
CORPORATE SOCIAL RESPONSIBILITY. A CRITICAL REVIEW*

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Abstract: Within the context of the European Union, the concept of *Corporate Social Responsibility* (CSR) has been revised in its 2011-2014 strategy to conform with a concept including new features that deal with *the impact of business in society*. We aim at denouncing the false debate between a compulsory or voluntary vision of CSR because the voluntariness would be in the process but not in its concept. CSR resurfaces with a vengeance after a period of reflection caused by the deep economic and social crisis. Our analysis intends to situate this concept in a critical and historicized perspective of CSR, inspired by a critical theory of society and the historicizing of concepts proposed by Ellacuría. Amartya Sen has also worked on the relationship between ethics and economics and the development of the capability approach as a way of measuring development; this approach may help to enforce the basic premise of CSR that was qualified as a weakness by Professor Stefano Zamagni due to its support of companies' reputational issues. At a moment when global capitalism is under revision and the environmental and social unsustainability of the current economic system has become evident, CSR could play a role or at least make a proposal to improve not only the visibility

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of companies, but also the legitimizing of a category of practices that could ultimately be unsustainable.

Keywords: *CSR, human rights, critical theory, business ethics, historicization of concepts.*

INTRODUCTION, CONTEXT

Globalization, and more specifically economic and financial globalization, is the initial element in our reflection describing the current context of CSR. CSR has to be in this larger context where we have witnessed a retreat of the State as well as the deep crisis in its regulatory capacity and, more specifically, a progressive deregulation of the economic situation. After a period of postponement caused by the severe economic and social crisis, CSR has re-emerged strongly, like new grass sprouting after a fire, which is often believed to grow stronger than ever. Some landowners even think, furthermore, that such a fire is a good excuse to clear the land for more profitable pastures. From another perspective, these practices were denounced years ago for depleting soil and subsoil resources and actually causing the acceleration of a desertification process, where initial green shoots are deceiving since they lack deeper foundations and eventually dry up (if not completely then at least for an even longer period than that needed for the recuperation of the terrain).

Our point of departure is the potential value of CSR and the importance, therefore, of protecting this category which still has a lot to contribute to society through business activities. But regarding CSR, the severe economic crisis has led to its development too. It could be said that in this time of crisis, CSR is also being brought into question by at least two types of phenomena that, although perhaps not conflicting, are at least of different types.

First, there is the question of how, during the boom of CSR, a crisis could have evolved whose main causes are related to irresponsible practices of large companies that might even actually be already formally complying with standards of social responsibility. From an optimistic perspective, the answer to this question is that it would have been worse if there had not been any participation at all within corporate CSR policy. Actually this is quite arguable, even if it could be considered accurate in part, as we discuss below the behavior of some companies on tax

heavens, gender inequality, corruption, sustainability or corporate governance.

Second, during the first stage of the crisis, companies or what is even more worrying, the governments responsible for the policies that drive and motivate CSR seem to have transmitted the powerful idea that social responsibility is an issue that should only matter in good times, because bad times, when the survival of the company is at stake, are not the moment to get involved in this issue. The question posed by this second view point would be: at what cost? It looks like it would be at the expense of ethics. Adela Cortina, a well-respected author in this field in Spain, has wondered whether CSR has been ethical or cosmetic;¹ hopefully, this is not the case of CSR in Spain and Europe.

But to get the feeling of the situation, the first thing to look into is the context of CSR in our social and historical scenario. The great progress that CSR has made in Spain in the field of business cannot be denied, and involves a large number of companies that have sealed the Global Pact with a total of 2,452 signatures in 2013, attributed to its closer relationship with SMEs, one of the CSR's great challenges.² This represents the significant progress of the company itself in the field of CSR, and the greatest indication of this is, undoubtedly, that it has become an intrinsic concern of the company itself. Nevertheless, the difficulties that challenge the real effectiveness of CSR cannot be ignored and must be taken into account. Among the most outstanding is tax fraud according to the Observatory on Corporate Social Responsibility, as found in the information provided by the Ibex 35 companies themselves on sustainability: 94% of these companies operate in tax havens and are, furthermore, very opaque about the information on their transactions in these tax havens and about their own policies and fiscal balance.³ Gender inequality is another of these shady areas; the field of corporate governance is still at levels well below those recommended by the European Union where currently only 12.74% of administration board posts are held by women as compared to the objective of 40%; at least three companies have no women in the

¹ Cortina, Adela "Economía sin ética" *El País*. May 5, 2009.

