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Nina Boeger, Rachel Murray and Charlotte Villiers (Eds.), Perspectives on Corporate Social Responsibility

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Reviewed by Kasey Lowe

PhD Researcher,
University of Edinburgh School of Law;
LL.M in International Law from University of Edinburgh;
JD University of Arkansas School of Law;
BA University of Arkansas.

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As globalisation continues to shrink the world and facilitate the increased transnational character of businesses, the Corporate Social Responsibility (CSR) movement has gained recognition amongst societal watchdogs, corporate boards and legal practitioners alike. Though CSR is not necessarily a welcomed visitor to all, it is clear that the idea of corporations having a greater responsibility to stakeholders, other than boosting the bottom-line at any cost, is one that is here to stay. At a bare minimum, proponents of CSR insist that a business is obliged to go beyond its clearly defined legal obligations to ensure that its impact is not harmful on an economic, social and, as many argue, environmental level.

The initial questions posed by the 2008 publication *Perspectives on Corporate Social Responsibility* set the tone for what proves to be a thorough and sensitive analysis of a topic that is becoming increasingly important in law and its relationship to the fields of business, economics, management and politics. Questioning what exactly CSR is, whether it is a good thing and whether it is a matter for legal intervention, the editors Nina Boeger, Rachel Murray and Charlotte Villiers, introduce the theme underlying the collection of essays that follow and remind readers that the law and its accoutrements are implicated in the CSR debate no matter in what forum it is initiated.

The essay-chapters make it clear that the international importance of CSR has fluctuated in response to the changing global priorities of the United Nations. A recurring argument in the book begs the question why CSR is not viewed as part of the overall strategy for sustainability and contributors Halina Ward, Joseph Corkin and Charlotte Villiers concede that the lack of a concrete definition presents a large obstacle to working CSR into the international sustainability dialogue. The authors

all agree that at its very least CSR, in Corkin's words, "involves a company going beyond its strict legal obligations to take into account the impact its business has on stakeholders other than its shareholders" and also involves some idea of the "triple-bottom line" which uses economic, social and environmental benchmarks as a way to measure corporate performance.

Recognizing the UN's shift to "sustainability" as a primary millennium development goal, Ward argues in "Corporate social responsibility in law and policy" that the ideas of poverty reduction and sustainability are not mutually exclusive to CSR and that a commitment to this goal should include a combined environmental/economic/social filter for businesses. Highlighting the significant problem of defining appropriate boundaries for businesses with respect to public policy and public governance, Ward insists that CSR be integrated into international development goals by overcoming the definitional challenges in order to achieve an optimal relationship between CSR, law and policy. Consideration of the balancing of roles between private actors, in the form of businesses, and the state in the assumption of social responsibility rounds out Ward's evaluation of the existing status of CSR and bleeds into the following chapter by Joseph Corkin.

In "Misappropriating citizenship: the limits of corporate social responsibility", Corkin explores the basics of what could create a successful partnership between a business's assumption of social responsibilities and the extent of state intervention while urging a rethink of terminology so as to not undermine the purpose from the outset. His evaluation of the heterarchical (horizontal) versus hierarchical relationship between businesses and states tracks the debate on how much state interference in the form of regulation is too much, and how much voluntary social responsibility can be realistically expected from a corporation whose primary purpose is to make money. This evaluation provides the foundation for the crux of the chapter which outlines the danger of attaching 'citizenship' terminology to corporations for fear that the personification of what are in fact legal entities undermines the power of real citizens whose duties in a functioning society/political community are not the same as a corporation. Though wary of applauding CSR, Corkin acknowledges its interest as a point of study and the necessity of recognizing the concept as one that is here to stay.

The fact that CSR challenges the classic Westphalian concept of international legal order is deemed by Sorcha MacLeod in "The United Nations, Human Rights and Transnational Corporations: Challenging the international legal Order" as merely another sign that there is a re-think of the traditional concept that the nation-state is the only subject of international law. Inspired by Allot's observation that international law is the creation of the human mind, and therefore can be recreated by the human mind,¹ MacLeod defies those who would argue the staidness of the international order. Using the International Criminal Court and the UN-led Global Compact initiative as evidence that private actors are becoming increasingly responsible on an international level, MacLeod suggests that these developments are paving the way for future international accountability for transnational corporations and the transition from soft to hard law in the area of CSR.

"Corporate law, corporate power and corporate social responsibility" initially acknowledges the relative lack of progress of the CSR movement during the past few decades, however Charlotte Villiers succinctly argues that an enabling environment created by enforceable regulations is necessary to keep corporations from negatively impacting society and the environment. Basing the demand for social responsibility on the immense power of corporations and the theoretical connection between power and responsibility, Villiers illustrates the existing CSR mechanisms available and highlights conceptual problems, including the lack of definition, as mentioned above, voluntariness and the inadequacy of the external regulatory environment. Acknowledging the

¹ Allot, P., 2001: xxvii, *Eunomia: New Order for a New World*, Oxford: OUP.

successes of UN initiatives and conceding that there have been improvements on the part of many corporations, the chapter points out that there is no consistency of responsible behaviour. It is through law, possibly a combination of soft law and hard law, that Villiers insists the triple-bottom line basis of CSR will be made a reality.

