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WHEN CORPORATE SOCIAL RESPONSIBILITY MEETS HUMAN RIGHTS. BUSINESS PLANNING BASED ON MORAL ABSOLUTES

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Abstract: What happens when Corporate Social Responsibility (CSR) and Human Rights meet? This article argues that although CSR is a worthy attempt to propose social-aimed better practices for managerial decisions, a human rights perspective substantially enriches this vision. It also suggests that the ancient principle of *res extra commercium* can provide the rationale crucial to join CSR with human rights as a source of moral absolutes. Essentially, based on the *res extra commercium* rationale, businesses should start by identifying areas of economic activity that are off limits because they may violate human dignity.

Keywords: *Corporate Social Responsibility, Human rights, Human rights-based Theory of justice, Globalization, Moral absolutes, Res extra commercium*

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1. INTRODUCTION

Corporate Social Responsibility (CSR) is now widely recognized because it describes a practice where it is assumed that the existence and functioning of a corporation causes wide-range social consequences, some positive and others the opposite, that must be fully known in order to foster or halt them, respectively (Calvo 2013).

Meanwhile, the practice of human rights seeks to protect the fundamental interests of all human beings based on a rationale according to which such protection should be the maximum possible, even when such interests are confronted with collective objectives.

When CSR meets human rights, a new element is added into the corporation's decision-making rationality: that of moral absolutes. Why? Because human dignity requires from everyone an unconditional respect that sometimes justifies the unreserved prohibition of certain acts. This idea is embraced by Theodor Adorno (1998: 191) in his landmark conference *Education after Auschwitz* with the following thesis: "The premier demand upon all education is that Auschwitz not happen again. Its priority before any other requirement is such that I believe I need not and should not justify it". In other words, the crucial lesson that humanity must not forget after Auschwitz is that it must be prepared and disposed to stop, at any cost, inhuman attitudes and actions (*mala in se* acts). All this is confirmed by the United Nations Universal Declaration of Human Rights (UDHR) when it explicitly states:

> Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people (Preamble).

So, we argue that although CSR is a worthy attempt to propose social-aimed better practices for managerial decisions, a human rights perspective substantially enriches this vision. We also discuss that globalization needs to be considered through a human rights perspective to better understand business activity in today's world.

We suggest that the ancient principle of *res extra commercium* can provide the rationale crucial to join CSR with human rights as a source of moral absolutes. Essentially, based on the *res extra commercium* ra-

tionale, businesses should start by identifying areas of economic activity that are off limits because they may violate human dignity. This action can move a corporation toward a serious commitment to human rights within business activity. Let us begin, as a general framework, with some thoughts about a human rights-based theory of justice.

2. A HUMAN RIGHTS-BASED THEORY OF JUSTICE

A theory of justice seeks answers concerning fundamental questions about the organization within a society. For example: How should individuals treat each other? How should the goods that are obtained and preserved through the efforts of the members of society be distributed?

Justice represents the highest criterion of evaluation regarding the correctness of actions and norms within the social context of compensation and distribution of goods. How can we know whether a conduct or a norm or a society is fair and just? Conceptions and theories of what is just are distinguished from one another by the criteria they propose for what merits being judged as correct, as well as the path to reach such a conclusion.

The human rights-based theory of justice is grounded on this principle: by virtue of our existence and as a condition for our fulfillment as human beings, we are all entitled to a set of goods, prerogatives and immunities that represent our fundamental, inalienable and unconditional interests.

The applicability of norms (moral and legal) is justified, in accordance to the latest principle, because it guarantees the respect and enjoyment of the goods, prerogatives and immunities inherent to rights. In other words, those norms are just and therefore coercively binding if, and only if, their fulfillment protects and promotes the fundamental interests of all human beings. Also, the criterion of correctness and justice for all distributive and corrective acts carried out in a society coincides with the degree of respect, protection and promotion that the fundamental interests of all human beings deserve.

