

Should the corporate social responsibility needs to be legally enforced?

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Key Words

Corporate social responsibility (CSR), critical management studies (CMS), critical performativity, Dow Jones Sustainability Index, neo-capitalism.

Abstract

Should the Corporate Social Responsibility (CSR) be enforced through legislation or an enterprise be allowed to voluntarily align itself to an affirmative corporate social agenda moving from mitigating harm to reinforcing corporate strategy through social progress? The paper seeks answer through the social contract theory, critical performativity and critical management studies. And it concludes it is a matter of a particularisation of a viewpoint whether CSR should be conceived as normative deontological ethics or a more reductionist pleases principle such as utilitarianism.

Introduction

According to the idealistic view, in order to render a meaning to Corporate Social Responsibility (CSR) it must be accorded to the expansive view (Devinney 2009)¹ of the CSR. The latter must be appropriated to the public policy of the state related to a justice system and conducting economic affairs such as providing basic education and healthcare within the remit of public spending priorities. Such a view, however, sits at a sharp contrast with a narrow conception of CSR, which merely suggests the corporate to fulfill its fundamental obligation towards the society by creating economic rents that can accrue to the stakeholders with recognized rights to those rents (Devinney 2009)². A moderate view of the CSR seeks a negotiated position, a trade-off, between these two extremes.

The principles of this trade-off between society and corporate lies in the social contract theory as laid down in Hobbes's seminal work *Leviathan*.³ The social contract theory in this case explains how the corporate can enjoy freedom, appropriated to justice and level-playing field within the structure of a society and the government which legitimises its operation.

Hobbes will concur with the fact that the corporate is like a sovereign representing its stakeholders even when the stakeholders disagree with it. In this paradox lies the nature of the state giving rise to a political reasoning that the corporate with respect to their CSR will need to abide by the natural law but since natural law is conflated with common law, the latter thus can extend its jurisprudence to CSR. As long the corporate realise their need to be a part of the commonwealth, notwithstanding their liberty, they learn to rein themselves without intervention of an iron claw hand of law.

¹ Devinney, Timothy M. (May 2009) *Is the Socially Responsible Corporation a Myth? The Good, the Bad, and the Ugly of Corporate Social Responsibility*, Academy of Management Perspectives ((NY: Academy of Management) p 44 <<http://aom.org/uploadedFiles/Publications/AMP/May09CorpSocialRespyDevinney.pdf>> Accessed on 10 Oct 2014

² Ibid.,

³ Hobbes, Thomas (2009) *Leviathan* (Digireads.com Publishing)

One of the Hobbes articulated principal rights for the sovereign can be rewritten from the perspective of the corporate's relationship with the sovereign as following:

The corporates falling within a superstructure called commonwealth circumscribed in the form of a covenant resulting from the corporates and its stakeholders giving to the commonwealth-sovereign the right to act for them, thus the commonwealth-sovereign cannot possibly breach the covenant; and therefore the corporates and its stakeholders can never plead to be disengaged from the covenant because of the actions of the commonwealth-sovereign.

The above is extracted from original idea of Hobbes as second of the twelve principal rights of a sovereign as below:

Because the Right of bearing the Person [corporate] of them all, is given to him [corporate] they make Sovereign, by Covenant only of one to another, and not of him [corporate] to any of them; there can happen no breach of Covenant on the part of the Sovereign; and consequently none of his [corporate's] subjects, by any pretence of forfeiture, can be freed from his [corporate's] Subjection.⁴

The widening chasm between corporate's own ethical practices and its CSR as an instrument to fulfill its obligation towards society calls upon a formal binding of legal obligation. O'Dwyer and Madden (2006)⁵ discovers in their survey of code of content and enforcement procedures based on Irish companies that certain situations may subject the company to a systematic process of investigation of issues surrounding the use of ethical codes of conduct as the public outrage over their ethical standards gather the storm.

The legality with relation to the ethical codes may not only concern itself to examine particularisation of code of ethical conduct but also to examine the issues related to the enforcement of the same (Stohs and Brannick 1999)⁶.

