

Navigating the Complexities of Business and Human Rights

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Business activities have a considerable convolution with Human Rights. Within the framework of the Universal Declaration of Human Rights, many rights are interconnected to certain choices made by corporations. For example, there has been a growing conversation both in the public media (Forbes , 2020; Anon., 2021) and in academia on how small businesses (Redmond, 2022) and larger size companies (Astuti, et al., 2022) have a significant impact on the environment.

From a climate perspective, business activities, to the extent that they promote or not the destruction of the environment, can be analogous to Art. 3 of UDHR, the right of every individual to life, liberty and security. Corporations are also responsible for the working conditions and the safety of their employees and in that respect, relating to art. 4, art.23-24 of UDHR, respectively the prohibition of slavery, the right to the favourable condition of work and pay, to join unions and the right to rest and leisure. As the main actor in the manufacture of products of consumption, corporations' activities can affect the right of individuals to receive and seek information (art. 19), especially on the products those individuals consume which correlates to a certain extent to the right to a standard of living adequate for health and well-being (art. 25). Finally, as we're facing a new globalized and digitalized world, the importance of the human right to data privacy has become significant. In that sense, companies fall under the scope of this right (art. 12).

The concept of Corporate Social Responsibility has evolved in its nature and shape, from an idea based on philanthropy with religious faith and trust to an idea of voluntary business behaviour. Great controversies have circulated about the motives and origins of its existence as well as its goal and effects. Beyond Friedman's theory of business' nature or criticism of socialism, CSR has been criticized for its hypocrisy (McKibben, 2006) or the two-facedness of its character, as a tool to legitimize the economic and social power of corporations (Gond & Moon, 2011). From a human rights perspective, corporations have been seen less as potential instruments for the protection of human rights and more as potential perpetrators (Wettstein, 2012) and many limits to the current notion of CSR are both an argument in favour of its apparent bigotry and determinant in asking whether business and human rights are compatible. This study seeks to investigate those limitations, respectively in relation to its legal aspect, other actors, and capitalism. It also proposes an alternative solution as a theoretical and practical archetype of a sustainable economic model.

Legal Aspect

The implications of internationally binding Human Rights on the contemporary notion of CSR, have broken out CSR of the domain of simple voluntariness (Brysk & Stohl, 2017, p. 115). Under the international legal framework, CSR falls under international law instruments such as OECD Guidelines and Guidance, UN instruments (United Nations Code of Conduct of Transnational Corporations and the United Nations Guiding Principles on Business and Human Rights) or even the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. CSR is also binding by regional and national laws through directives and the rule of due diligence.

However, the lack of mechanisms put in place to monitor and enforce those laws, the lack of clarity on the scope of

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applicability of certain business practices (supply chain) or even the lack of comprehensive coverage of human rights concerned in due diligence (due diligence mandatory legislation referring only to rights considered to be “fundamental”), posed serious concerns on the efficiency of legal obligation upon CSR practices. There was always a great controversy on the limits of companies to respect human rights, and while many argued for passive duty to respect human rights “CSR is often perceived to be essentially about pro-active corporate engagement in social causes and thus about corporate responsibilities beyond the negative realm of doing no harm.” (Wettstein, 2012, p. 19). Indeed 21st century CSR thought has been overwhelmed by the idea that CSR needed to be a proactive concept with positive obligations (Baumann-Pauly & Nolan, 2016, p. 8; Scherer & Palazzo, 2007). Nevertheless, the gap in defining the limits of corporate responsibilities against the concept of legal positive obligations (Mares, 2009) has revealed that the CSR movement has not yet seized the full dimension of jurisprudence in negligence law and International Human Rights Law and its coexistence with attention to the societal vision of fairness and justice and current public policy. In other words, neither the current legal aspect of CSR, nor the theoretical approach of what it could be, are above reproach in regard to its feasibility or its congruence with Human Rights.

Other Actors

The above concern on the interconnectivity between CSR with society and public policy, allows us to consider the purport of other actors such as individuals and States. While ethical consumerism has been criticized for its limited ability to effect structural change, NGOs reporting on CSR and Human Rights violations by corporations have improved access to information on products and companies making it easier for consumers to distinguish green-washing from ethical practices. According to Sisaye 2021, NGOs have positively impacted the evolution of the Global Reporting Initiative (GRI) and businesses’ behaviour. Consumers are a key driving force of business activities (Smith, 2009) and in that regard, the tenor of their choices cannot be disregarded, nor their agency as such actors in corporations’ decisions of production. Nevertheless, the influence of CSR marketing is also noteworthy in examining consumers’ sway. In this respect, it is perhaps more circumspect to highlight NGO reporting on corporation practices as the main societal actor of impact on CSR effectiveness.

CSR has blurred the line of responsibility division between the public duty of the State and the private realm of corporations. The critique of the relationship between the State and CSR has indeed evolved from an idea of substitution (Friedman, 1970) to one of complementing (Bhave, 2009). The State, as a governmental entity, has often been recognized as a focal point in any political decision-making (Kušej, et al., 1998). Dolores Modic has, through her analysis, emphasized three main roles of the state in regard to CSR: “1) the state as regulator and promotor of good practices, 2) the state as “first among equals” or »leading by example« and 3) the state as a supervisor” (Modic, 2008, p. 3). The state, as main actor of legislation, has the power to facilitate the development of CSR in the same way as it has the capacity to endorse different levels of interventionism or preferences which can play on the outcomes of CSR policies in very various ways.