The human rights-based theory of justice fosters significant practical trends such as:

a) The urge to eliminate all discriminatory situations. Today it is an undisputed moral principle to forbid primary discrimination. That is, any act that denies human dignity by excluding individuals from

the universal moral community of holders of equal rights. Likewise, distinctions that imply an unequal distribution of goods, justified by equal respect for all, are authorized. In both cases it is clear that human dignity is recognized in each human being, considering the plurality of ways in which human beings reveal themselves.

b) The recognition of human dignity as a genuine source of duties. A moral relationship emerges from these duties because someone owes rightfully something to another one, without expecting a compensation.

c) A third practical trend aims towards the fulfillment of the moral promise inherent to the rights acknowledgement. As Jürgen Habermas has pointed out: "Human rights constitute a realistic utopia insofar as they no longer propose misleading images of a social utopia that promises collective happiness, but rather base the ideal of a just society on (...) an idea of justice that aims to transcend all contexts" (2012: 80).

Based on the previous ideas, let us continue with the description of how corporate social responsibility and human rights relate to each other.

3. DISCOVERING HUMAN RIGHTS AND CSR IN THE BUSINESS CONTEXT

Human rights, as rights inherent to our common humanity, should not only be respected by States or public entities. In the last few years it has become clearer that private actors are also obliged to comply with human rights obligations, sometimes by themselves, others in coordination with a State. In any case, it is not enough to proclaim this last idea without any sense, but taking into consideration what a human right is. In asking a question about the nature of human rights, we should acknowledge that there may be a process of discovering them. If a question like that is not taken into consideration, there might be the risk of misleading the path in order to obtain a proper and effective protection of human rights, especially in the context of business activities.

The process of discovering what a human right is could be known as "foundation", that is, looking for a reality that could give sense of the concept. Although there might be different approaches to answer this

question, such as considering human rights founded in law, autonomy, interests or necessities (Ramírez & Pallares 2001: 40-51), we can agree that their purpose is to protect human dignity[1]; to recognize an equal value to every human being, and therefore to define the obligations both a public or a private entity has in order to protect them. In this sense, looking for a human rights perspective in the context of business activity must consider the ultimate reason for their existence: protecting human dignity.

According to Henry Shue, the concept of human rights is deeply Janus-faced.[2] This means that there is the necessity to explain rights both from the side of the right holder and from the one of the bearers of the correlative duties (Shue 1996: 31-32). In the context of business activity this means that introducing human rights into the corporate landscape needs to consider both the entitlement of the right by individuals or communities that may be affected by actions of the company, but also to define what the duties a corporation has towards those stakeholders. This broad perspective should determine how internal and external policies of businesses need to reshape in order to incorporate human rights as a perspective. In any case, an adoption of human rights within the corporate realm needs to be critical, with the possibility of questioning them, and using them as a basis for decision and understanding of them as hopes or aspirations towards a better world (Nickel 2007: 28, 31).

Within human rights practice, determining their content and the reciprocity between rights and duties are probably some of the most important topics to consider, especially when it comes to describe business activity; an activity that traditionally has been considered as self-interested. According to Beate Sjäfjell, it seems that at the heart of the business and human right debate is the failure of company law to introduce these moral concepts into its practice. Indeed, societal impact of business has

[1] Although human dignity is widely recognized as the foundation or basis of human rights in documents such as the Universal Declaration of Human Rights, and also according to different academics, there are views such as that of Schopenhauer or Bentham that refer to it as a vague and empty concept. For a history and analysis of the idea of human dignity (Barak, 2015; Gomá, 2019).

[2] Making reference to Roman god Janus (god of beginnings), depicted with two heads, one to the past, the other one to the future. That is why "January" is the first month of the year. However, in this context, its use might mean that human rights should look both to the "rights" aspect as to the "duty" one, that is, in opposite directions, or to the moral and legal aspect of the rights (Moka-Mubelo, 2016).

been regarded as irrelevant to company law (Sjäfjell 2020: 4). It is important to bear in mind that, in general, corporate activity is entrenched in the context of capitalism and neoliberalism, where it seems that the main aim of business practice is to obtain profits and not to take care of human rights (Duchrow 2005: 34).