² Pacto Mundial: <http://www.pactomundial.org/wp-content/uploads/2014/06/Memoria-Actividades-2013-web.pdf>, consulted June 17, 2014.

³ Vázquez, Orencio (dir.), *La Responsabilidad Social Corporativa en las empresas del Ibex 35*. Analysis of the exercise 2012, tenth edition, Conclusion Report, Observatorio de Responsabilidad Social Corporativa, pp. 49-67.

board.⁴ Corruption is another disturbing element. According to the latest report published by Ernst & Young, based on its *13th Global Fraud Survey*, nearly four in ten employers would condone some form of fraudulent practice to safeguard their company.⁵ Environmental concerns and the relationship with workers in such aspects as wage inequality and participation are other issues that still have a long way to go.

ON THE DILEMMA REGARDING VOLUNTARISM REGULATION

Now that the CSR panoramic context has been established, we would like to add some lines on what we have called the false debate between voluntarism and CSR regulation. This is primarily because the debate generated is based on the dilemma of choosing between regulated social responsibility as compared to social responsibility that is left in the hands of voluntarism or to the free initiative of social partners. But as mentioned above, it seems to be a false debate because it restricts the area of social responsibility solely to the legal field, which is indeed a *contradictio in terminis*. It is impossible to speak of responsibility and voluntarism, since any action carried out by any agent, as long as it is a free action, generates in itself a responsibility, as proposed by such great thinkers of the Spanish school of ethics as Ortega, Zubiri, Aranguren and Ellacuría and carried on by outstanding Spanish philosophers like Adela Cortina. If we could liberate freedom itself from responsibility, certainly there would not only be the problem of voluntarism in CSR, but another even more serious one. Furthermore, it would entail an obligation which will now be analyzed to discover of which type it is, but we are not speaking here of voluntary responsibility. In the 2011-2014 CSR the EU strategy⁶ gives us two key elements to understand the true meaning of the concept of voluntarism as regards the *iter*, and not as a responsibility which may or

⁴ The presence of women on the board. IESE, Inforpress. <http://www.inforpress.es/wp-content/uploads/2013/03/PRESENTACION-93N-PRESENCIA-MUJERES-CONSEJOS-IBEX-INFOPRESS-MARZO-2013.pdf>, consulted June 17, 2014.

⁵ Ernst & Young http://www.ey.com/Publication/vwLUAssets/Navigating_todays_complex_business_risks/FILE/Navigating_todays_complex_business_risks.pdf, consulted June 17, 2014.

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:ES:PDF>, consulted June 17, 2014.

may not be assumed. Firstly, this comes from the new definition given in the new CSR strategy itself as the responsibility of the company for its impact on society, that is, all of its impact which is totally automatic as well; secondly, it comes with the EU's own interpretation of voluntarism. The EU understands that voluntarism is the way to implement CSR. It is not so much whether CSR is voluntary or compulsory, but that it is in between the two possible routes of implementation: one regulated by normative acts, and the other taking an unregulated path which is determined instead by a process voluntarily set up by the company itself. The EU makes it clear that it is not a question of voluntarism or a question that can be set aside as the ultimate goal. In fact, it indicates that in the event that voluntarism does not work as a way to reach the ultimate goal of social responsibility, new mechanisms would have to be considered to achieve it. Therefore, some of the most relevant steps that have been taken in this direction include expanding reporting requirements and the reform of corporate boards in order to achieve greater diversity for better corporate governance by reforming the so-called *accounting directives*. It is true that the blame cannot be placed on companies in the same way that it would be attributed to individuals, but it also cannot be forgotten that ultimately decisions are always taken and supported by an individual who has the last word. In this regard, in order to resolve this dilemma between voluntarism and regulation, it could be of interest to introduce the classical Kantian distinction between perfect and imperfect duties,⁷ understanding the former as those that have actually defined the object of responsibility as well as the responsible party, and also how to enforce that obligation if compliance is not forthcoming. Imperfect obligations, on the other hand, refer to those whose terms are not all defined, for example, the final responsible party is missing, or the precise content of the obligation, or the due process of compliance in case of non-fulfillment. Any of these scenarios means that the final exercise cannot be guaranteed, at least in those cases where we cannot prescribe universal compliance. Therefore, the fact that an obligation cannot be determined and sanctioned legally does not mean that in this case the responsibility of the corporate agent can be considered irrelevant.