The narrower view of the CSR, which perhaps may call for a legal binding, certain times disadvantage certain outside stakeholders whose claims are usually excluded from the economic rents of the firm (Banerjee 2007).⁷ On contrary, the corporates those accommodate claims on the economic rents of the firm do not require any affirmative action by a legal instrument to rein them in.

Critical performativity, critical management studies and corporate social responsibility

The critical performativity⁸ in CSR unravels both the narrower and the expansive view of the CSR. Hence, no matter how the corporates choose to communicate their

⁴ Hobbes, Thomas (2009) Leviathan (Digireads.com Publishing) p 77

⁵ O'Dwyer, Brendan and Madden, Grainne (2006) Ethical Codes of Conduct in Irish Companies: A Survey of Code Content and Enforcement Procedures (Berlin, Heidelberg: Springer) p 217

⁶ Stohs, J. H. and T. Brannick: 1999, Codes and Conduct: Predictors of Irish Managers' Ethical Reasoning, Journal of Business Ethics 22(4), 311-326. as cited in O'Dwyer, Brendan and Madden, Grainne (2006) Ethical Codes of Conduct in Irish Companies: A Survey of Code Content and Enforcement Procedures (Berlin, Heidelberg: Springer) p 218

⁷ Banerjee, S.B. (2007) Corporate Social Responsibility: The good, the bad and the ugly (Cheltenham, England: Edward Elgar) as cited in Devinney, Timothy M. (May 2009) Is the Socially Responsible Corporation a Myth? The Good, the Bad, and the Ugly of Corporate Social Responsibility, Academy of Management Perspectives ((NY: Academy of Management) p 45

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⁸ Wickert, W. (15-17, Sept 2010) Paper presented at the CSR Research Conference (Euromed Management School, Marseille, France): Wickert introduces critical performativity (Spicer et al. 2009) to gain a deep insight into the

intentions to make themselves more aligned to societal norms (Basu and Palazzo 2008) ⁹they are always vindicated in the face of a misalignment between corporate image and actions (Weaver et al., 1999)¹⁰.

The widening gap between image and actions has put CSR into use as a mean to accumulate wealth ignoring the larger social purpose of an organisation (Laufer, 2003¹¹; Sims & Brinkmann, 2003¹²). The critical management studies (CMS) movement intends to reveal the 'dark underbelly' of CSR through a dominant instrumental, economic approach by affirming that CSR is merely a façade which obscures their underlying ideologies (Banerjee, 2008a¹³; Boje & Khan, 2009¹⁴; Frankental, 2001¹⁵; Khan et al., 2007¹⁶, Gond et al., 2009¹⁷).

Upon the peeling-off of the mask CSR rhetoric the corporates run for a cover. Crane (2000) calls it 'corporate greening' as he points out how McDonalds which, after receiving flaks for its foods' adverse effects on health, launched an image makeover campaign extolling itself as environmental-friendly adopting green logos, but reality did not affect any changes in core products' nutritional value (Chicago Tribune, 2009; Green Life, 2004)¹⁸.

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contexts and constraints of management involving pertinent questions about what works, what is feasible, and what those addressed perceive as relevant.
corporations.

⁹ Basu, K. and Palazzo, G. (2008). 'Corporate Social Responsibility: A Process Model of Sensemaking'. *Academy of Management Review*, 33(1), pp 122-136 as cited in Wickert, W. (15-17,Sept 2010) Paper presented at the CSR Research Conference (Euromed Management School, Marseille, France)

¹⁰ Weaver, G. R., Treviño, L. K. and Cochran, P. L. (1999). 'Integrated and decoupled corporate social performance: Management commitments, external pressures, and corporate ethics practices'. *Academy of Management Journal*, 42(5), pp 539-552 as cited in Wickert, W. (15-17,Sept 2010) Paper presented at the CSR Research Conference (Euromed Management School, Marseille, France)

¹¹ Laufer, W. S. (2003). 'Social accountability and corporate greenwashing'. *Journal of Business Ethics*, 43(3), pp 253-261.