Although this might be true, the business and human rights debate has brought into attention that companies, as legal persons, can be regarded as important actors whose actions may have an impact in political, sociological, and legal realms. Actions by private persons can have beneficial or negative consequences on the lives of other individuals, corporate entities, or society in general (Galtung 1994). For these reasons, society may expect businesses not to simply fulfill their economic functions, but also to generate solutions to social problems (Gómez Galán, et. al. 2015: 41-62). This conception has transited from a liberal perspective that sustained, as famously stated by Milton Friedman, that businesses would make all their expected social contributions only after increasing profits,[3] to other perspectives that identify Corporate Social Responsibility (CSR) as a set of voluntary rules that corporations can adhere to, mainly during good times, so that part of their resources can be directed toward social activities.[4] Finally, we are now facing an approach to analyzing business activity through human rights (Ramírez-García & Díez-Spelz 2020). It is in this context in which we should think about human rights as moral absolutes towards business activity.

As identified by Anna Grear, commercial corporations, regardless of size, have a dominant role in today's society that could have a significant impact on the rights of others (Grear 2016: 416). Many efforts within the field of business and human rights have been made towards creating

[3] Friedman sustained that the only responsibility of businesses is to make money, increase profits, and conduct the enterprise according to its desires. Friedman's vision assumes that a company, just by responding to shareholder interests will benefit society. In doing so, the company sufficiently complies with its social responsibilities (Friedman, 1970).

[4] Rhou and Singal explain CSR as the evolution from a mere shareholder primary perspective to a perspective where businesses also consider non-shareholding stakeholders such as customers, employees, suppliers, community, and society. CSR might be used as a tool to enhance corporate image and economic returns. Many corporate practices such as green building, waste and pollution reduction, employee development, and providing community assistance (especially in times of need) have become commonplace (Rhou, & Singal, 2020).

and designing mechanisms to assess abuses and make corporations accountable for violating them, but also to prevent those violations from happening. This topic is studied within the field of business and human rights (BHR). In 2011 the United Nations (UN) published the *Guiding Principles on Business and Human Rights* (UNGP) where it proposes a framework that encourages corporations to protect and respect human rights and remedy violations when they occur. John Ruggie coordinated the development of the principles, considering positions of governments, businesses, NGOs, and stakeholders in order to reach agreements about the importance of the implementation of human rights norms within companies so that "all voices" are heard (Ruggie 2013; Cassell & Ramasastry 2016). Contemporary efforts have been directed toward the creation of a mandatory treaty[5] to make explicit the obligations businesses have concerning human rights.

The UNGP framework includes the state's duty to *protect*, the corporate responsibility to *respect* human rights, and the need for more effective access to *remedies,* which together shape the obligations of corporate bodies toward human rights. "Pillar Two" of the UNGP stresses that it is the "responsibility of businesses to respect" human rights. This is perhaps the main objective of human rights for corporations and the objective that fosters the social responsibility of businesses toward others (Cassell & Ramasastry 2016). Adhering to the principle, companies cannot infringe upon the rights of others, must establish processes of positive due diligence to assure compliance with national laws, and manage the risk of human rights harm with the intention of avoiding it altogether (Cassell & Ramasastry 2016).

It is precisely in this context where it is necessary to reflect about human rights in depth. Respecting effectively human rights, especially within the business context, needs a deep understanding of the exigencies and aspirations they purport. Some of those exigencies may stand as moral absolutes, that could shape the legitimacy or not of some of the activities that companies may pursue. In any case, this particular vision might be embedded within the context of a risk society. In such context, every action supposes a risk, particularly those actions performed by

[5] OEIGWG, *Legally binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises*, Revised Draft, 16.7.2019, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf>.

businesses that cause significant side effects for different stakeholders all over the world (Beck 1998). Although there is always a risk of damaging others, human rights need to be a parameter of validity to mitigate those risks.