This same figure of imperfect obligations is used by the Nobel Prize winner in Economics, Amartya Sen. When *The Idea of Justice* speaks

⁷ Singer, Peter. *Compendio de Ética*, Alianza Editorial, Madrid, 2004, pp. 255-257.

of the fulfilment of human rights, such obligations are granted major importance. Sen maintains that imperfect obligations play a key role in matters of social ethics, and it is a question of emphasizing the responsibility of those whose actions can prevent violations thereof.⁸ This same action could in the same vein be related to problems associated with environmental degradation, tax fraud, gender inequality, corruption, etc.

The contradiction, therefore, must not be between responsibility and irresponsibility, or unenforceable responsibility. In fact, there are already a good number of laws, legislative issues, that should be regulated, but it might be preferable to let financial and business agents be responsible for innovation. In this sense, Amartya Sen does not consider the route of positivization to be in all cases the best way to ensure human rights, but we do have to prioritize the method of social control and intense public debate and discussion.

PROBLEMATIZATION ON THE SUBSTANTIATION OF CSR

Having commented on the context of CSR, and analyzed the issue of compulsory CSR and its relationship with regulations, we would also like to make some contributions regarding the foundations of CSR. We understand that CSR is a valuable asset and a category that has an emancipatory potential that must receive constant encouragement. Even so, this same category also requires a theoretical foundation to develop its full potential and enable it to be at its most fruitful in the business arena.

In this sense, Stefano Zamagni, the Bologna professor, thinks that CSR's foundation is prey to a great weakness because it is based on the reputation of the company. That is, CSR serves as an element of legitimacy for companies with respect to society and is a channel of communication with *stakeholders* to communicate that the company is socially responsible and that its development should be supported by society. But as mentioned above, Zamagni believes this would be but a weak foundation, and we understand that this is a risk for CSR, since it is based on the fact that the company will only work following principles of social responsibility where the general public or its *stakeholders* are privy to information about such actions, sweeping under the carpet the responsibility for those acts which do not necessarily have to be made public or

⁸ Sen, Amartya. *La idea de la justicia*, Taurus, Madrid, 2010 pp. 404-408.

could be hidden from the public eye or *stakeholders* themselves.⁹ In fact, analysed from the perspective of moral development as proposed in the development of Lawrence Kohlberg's stages,¹⁰ this behavior would be included in the first stage of moral development, where responses are based on rewards and punishments or in any case on reciprocal actions since there is an expectation of mutual benefit if one acts responsibly. Both cases involve moral developments that have not yet generated moral autonomy. Zamagni, therefore, feels it is necessary for the connection between ethics and economics to be rebuilt yet again, through the proposal of *civil economy*, a paradigm of a different market economy and an *ex ante* model of CSR, where responsibility is not something that is incorporated after the fact. Instead it is present in the company by including the principle of reciprocity, through which actions do not seek automatic compensation, but under the understanding that this type of activities will be generated at a general level. This will lead all agents, based on their mutual trust, to ultimately benefit from the increased cooperation between economic operators, the cohesion of social space and the generation of private and relational assets that will enable people to carry out their life projects.¹¹

Amartya Sen has also worked on the link between ethics and economics. One of his objectives is to provide a reinterpretation or a more complete and systematic reading of Adam Smith. For Sen, Smith's most quoted text about the butcher, the baker and selfishness has been interpreted in a merely isolated way, despite the fact that Adam Smith is a moral philosopher who situates this performance within a more complex system where selfishness is not the only rational way to act. In *On Ethics and Economics, Rational Fools, Justice of Wellbeing and the Market*,¹² Sen confronts the problem of the foundation of behavioral economics, specifically guided by the criterion of the theory of rational choice where

⁹ Zamagni, Stefano. *Por una economía del bien común*, Madrid 2012, Ciudad Nueva, pp. 138-140.

¹⁰ Kohlberg, Lawrence. *Psicología del desarrollo moral*, Desclee de Brouwer, Bilbao, 1992.

¹¹ Calvo, Patrici. "Fundamentos de la economía civil para el diseño de las organizaciones", *Revista Internacional de Organizaciones*, n° 10, junio 2013, pp. 65-84.