¹² Sims, R. R. and Brinkmann, J. (2003). 'Enron Ethics (Or: Culture Matters More than Codes)'. *Journal of Business Ethics*, 45(3), pp 243-256.

¹³ Banerjee, S. B. (2008a). 'Corporate Social Responsibility: The Good, the Bad and the Ugly'. *Critical Sociology*, 34(1), pp 51-79.

¹⁴ Boje, D. M. and Khan, F. R. (2009). 'Story-Branding by Empire Entrepreneurs: Nike, child labour, and Pakistan's soccer ball industry'. *Journal of Small Business and Entrepreneurship*, 22(1), pp 9-24.

¹⁵ Frankental, P. (2001). 'Corporate Social Responsibility - a PR invention?'. *Corporate Communications: An International Journal*, 6(1), pp 18-23.

¹⁶ Khan, F. R., Munir, K. A. and Willmott, H. (2007). 'A Dark Side of Institutional Entrepreneurship: Soccer Balls, Child Labour and Postcolonial Impoverishment'. *Organization Studies*, 28(7), pp 1055-1077.

¹⁷ Gond, J.-P., Palazzo, G. and Basu, K. (2009). 'Reconsidering Instrumental Corporate Social Responsibility through the Mafia Metaphor'. *Business Ethics Quarterly*, 19(1), pp 57-85.

¹⁸ Wickert, W. (15-17,Sept 2010) Paper presented at the CSR Research Conference (Euromed Management School, Marseille, France)

¹⁹ Chicago Tribune (2009). 'McDonald's makes its logo more 'green' in Europe'. Accessed <http://archives.chicagotribune.com/2009/nov/23/local/chi-ap-eu-germanymcdonalds> (accessed on March 22 2010) as cited in Wickert, W. (15-17,Sept 2010) Paper presented at the CSR Research Conference (Euromed Management School, Marseille, France)

'critical performativity' Wickert (2010)²⁰ inspires the corporates with a agenda of CSR to adopt a conceptual framework that enables the corporates to identify their problems of injustice, pragmatism and potentialities when deliberating on solutions, and a normative disposition when laying down principles. Through affirmative action the corporates could learn to be discreet about admitting to the fact that it's object of study is known and transpicuous prior to it being confronted' (Clegg et al., 2006)²¹. According to Latour (2005)²² the critical performative approach repudiates the script to cast dominant organizations as outrightly integrated, all-powerful, monolith entities. These criteria underpin and lead management practices, while at the same time reduce the constraints that people in organizations face giving them more latitude for initiatives and self-determination. Wickert (2010) a set of criteria underpinning management practices, while at the same time reduce the constraints that people in organizations face giving them more latitude for initiatives and self-determination.

The multiple stakeholders in a corporate when extend themselves to become a part of an inclusive society they struggle to come to terms with the multiple agendas exist at multiple levels (Augilera et al, 2007). The ethics and value-system of these stakeholders -- both in capacity of members of larger society and simultaneously as role-playing members of particular organisation -- go through a process of trade-offs to either hold a certain viewpoint or translate it to a certain action.

Devinney (2009)²³ affirms the trade-offs can be avoided ..corporations can be made more "virtuous" on some dimensions (or by the definition of virtuousness by some individuals or groups, but this will invariably involve a price on other dimensions (or a cost borne by those with other definitions of virtues).

As these trade-offs are rarely going to be Pareto optimal, they will invariably involve a trade-off of values and a 'judgement' about what is 'better' or 'worse'.²⁴

The corruption of ethics and values emerge in multiple forms in businesses -- less apparent on the surface but more detrimental to the society -- preferential treatment in the form of crony capitalism, inside trading, negotiating actions which can be challenged on ethical grounds ranging from puffery to non-disclosures and information exploitation (Reitz et al., 1998).