We consider human rights to be rights bestowed upon all human beings, and necessary for a just society (Weston & Grear 2016: 7-19). Following this perspective, we affirm that human rights should be the source of concrete obligations of businesses, especially when they are understood as the entitlements of different stakeholders. As we develop in subsequent sections of this article, the concept of human rights presents a moral imperative that defines and shapes the duties of a corporation with full consideration of other members of society. Although an interdisciplinary concept that encompasses philosophy, sociology, and psychology, our main focus of analysis is legal. Among other reasons, we focus on legal analysis because of the existence of the International Human Rights Law (IHRL) framework that addresses many of the human rights obligations of businesses (as well as those of nation states).[6]

It is in this context where CSR and BHR converge. BHR primarily focuses on avoiding or repairing human rights violations caused by business activity. However, BHR should broaden this understanding to also account for the positive actions that businesses may adopt in order to have a beneficial impact on society. Following Wettstein and others, Ramasastry identifies this as the point where both approaches to evaluating business activity may have a larger connection and conversation (Ramasastry 2015: 237-259). The aspirations and exigencies human rights stand for should define the scope and perspective of business activity, leading it toward the respect and protection of human dignity.

However, considering the legal framework of human rights, as well

[6] For example, when we account for the "Proclamation" of the Universal Declaration of Human Rights (1948), we notice that human rights should be: "a common standard of achievement for all peoples and all nations, to the end that every individual and *every organ of society*, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction." It could be noticed that "every organ of society," including corporations, have certain duties to respect human rights. The UDHR can be consulted at: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

as the connections between them and the societal impacts that business activity may have, bring us to the problem of enforceability. Independently of the vinculative nature that norms of IHRL may have, the challenge for all social actors in these matters is to internalize them as valuable norms and not just as obligations or burdens. Indeed, Koh suggests that there are at least four ways a norm may be accomplished: through coincidence, conformity, obedience and internalization (Koh 2016). For a complete and integral protection of human rights towards CSR, the objective of businesses is to internalize those norms and, therefore, comply with them.

According to Elegido (2008), the internalization of human rights norms and moral concerns within the business activity should override that of CSR. He suggests that CSR represents only a minimal investment of an organization's resources, whereas seriously considering human rights as an integral part of the business enterprise entails real benefits for the operation of the corporation. In fact, integrating human rights into business activity may bring benefits to employees, suppliers, customers, the environment, and other stakeholders.

We must also acknowledge that there are certain views that consider human rights as one of many approaches to defend human dignity and therefore need not be understood as the sole framework. Nevertheless, to ensure human dignity, businesses must consider human rights as a universal framework for justice that respects traditions and cultures in different parts of the world where businesses may operate (De Sousa Santos & Sena Martins 2019). We maintain that contemporary human rights are the principal social practice that helps individuals and businesses answer the question, "What should we do?" (Ramírez-Garcia & Díez-Spelz 2016).

To effectively adopt a human rights perspective within corporations towards the protection of human dignity and regulating their societal effects through CRS, these obligations must have a prominent and central role, not just a collateral one (Leader 2004). When there is a clash between human rights and commercial imperatives, it is important to analyze each right in particular, and how it interacts with the rights of others. It is also necessary to address interactions between different subjects, their interests, dignity and *status* as participants (Rowan 1999: 6-7). In any case, human rights must play a central role as those parameters of validity that need to be internalized. In his book, *In Our Own Best Interest: How Defending Human Rights Benefits Us All*, Schulz (2002) agrees with what

Leader had previously said and emphasizes that it is necessary for businesses to clarify and justify their human rights obligations, keep in mind the persons that may be affected by business activities, and account for the possible (internal or external) side effects of any regulation.

Nevertheless, accomplishing human rights obligations is still a challenge that companies may see as a "burden." Many problems of this kind arise from conflicts between human rights and corporate imperatives (Díez Spelz & Bustos Niño 2019). In 2008, Ruggie recognized that the "root cause" of contemporary problems involving BHRs are the "governance gaps" inside a company that permit an environment for wrongful acts, mostly created by globalization (Special Representative of the Secretary-General, 2008). That said, globalization has increased awareness of how businesses are responsible for the community, CSR, as well as human rights obligations (Yuniarta 2020). For this reason, in the following section we explore how a "globalization trap" may impact the fulfillment of human rights obligations.