The standard of corporate social responsibility is influenced by a multifactor and multi-actor system, creating a challenging and arduous demand of a — currently lacking — collaboration with clear and set goals.

Marxist View: Capitalism Incompatible with Human Rights and CSR

The scepticism from the Marxist-inspired left is now taking over the criticism of the libertarian right (Friedman 1970). Literature on the subject of capitalism and Human Rights and anti-capitalist thought have tried to show a direct contradiction between the nature of corporations — the capitalistic economic structure of current society — and the realization of Human Rights. (Vogel, 2005; Nunn, 2012; Shaw, William H., 2009). As established above, the role of the State in economic policies is self-evident, the question that Marxist thought is trying to respond to is whether a society based on a capitalist economic system can co-exist with the goals that CSR publicly proclaim, i.e the fulfilment of (certain) Human Rights by companies.

From this question and research, corporate responsibility has been largely characterized as a neo-liberal project with “empty gesture” (Fleming. & Jones, 2013, p. 11). The main argument is that while the creation of CSR might have been inspired by concerns about the societal effect of the current global economy, CSR advocates are still under an

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impression that social ethics and capitalism can be homogenous (Ibid. p. 13), this perception which leads the CSR movement and its actions, is criticized to be influenced and coordinated as a “capitalistic smokescreen meant to preserve the status quo and an initiative that saved capitalism” (Topić, 2012, p. chap. 4).

The logic is based on two Marxist objections to business ethics, the first one being that capitalism has historically and systematically generated a business behaviour based on insatiable profit making, unethical practices and disregarding for human rights. The second is that focusing on the eventual moral or immoral conduct of individual business is diverting attention from the main problem of capitalism and specifically the alienation through the estrangement of labour (Marx, 1844). Furthermore, corporate social responsibility does not give a solution to the business structure’s inconsideration of propertyless workers and its impact on feeding Percy Bysshe Shelley’s aphorism “The rich get richer, and the poor get poorer”. This lacking response has been an essential ground element to neo-Marxist contention against CSR. Through Marx’s concept of competition (behaviour of capitalistic firms) and class struggle between proletariat and bourgeoisie, Nunn 2012 gives us a comprehensive capsulization of the direction taken by neo-Marxist research on CSR. From the author’s analysis of structural contradictions and constraints on Corporate Social Responsibility, “the scope for the corporate agency in relation to responsibility/irresponsibility is severely limited by inter-capitalist competition and capitalist social relations” (Nunn, 2012, p. 2).

Proposed Solutions

In order to create a global and sustainable change in relation to the economy, society needs to rethink its approach to consumption, production, inhabitation and movement. CSR, as a framework for the sensibilization of economic actors, proposed this change. Nevertheless, it produced a repetitive cycle of compensation where companies choose to offset their actions to respond to the social and environmental call; planting trees, associations funding, volunteering programs... A shift from compensation to transformation in the core structure of business behaviour is necessary to achieve Human Rights.

Sustainable development will only be effective when we will have a revision of the educative system ie. a global politic of transformation in education policies. Future important economic actors such as engineers, entrepreneurs or politicians should be students of a new structure of education based on social and environmental ideas (eco-conception, circular economy...). The purpose of these new policies should not be to simply add new courses or modules but to implement these ideas comprehensively throughout education.

In regard to governments, a legal obligation to measure the impact of the budget of states and territorial collectivities on the social and environmental milieu, a shift from GDP to a measure focused on social and environmental components. Each territorial collectivity should aim for sovereign independence and international responsibility to resist the consequences of war since historically, states and companies have used the pretext of war to change to a politic of survival and ignore Human Rights.

Finally, a shift in the structure of capitalism is the only solution to respond to both CSR and neo-Marxist critiques and limits. From financial capitalism based on competition, economic policies should head for “citizen capitalism” (Felber, 2011; Wolfrom, 2011) based on cooperation. This Social and Solidarity Economic (SSE) structure aims to focus on social profitability instead of only financial profits. Researchers of the early 2000s (Allard & Davidson, 2008; Bouchard, 2009) up to the current time (Calvo, et al., 2017) have filled in the gap in the literature about the social economy and have provided support for this realist utopia. SSE share certain similar principles to CSR, particularly the “social concern” (Palomo, 2014, p. 98). However, it differs in various ways, as seen in the table below (Saatchi & Urper, 2013), respectively its focus, goal, base, creation, target, sustainability, funding, standards and allocations.

A multitude of exemplified arguments for the verisimilitude of such economic structure is given through case studies of countries like France (Lainé, 2015), Uruguay (Rossel, 2015) Uganda (Nannyonjo, 2015) or India (Ghosh, 2015). This is laying with the idea of territorial sovereignty; that each territory is now required to be more resilient in the face of crises and support a new economy; a collaborative economy (Botsman & Rogers, 2010) that favours use rather than possession. A circular, local, functional economy, creating quality jobs and guaranteeing social ties. This new

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innovative, solidarity-based economy exists, as one could argue, under the name of SSE.

Conclusion

This study has examined some of the potential limits of CSR. It also overviewed the critique of its effects and potentially diverted intentions. Due to some legal, social and political barriers as well as its capitalistic driving force, CSR, has shown to be inadequate in facing current social and environmental challenges. For the purpose of this paper, the non-exhausted analysis of SSE was used as evidence needed to show the existence of an alternative system type that complies with Human Rights. Being still a profit and capital-making alternative, whether Marx would have found this SEE as the/a solution to end the alienation of capitalism is another question.

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