The neo-capitalism scenario²⁵, a phenomenon witnessed in the Continental Europe today, the CSR is not far from selective government intervention, if so required, as it interfaces between expansive private enterprise and social-welfare programs in which labor

²⁰ Spicer, A., Alvesson, M. and Karreman, D. (2009). 'Critical performativity: The unfinished business of critical management studies'. *Human Relations*, 62(4), pp 537-537 and Wickert, W. (15-17, Sept 2010) Paper presented at the CSR Research Conference (Euromed Management School, Marseille, France)

²¹ Clegg, S., Kornberger, M., Carter, C. and Rhodes, C. (2006). 'For management?' *Management Learning*, 37(1), pp 7-27.

²² Latour, B. (2004). 'Why has critique run out of steam? From matters of fact to matters of concern'. *Critical Inquiry*, 30, pp 225-48

²³ Devinney, Timothy M. (May 2009) Is the Socially Responsible Corporation a Myth? The Good, the Bad, and the Ugly of Corporate Social Responsibility, *Academy of Management Perspectives* ((NY: Academy of Management) p 44 <<http://aom.org/uploadedFiles/Publications/AMP/May09CorpSocialRespbyDevinney.pdf>> Accessed on 10 Oct 2014

²⁴ Ibid.,

²⁵ Mandel, Ernest (2002) *An Introduction to Marxist Economic Theory* (Chippendale NSW, Australia: Resistance Books) pP 43-64.

unions engage in the bargain process with the State and private industry for their own welfare and industry's integration with the society.

CSR perspectives and practices vary not only across geographies but even within the same society.

The neo-Marxist Mandel retains many of the Marx's terms of reference such as proletariat and bourgeois but explains how these social groups have evolved in different geographies to possess different expectation from a capitalist economy.

The bourgeoisie took the form of an attempt to consolidate capitalism by means of fascism and other authoritarian experiments in certain Western, Central and Southern European countries. It took a less violent form in the United States, and it is this American society of the years 1932-40 which foreshadows what is called neo-capitalism today.²⁶

Mandel (2002) questions 'Why is it that it was not an extended and generalised fascist experience which gave neo-capitalism its fundamental characteristic but rather the experiment of an "idyllic detente" in social tensions?'

The fascist system was a regime of extreme social, economic and political crisis, of extreme tensions in class relationships, which, in the final analysis, was determined by a long period of economic stagnation, in which the margin for discussion and negotiation between the working class and the bourgeoisie was virtually reduced to zero. The capitalist system had become incompatible with any residue of a more or less independent working-class movement.

The cyclic economic depression ²⁷(unwittingly built into a capitalistic economy model) as and when it occurs enlarges the margin for negotiation between bourgeoisie and working class. It engenders an opportunity of greater manifestation of CSR programs as neo-capitalist policy is based on rather close collaboration between an expansive bourgeoisie and the conservative forces of the labour movement. Hence, there is a perceived difference in the CSR practices are put into place.

The multiple stakeholders in an organisation linking to the society at the large may find themselves difficult to reconcile to each other's viewpoints until they recognise an overarching perspective of CSR as purely instrumental and rational admitting to the fact that corporate-driven market is the most efficacious mean of deciding social needs and delivering solutions. ²⁸

²⁶ Mandel, Ernest (2002) *An Introduction to Marxist Economic Theory* (Chippendale NSW, Australia: Resistance Books) p 43-44.

²⁷ Kondratief, who admits to the fact of explosive growth followed by deep recession, refers to long-term cycles of 25 to 30 years primarily based his experience on the Great Depression and the growth that followed the WW II: Mandel, Ernest (2002) *An Introduction to Marxist Economic Theory* (Chippendale NSW, Australia: Resistance Books) p 44

²⁸ Devinney, Timothy M. (May 2009) *Is the Socially Responsible Corporation a Myth? The Good, the Bad, and the Ugly of Corporate Social Responsibility*, *Academy of Management Perspectives* ((NY: Academy of Management) p 48 <<http://aom.org/uploadedFiles/Publications/AMP/May09CorpSocialRespbyDevinney.pdf>> Accessed on 10 Oct 2014

The social positioning of the products elicit different responses across geographies (Auger et al.: 2003, 2008 and Devinney et al. 2006),²⁹ thus enforcing different CSR standards, some of these enforcement happened through legal instrument while others are voluntary notwithstanding the latter's casual relationship with various pressure groups.