4. GLOBALIZATION: AN AMBIVALENT SCENARIO FOR HUMAN RIGHTS

A human rights approach to CSR enriches our understanding on how business activities impact on different stakeholders for two reasons. On the one hand, companies are the consequence of the effective exercise of multiple rights: the right to freedom of association, the right to private property, or the right to commercial freedom. Lending support to the first reason, the United Nations Development Programme studies demonstrate the role of economic development as an important condition for the exercise of human rights. Companies undoubtedly play an important role in economic development. They efficiently combine productive factors, decision-making in technological innovation, risk-taking, and generation of employment. Indeed, during recent decades, the activity of multinational companies has shown success equivalent to that carried out by organizations and agencies (public and private) dedicated to international cooperation.

On the other hand, corporations can hinder, block, or otherwise negatively affect human rights. Indicating the potential negative impacts that companies can have on human rights, Ramasastry (2002; 2015) demonstrates the complicity of companies in obtaining economic advan-

tages with governments that violate or at least inadequately respect human rights. The corporate complicity consists of a set of activities that enable a corporation to take advantage of the violation or lack of respect for human rights to accomplish its objectives, specifically the increase of economic profits. Complicity ranges from corporate collaboration with governments that violate human rights to corporate silence or indifference to acts that violate human rights where the corporation does not denounce violations so as not to compromise activities and profits.

Globalization can increase the risk of negative consequences for human rights associated with corporate activities. Some scholars have named this phenomenon the *globalization trap* (Bauman 1998; Beck 1999; Forrester 1996). Globalization becomes a threat when it prevents the fulfilment of the universal respect for human rights mandate (i.e., human rights are truly enforced in favor of all human beings). As De Lucas (2008) explains, the economic–financial globalization can be an obstacle to the enjoyment of human rights when its entitlement and exercise is conditioned by the ability to contribute economically.

In this context, CSR and human rights must be strengthened to prevent business activities from contributing to situations of economic violence. Such violence occurs when the lack of respect for the person is carried out within the processes of production, distribution, and consumption of goods and services. Economic violence is most likely to occur when the meaning of human existence is interpreted substantially in economic terms: to produce, consume, and accumulate wealth (Han 2013). According to Ballesteros (2006), some cultural trends can foster economic violence, for example, when human beings are valued mainly by their ability to produce wealth and thus excluded or marginalized when they are incapable of doing so.

There are two paths by which corporations can reach situations of economic violence by separating their contributions to globalization from a universal perspective of human rights.

a) The first one is the fragmented regulation, leading to a decrease in responsibility. This is a phenomenon where the activity of transnational companies is carried out in various parts of the planet and is therefore regulated by different standards. This creates a very inefficient regulatory nebula. The globalized economy requires companies to transcend national borders in search of an increasingly wider market. Transactions can occur quickly via contemporary information communication technology. All of this happens within insufficiently defined legal spaces. The eco-

nomic penetration capacity of many companies places them in situations where national and international regulations become virtually unusable.

In other words, the world of business is quite complex. Not only because of its structure, but also because of how it works. The possibility for businesses to operate in various nation states and under different legal systems enables businesses to obtain maximum profits at a relatively low cost. This is particularly true if the business takes advantage of existing gaps or weaknesses in the governmental apparatus. Much of the impact generated by business activities is directly related to the economy. Business activities also impact the welfare of the population within the nation states where the business operates. Although the establishment of subsidiaries has fostered development and improvement, this is not true in all instances. Negative effects have generated economic repercussions as well as the discourse regarding human rights and the legal forms to guarantee them.

b) The second path is the temptation to consider corporate compliance as if it were an operative cost. When business objectives are primarily focused on the generation of profits, this focus easily becomes the radical, undisputable aim of business activity. This moral imperative may legitimize the performance of multiple acts as long as this objective is obtained. When the central purpose of a business is to obtain profits, it is easy to consider the pursuit of this purpose is an operative cost. Furthermore, when the duty is interpreted as an operative cost, it is rational for the business to attempt to minimize its economic value to achieve more benefits. If corporate compliance has a cost of 100, then it is logical for the business to seek to minimize the value of 100 while still achieving its duties. Tax avoidance via legal and accounting engineering is one clear example of this practice. When a company interprets the performance of its duties as an operative cost, then its directors and managers consider the obtaining of higher profits as an absolute principle. This perspective justifies the performance of any act within the company so long as it increases economic gains.