¹² Sen, Amartya. *Sobre ética y economía*, Ciencias Sociales, Ensayo, Alianza Editorial, Madrid, 1999; "Los tontos racionales", in Frank Hahn and Martin Hollis, *Filosofía y teoría económica*, Fondo de Cultura Económica, México. 1986; *Bienestar, Justicia y Mercado*, Paidós. ICE/UAB, Barcelona, 1998.

modern economy considers that it is the only rational behavior that leads to maximizing one's own profit or utility; this also occurs consistently or repeatedly over time. Sen contends that this vision of economy is a skewed view of rationality, as biased as any interpretation of Adam Smith that ignores all his systematic work including his *Theory of Moral Sentiments*. In *Rational fools* and regarding ethics and moral reasoning, Sen concludes that when the management of an organization is solely motivated by personal gain, it is doomed to failure.¹³ Obviously simplification is necessary in order to be able to make progress in carrying out certain jobs, but it is not the same to start out from this anthropological conception of definitional egoism. Sen finds this affirmation to be erroneous because it does not correspond with reality, since we often make decisions based on other criteria. According to Sen, there are other criteria in decision-making that are as rational as the theory of rational choice. Therefore if we only take self-interest into account, many issues that can ultimately lead to arbitrary decisions are ignored. This necessary expansion of the concept of rationality and, more specifically, economic rationality, leads to a review of the groundwork of an economy that ends up offering limited horizons for humanization. In this sense we understand that CSR may be limited if it is within this economic paradigm. The possibility of approaching CSR from a new economic basis is appealing, as it would open up possibilities for the economy and companies and therefore for CSR itself.

This perspective also forces an analysis to situate CSR in the critical and historicized perspective inspired by the critical theory of society, and in the historicizing of the concept proposed by Ellacuría.¹⁴ On the one hand, a critical review would have to assume the origin of CSR and try to ascertain its projection into the future. We have to actually verify whether CSR, with respect to the *stakeholders*, will result in a company transformation that will lead society and the firm to more emancipating horizons; or if, on the other hand, this transformation will be used to prevent the institutionalization of human rights obligations or could even legitimize the continuation of business practices in different sectors where the discourse of sustainability and CSR could be carrying out practices

¹³ Sen, Amartya. "Los tontos racionales", op. cit.

¹⁴ Ellacuría, Ignacio. "La historización del concepto de propiedad como principio de desideologización", in Senent, Juan A. (ed.). *La Lucha por la justicia. Selección de textos de Ignacio Ellacuría (1969-1989)*, pp. 236-240, Deusto, Bilbao, 2012.

contrary to health,¹⁵ or wild extractive policies, or others that favour environmental degradation through deforestation, water pollution, deteriorating working conditions or, in short, violations of the human rights,¹⁶ etc. In these cases we could denounce what Ellacuría called an *ideological use* of the concept of CSR as a concealment of reality, that should lead to a thorough review of the concept itself and the practices it leads to. Following the same train of thought, we have the work of the economist Franz Hinkelammert on the processes of ideological investment or on the side effects of a particular conception of the economy.¹⁷

LEGISLATIVE REFORMS: ACCOUNTING DIRECTIVES, COMPANY ACTS, GOOD GOVERNANCE CODE

In this context the EU has revised the idea of CSR in its CSR strategy 2011-2014 as a concept with new features influenced by “the impact of business in society”, developing this concept which has already been under study¹⁸ and is currently being developed in the European Parliament in the reform of accounting directives to expand the obligations for some companies to submit non-financial information, mainly firms with higher volume and impact, as well as to introduce greater diversity in the Boards of Directors in order to improve the governance of large companies.

Regarding this topic, Spain has put into effect different measures during the past year. In any case, the starting point was Art. 39 of the Sus-

¹⁵ “We do not develop this medication for the Indian market: we have developed it for western patients who can afford it.” These are the words of the CEO of the German pharmaceutical Bayer, Marijn Dekkers, in the course of a forum for the pharmaceutical industry held on December 3, 2013 in London and subsequently printed by the weekly magazine Bloomberg Business Weekly, which many considered outrageous. <http://www.elmundo.es/salud/2014/01/24/52e210d5e2704e36188b456b.html>, consulted June 17, 2014.

¹⁶ The first anniversary of the accident of Rana Square that killed over a thousand people in Bangladesh on April 24, 2013 was recently remembered.