Since various stakeholders corporate, individual and government have different levels of access to information and their own ability to process these information, hence each may adopt a certain viewpoint to have CSR enforced through legality. The corporates discernment of trade-offs, technologies and trends largely outwit the government.

The corporates' engagement with 'social experimentation' is more scalable than individuals, hence Devinney (2009) upholds that 'corporations are valid instrument for social entrepreneurship and an effective means of gauging the social demands of conflicting constituencies.'³⁰ Hence, the corporate's idea of social experimentation may differ from an individual.

Conclusion

It is difficult to conclude should the CSR be mandated by a larger social agenda of a corporate without involving legal intervention or it must be controlled as a part of overarching social policies of government. But CSR itself is justified and meaningful as long the corporates consider this as a moral obligation, an instrument which can sustain their business and provide them the license to operate and help them in their image management exercise. But even if not through the intervention of law the measurement of CSR performance through something like Dow Jones Sustainability Index³¹, no matter how flawed it is, can discipline the corporates with their CSR agenda. Despite all these approaches, the fundamental question would remain whether the CSR should be viewed as Kantian deontological ethics³² or a reductionist approach to ethics in the form of Bentham's utilitarianism³³ or more moderate version of Mill's utilitarianism³⁴.

²⁹ Auger, P., Devinney, T. M., Louviere, J. J., & Burke, P. (2003). What will consumers pay for social product features? *Journal of Business Ethics*, 42(3), pp 281-304 and Auger, P., Devinney, T. M., Louviere, J. J., & Burke, P. (2008). Do social product features have value to consumers? *International Journal of Research in Marketing*, 25(3), pp 183-191 and Devinney, T. M., Auger, P., Eckhardt, G., & Birtchnell, T. (in press). The other CSR: Consumer social responsibility. *Stanford Social Innovation Review* as cited in Devinney, Timothy M. (May 2009) *Is the Socially Responsible Corporation a Myth? The Good, the Bad, and the Ugly of Corporate Social Responsibility*, *Academy of Management Perspectives* ((NY: Academy of Management) p 44 <<http://aom.org/uploadedFiles/Publications/AMP/May09CorpSocialRespyDevinney.pdf>> Accessed on 10 Oct 2014

³⁰ Devinney, Timothy M. (May 2009) *Is the Socially Responsible Corporation a Myth? The Good, the Bad, and the Ugly of Corporate Social Responsibility*, *Academy of Management Perspectives* ((NY: Academy of Management) p 49 <<http://aom.org/uploadedFiles/Publications/AMP/May09CorpSocialRespyDevinney.pdf>> Accessed on 10 Oct 2014

³¹ The Dow Jones Sustainability Index, for example, uses the size of a company's board as a measure of community involvement, even though size and involvement may be entirely unrelated: Porter, Michael, E., and Kramer, Mark, R., (Dec 2006) *Strategy & Society: : The Link Between Competitive Advantage and Corporate Social Responsibility*, *Harvard Business Review* and also appeared in *Harvard Business Review 2006: A Year of Management Ideas* (Boston, MA: Harvard Business Publishing)

³² the normative ethical position that judges the morality of an action based on the action's adherence to a rule or rules or so called 'duty' or 'obligation' or 'rule'-based ethics, because rules 'bind you to your duty' which is at a variance with consequentialism, virtue ethics, and pragmatic ethics.

³³ a theory in normative ethics holding that the proper course of action is the one that maximizes utility, usually defined as maximizing total benefit and reducing suffering or the negatives

³⁴ Mill rejects a purely quantitative measurement of utility and says: It is quite compatible with the principle of utility to recognise the fact, that some kinds of pleasure are more desirable and more valuable than others. It

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