The fulfillment of duties as if they were operative costs is completely inadequate when it comes to human rights related duties. Actually, fulfilling human rights related duties means to obtain a good in an optimal way. Moreover, when a duty associated with human rights is breached, it may result in irrevocable damage to particular human beings. Fulfilling a duty associated with human rights is not only related to law or statutes, but above all to our condition as human beings. Therefore, the challenge for

corporations is to broaden the criteria by which they value their activities. In short, the value of a business act is not limited to increasing profits. Rather, it is about doing good.

5. CSR MEETS MORAL ABSOLUTES

How can the disturbing tendency of economic globalization to focus solely on the internal logic of the market be prevented? To do so, it has to be acknowledged that business activity requires real moral limits (that are not self-imposed by the corporation). To accomplish this, CSR must be more strongly linked with human rights and consider the moral functions that human rights have performed since receiving international recognition in the second half of the twentieth century.

As seen before, the human rights concept refers to a practice that promotes fundamental human interests; that is, a set of assets, goods, and privileges that need to be protected and committed in favor of every human being. Since its international expansion fostered by the UDHR, rights based on human dignity generate universally valid duties. This is the most recent historical effort for shaping a universal morality. This approach demands equal treatment for every human being on the basis of human dignity, especially where discrimination (i.e., unequal treatment without sufficient legitimation) and marginalization (i.e., treating someone who is present as if he was absent) still exists.

Human rights have three important characteristics. Firstly, they substantially strengthen the rule of law. Human rights help to determine the fairness or unfairness of laws that are applied in particular cases. In the presence of human rights, not all normative mandates offer legitimacy or justification to the rule of law. Only laws that authorize behaviors that respect human rights and promote their exercise and enjoyment are truly valid and mandatory. In this context, human rights are the origin and the purpose of political institutions and therefore represent the most strict and legitimate mode of government control.

This thesis had a central role within the thought of some modern authors who introduced the concept of natural rights (the precursor to contemporary human rights) in political philosophy. This same thesis is present in the first legal documents to recognize human rights: United States Declaration of Independence (1776) and France's Declaration of the Rights of Man and of the Citizen (1789). The UN Universal Decla-

ration of Human Rights (1948) also views human rights as a means for controlling government. This document aims to reduce tyranny and its lack of respect for human rights. In short, the non-arbitrary exercise of power always respects human rights.

Secondly, the concept of responsibility was transformed after the recognition of human rights. A clear case is the human right to a healthy environment, which requires proper care of the ecosystem so that future generations can enjoy it. Another example can be found in the theoretical and practical efforts to develop a global distributive justice system. In such a system, citizens are not only responsible for paying taxes to their state or nation, but must also make a financial contribution to the global community. This approach endeavors to allow the poorest populations of the planet to enjoy the benefits generated in the most economically developed regions.

Finally, human rights reintroduce the validity of moral absolutes (i.e., rules that lack exceptions). When deciding, one should never choose an option prohibited by a moral absolute. Moreover, conduct prohibited by a moral absolute should not even be considered as an alternative (Finnis, 1991). The preamble of the UDHR anticipates the presence of these absolute imperatives in order to achieve humanity's highest aspiration: a world in peace, where human beings are free from fear and free from misery. Moral absolutes are key standards of practical knowledge that identify certain acts as always seriously wrong, regardless of circumstances. Therefore, moral standards are immutable and unconditional. The prohibition of torture is an example of a moral absolute associated with human rights. Di Cesare (2016: 86) describes torture as

> An extreme situation in which human dignity is radically injured. When the torturer touches his victim, the otherness and identity are erased. All space between them disappears. The executioner usurps the victim's world.

Many international human rights documents clearly show that torture is an intrinsically bad act and therefore must be absolutely prohibited. It is not possible to offer rational arguments that might authorize torture under certain circumstances or in certain cases. Furthermore, the moral status of torture cannot be altered today or tomorrow. Since it is an act recognized as *mala in se*, torture must be banned forever.

Unconditional or absolute moral duties spell out the limits of practical rationality, which in fact accompanies the recognition of human rights.

