 2875.
- 44 Notable in this respect is how Article 17, paragraph 2, of the Treaty on the Functioning of the European Union (TFEU) mandates the legal equivalence between churches and philosophical and non-confessional organisations.
- 45 In this sense, see also McCrea (2022) (discussing “three fundamental changes” at the intersection of law, religion, and society that have progressively shaped the current configuration of a “post-Christian, partly Muslim and sexually free Europe”).
- 46 This term can be traced back to Ross (2021) (emphasis added). See also United Nations and Swiss Department of Foreign Affairs (2004) (describing the objective of “creating long-term value for shareholders” as a “business philosophy”).
- 47 In the aftermath of the Russo-Ukrainian war, there is now an interesting debate about including the defence industry under ESG. For instance, this is discussed in Webb (2022).
- 48 This term should be traced back to Fukuyama (2022) (discussing how conventional *laissez-faire* economic theory “has successfully persuaded two generations of economists and legal scholars to adopt the consumer welfare standard as the sole measure of economic [and legal] outcomes”) 38 (parenthesis added).
- 49 This is discussed in Corsalini (2023, pp. 125–33).
- 50 The relationship between ESG and this shift is discussed in Colombo (2022).

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