¹⁷ Hinkelammert, Franz. “La inversión de los derechos humanos, el caso de John Locke”, in *El vuelo de Anteo. Derechos humanos y crítica de la razón liberal*, Bilbao, 2000, pp. 79-114.

¹⁸ Ibáñez, Eduardo; Margenat, Josep M. “Posibilidades y límites jurídicos de la RSE en el ámbito estatal y europeo”, in Fernández, José L. and Paz, Salvador. (eds.), *Construir confianza: Intuiciones y propuestas desde la Ética para la empresa sostenible*, Cátedra de Ética Económica y Empresarial de la Universidad Pontificia Comillas, Madrid, 2013.

tainable Economy Act (2/2011, 04 March) to *promote social responsibility of business* where it was announced that a series of development measures would be passed regarding to the development of indicators, the preparation of reports for some of the larger companies (with over a thousand employees) in which the State Board of Social Responsibility should have had an important role, and even the possibility of asking the government itself to certify companies that had voluntarily requested to be declared socially responsible, although that procedure was not developed at that time. But on the other hand, as of this year measures have been taken by the Spanish government to revitalize CSR. Among them, there are three worth mentioning: 1) *the draft of the National Plan regarding Business and Human Rights* based on the principles in the Ruggie Report to protect, respect and remedy, which aim to respond to the request of the EU for all member countries to have a plan for business performance and human rights by 2012;¹⁹ 2) the progress in the new Code of Good Governance through the proposed reform of the Companies Act, which aims to improve the governance body of big business through the introduction of greater transparency, diversity, the role of the board of shareholders, and the incorporation of the principle of “comply or explain” or, alternatively, legal obligations;²⁰ 3) and finally, the development of a *Draft of Spanish CSR Strategy*²¹ as a first draft of what the path of CSR in Spain should be, following the European strategy for CSR which proposes a perspective for Spanish CSR for 2020²². It establishes four purposes and ten lines of action that stem from the following six principles: competitiveness, social cohesion, creating shared value, sustainability, transparency and willingness.

¹⁹ COM (2011) 681 Final. Bruselas 25-10-2011, p. 17. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:ES:PDF>, consulted June 17, 2014.

²⁰ Draft bill which modifies the Law of Corporations to improve corporate government. http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-97-1.PDF, consulted June 17, 2014.

²¹ Ministry of Employment and Social Security, Government of Spain. http://www.empleo.gob.es/es/sec_trabajo/BorradorEstrategiaRSE_29abril14.pdf, pp. 27-29., consulted June 17, 2014.

²² *Spanish CSR strategy is aimed to support the development of responsible practices in companies in order to constitute an important driving force of competitiveness in the country and in its transformation into a more productive society and economy that is sustainable and integrated.* Op. cit., p. 27.

CONCLUSIONS

In the context of the current crisis, we have seen the questioning of CSR that can be made with respect to its lack of relevance in times of economic distress in the past; now that the crisis is being overcome, it is the moment to identify the role that CSR can play today. In any case it is also understood that, as a business phenomenon, CSR must be closely entwined with processes of economic and financial globalization, and with the crisis of the welfare state and the pressures it receives for pulling back to favour the greater weight of the market itself as a regulator of social relations.

We have also tried to review the problem of voluntary CSR noting that such voluntarism must be predicated not only on the *iter* that it has to follow but also on the inescapable social responsibility of companies as indicated by the EU in its modern definition of CSR for its impact on society.

As for the theoretical foundation of CSR and modern economy, we have highlighted the need to review their basic principles just like leading economists such as Stefano Zamagni and Amartya Sen, who have long called for a greater link between ethics and economics, expanding the presuppositions of economic rationality with a holistic view of the person, and not reducing it to an anthropology one of *homo economicus*.

With respect to legislative and governmental CSR reforms, it must first be said that they are good initiatives in line with voluntary *iter* action prioritizing information within a framework that relies on reputation as the main driving and motivating element of CSR, but the potential deficiencies of the CSR model based on reputation have already been mentioned. Moreover, in any case CSR gambles its future on the actual praxis of the company, in great transnational enterprises and small and medium enterprises so we must be always vigilant through independent reporting and social control and public debate on CSR's real contribution to society.

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Propuesta de Directiva del Parlamento Europeo y del Consejo por la que se modifican las Directivas 78/660/CEE y 83/349/CEE del Consejo. Comisión Europea Comunicaciones sobre RSE: 2001, 2002, 2006 y 2011.

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