An act of torture is illicit because it violates a human right. Moreover, as stated above, because torture is an irrational act it cannot be justified under any rational argument. Ethics refers to these types of acts as *mala in se*. Extending this reasoning to business activity, it is clear that a human rights perspective of CSR must include and be based in a series of moral absolutes. This may include acts that generate economic profits, but if carried out, they must be considered irrational because they put at risk the entrepreneurial nature of the entity that carries them out.

Responsibility linked to human rights is not limited to legal compliance. A theory of justice related strongly to human rights obligations is not based solely on rules, but on an *end*. Specifically, the *end* inherent in the existence of a human being. The duty linked to a human right in this way acquires the characteristics of an obligation in the clearest sense of the term. This duty establishes a real relationship between two people. Breaching this duty is a serious event that can cause irreparable damage.

CSR must take advantage of the trends associated with the moral functions attributed to human rights. Otherwise, companies can become part of structures that enable economic violence. More specifically, we argue in favor of a CSR with solid foundations in moral absolutes represented by human rights. The premise of our argument is that CSR is placed between self-imposed limitations and the duties that are part of their circumstance. For this balance to be viable, very strong moral criteria are necessary.

6. THE *EXTRA COMMERCIUM* RATIONALE AS A FRAMEWORK FOR CSR

Taking CSR seriously requires placing human rights as an essential element of a corporation's interest. Human rights operate as a limit because they represent ethical and normative criteria for proper political and economic governance. This is the only way that human rights such as equality and non-discrimination, freedom of association, collective bargaining, the right to strike, protection of health and safety at work, and fair remuneration can be guaranteed. Moreover, making human rights essential to a corporation's interests can effectively avoid situations such as child labor, forced labor, human trafficking, eugenics, and other attacks on human dignity.

An important question remains. How can human rights better influence CSR? We suggest that CSR should assume insurmountable limits, such as those found in moral absolutes. Legal history offers a pathway to achieve this purpose through an institution that defines the permissible acts that produce economic benefit through the exchange of goods: *res extra commercium*.

Res extra commercium (lat. a thing out-of-commerce), is an ancient Roman legal notion that establishes the prohibition of carrying out acts of lucrative alienation or trade when certain types of objects are exchanged (D'Ors, 1997). Trade acts involving an excluded object by the *res extra commercium* rationale are illegal. An object's quality or one of its characteristics can provide sufficient reason to exclude it from legal traffic. The excluding quality or characteristic can relate to the physical reality of the object. For example, Earth's atmosphere is *res extra commercium* as is the Moon. The impossibility of appropriation is the relevant fact that justifies the consideration of Earth's atmosphere or the Moon itself to be cases of *res extra commercium*. Once the factual impossibility is overcome, it is likely that both objects cease to be *res extra commercium*.

In addition to the physical qualities of an object, moral arguments can deem an object as *res extra commercium*. Human organs are objects that are currently considered to be *res extra commercium*. In almost all the world, selling human organs is considered illegal. Rather than a physical cause, it is a moral condition that justifies the prohibition on the sale of human organs. Both *res extra commercium* and moral absolutes are nonderivable, absolute prohibitions. If there is a current moral rationale to justify the prohibition of acts of commerce (e.g., selling human organs), then such reasons do not expire nor are they transformed by social conventions. Such moral rationale will retain validity because it is based on an axiologically unquestionable reality: human dignity. Established in 2018, the Council of Europe Convention against Trafficking in Human Organs is a recent example of a legal document that establishes a *res extra commercium*. This document implies two important questions: Is the criminalization, without exceptions, of all behaviors involved in human organs trade legitimate? Is it reasonable to repeal it? When we consider that the Council of Europe Convention against Trafficking in Human Organs establishes organs as *res extra commercium* on the imperative of unconditional respect for human dignity, the answer to the first question is yes, and to the latter is no. The Council of Europe Con-

vention against Trafficking in Human Organs declares that the removal of organs is illegal per se. An act of lucrative exchange of human organs is an act of unquestionable abuse on human dignity, regardless of the subsequent use of the organs or the consent of the person from whom the organs are extracted. Article 4 of the Council of Europe Convention against Trafficking in Human Organs establishes,

> The intentional extraction of human organs from living donors should be criminalized in the internal law of the States Parties when they are performed without the free, informed and specific consent of the donor or when, in exchange for the extraction, the economic donor or a third party has been offered or granted a comparable economic benefit or advantage.