Peer Zumbansen's "Varieties of capitalism and the learning firm: corporate governance and labour in the context of contemporary developments in European and German company law" introduces a fresh issue to the book by recognizing the role of the employee in a business enterprise. Zumbansen makes the case that an understanding of the firm is necessary before an overarching definition of CSR can be applied and utilizes the German co-determination regime to compare how corporate structure, and therefore ideology, varies from jurisdiction to jurisdiction. This realisation is borne of the recognition that corporate law is not only different between states but also that the values of corporations are heavily related to the societal norms in place, as evidenced by the role of employees within a firm. The chapter concludes with the observation that there are many aspects of corporate governance which must be considered before a balance between shareholder and stakeholder responsibility can be struck, not the least being the organisational design of corporations.

Janet Dine and Kirsteen Shields use the Fairtrade movement to argue that CSR has evolved as a complement to international commercial law in "Corporate social responsibility: do corporations have a responsibility to trade fairly? Can the Fairtrade movement deliver the duty?" Dine and Shields contend that legal and philosophical understandings of human rights support the concession theory argument that companies may only trade within limits imposed by general societal norms by informing the institutions surrounding international trade. The authors make the case that both WTO liberalization and the design of companies themselves hinder the CSR movement; thus human rights norms must inform the moral parameters of corporate responsibility. Looking to international initiatives such as the UN Global Compact and the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, which both require that multinational corporations not engage in human rights abuses, the chapter considers whether soft law instruments such as these should be reflected in CSR models or if the duty to trade fairly is enshrined in international law. They conclude that the Fairtrade movement offers a responsibility model that, if taken onboard by commercial law, would offset the imbalance of power that currently exists to the detriment of human rights.

Applying aspects of regulatory theory to the CSR debate, Colin Scott uses both top-down and bottom-up approaches to governance of regimes to reconceptualize the role of law and apply it to CSR in his chapter "Reflexive governance, meta-regulation and corporate social responsibility: the 'Heineken effect'". He then links the approaches, reflexive governance and meta-regulation, identifying actors that influence the actions of the various players shaping the CSR debate. Scott explores the contrasting views that the influence of law on CSR both hinders and enables progress of the movement. In keeping with the international underpinnings of several of the previous chapters, Scott also points to the UN Global Compact and the 10 Universal Principles relating to human rights, labour standards, the environment and anti-corruption to confirm that the theories behind CSR do have grounding and support in the international legal arena which seems to indicate, as also reflected in MacLeod's chapter, that the state-centric notion of governance is no longer the solitary theory. Because CSR by any definition necessitates that corporate conduct go beyond its legal requirements Scott reveals the catch-22 that the conduct will only be trusted and effective if it is backed up by law facilitating such action.

A valid concern about the all-compassing nature of CSR is laid out in "Locating the 'environment' within corporate social responsibility: continuing problems of legal definition and representation". In this chapter, David M. Ong questions whether the environment should be left out of the

definition of CSR, casting doubt on previous chapters' claims that CSR should include economic, social *and* environmental accountability. This contradiction furthers one of the book's recurring themes about the problematic definitional aspect of CSR. Ong muses over the existence of a hierarchy among shareholders potentially covered by the CSR umbrella revealing its representational dilemma. Not only is the lack of a CSR definition reiterated as a manifest problem with the movement but the lack of a true definition of 'environment' further undermines its place within CSR. Using case-studies from several jurisdictions, Ong presents the results of various attempts to include some level of the environmental accountability in the corporate decision making process and further proves that there remains a long struggle before the balance of soft law and hard law is reached, though some efforts have made promising headway.

In the final chapter, Sally Wheeler closes with a positive, citizen-centric approach by introducing a grassroots based method for invigorating the CSR movement in "Engaging individuals". Hoping to redirect the energy that disenchanted individuals currently feel toward traditional political structures, she advocates encouraging these individuals to take an active role in defining and promoting CSR endeavours. Acknowledging potential detrimental effects of individual, rather than collective, engagement the chapter makes clear that the opportunity to utilize otherwise excluded members of society in the CSR movement—a movement that is highly important to correcting their exclusion—may not be the definitive answer, but is a positive step forward. Echoing Dine and Shields, Wheeler relies on the idea that corporations are instruments of the will of the wider public and commends individuals to re-engage and take control of their future by inspiring political and ethical responsibility.

For those involved in the CSR debate *Perspectives on Corporate Social Responsibility* provides both a balanced summary of views long held on its value and a promise of what can be achieved with creative thinking. Tackling the definition of CSR appears from these pages to be the number one initiative that CSR advocates must embrace, even if it eventually results in stepping away from an all-inclusive mantra. The authors do not apologise for the shortcomings of CSR and it is evident that progress on some fronts, such as the concurrent Fairtrade movement, is happening. What is most apparent from each of the chapters is that both soft law and hard law will be implicated in any successful realisation of the CSR movement. How long this success will be in coming is for anyone to say but despite those who dismiss the movement, it is clear from the contributions in this book that the tide is turning definitively in favour of corporate social responsibility.