The above clearly shows that, when a value (such as human dignity) is not commensurate with anything, its exchange for profit is always unfair since it is not possible to find anything with equivalent value. There is no price that can justify the legitimate acquisition of a person's life; there is no price that can justify the legitimate acquisition of a person's freedom; there is no price that can justify the legitimate acquisition of a person's organs; and so on.

With all this in mind, for CSR to be authentically adjusted to the moral rationale of human rights it is first necessary to identify what activities, what items (i.e., goods and services) can never be considered as a part of a business plan. In other words, to make relevant decisions for a corporation, CSR must be based on a list of *res extra commercium* that are equivalent to the moral absolutes that define what is intolerable.

Each business sector can have its own list of *res extra commercium*: relevant business actors can collectively identify pertinent *res extra commercium*. For example, businesses associated with health might recognize services that facilitate eugenic practices, declaring them accordingly as *res extra commercium*. Why should they do this? Because today we know, after ethical reflection on recent and contemporary events, that eugenic practices "fracture the moral community among human beings" (Habermas 2003: 61). When the genome of an unborn human being is modified to satisfy the interests or preferences of a third party, an unjustifiably asymmetrical relationship emerges between the two: the human being genetically engineered according to the preferences of a third party is treated as an instrument. If someone is radically available for the interests of others, he will not be inviolable, or rather, he will be a disposable hu-

man being. Is it possible to talk properly about a business plan aligned with CSR when it encourages the above?

Alternatively, health business actors might identify services that promote the commercialization of human body functions, namely commercial surrogate motherhood, as *res extra commercium*. Why should they do this? Because the gestation of a baby certainly requires great sacrifices; and we know, thanks to ethical reflection, that decisions involving a major sacrifice for someone, and which are paid for, are not taken with full freedom, but in a context of vulnerability: if that particular context is removed, the subject most probably would not reach the same decision (Sandel 2012). should a business plan accept, as one of its core elements, contracts where someone could be subjected to forms of soft coercion?

Today there is still time to seriously reflect on whether or not the development and use of an artificial uterus to replace the human womb should be the main part of a business plan. Should it be qualified as *res extra commercium*?

7. CONCLUSION

a) Looking for a human rights perspective within the context of business activity supposes a process of discovery that permits to identify what are human rights in concept, and also define the obligations both public or private entities have towards the interests of others, founded in our inherent dignity. The efforts towards enhancing societal compromise within the business context have been traditionally developed through the concept of CSR. However, in trying to enlarge ethical commitment, CSR has proven to be insufficient.

b) That is why we believe that businesses need to look for a broader perspective in order to enhance social and moral commitment. Therefore, the recognition and adjudication of human rights refers to the obligations that businesses have toward different stakeholders. The BHRs component of International Human Rights Law within the UN Guiding Principles establishes a framework for protection, outlines the responsibility for respect, and provides access to remedies for human rights violations due to business activity.

c) CSR recommends that companies reinforce the human components that justify their existence and, for that matter, their activities. Ap-

plying CSR, the objective of increasing economic benefits is transformed to collaborate for the human good. Only in this scenario can true responsibility exist.

d) Human rights offer one of the most important ethical guides of our time. If they are respected and guaranteed, we can expect our societies to truly improve. Moral absolutes are a basic guarantee for the respect of human rights. When they prohibit an act without exception, they define the rational limits of our conduct.

e) If corporations truly seek to be socially responsible they must first fulfill a key duty related to moral absolutes. That is, companies need to identify what acts they will never carry out, even if they represent the possibility of obtaining profits. To do so, they can adopt the *res extra commercium* rationale to justify the exclusion of the trade of certain objects and services. In sum, if a corporation is serious about its social responsibility to respect human rights, it should identify and state which acts, objects, and services will, under no circumstances, be part of its business.

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