

CSR – FROM ECONOMICS TO LAW AND ETHICS. A CASE AND THREE APPROACHES

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ABSTRACT.

The main point of the paper is that CSR is an important philosophical and ethical concept and it facilitates the apparition of a new type of morality, together with a new type of moral agent: the corporate entity. A business ethics approach on CSR unveils some important traits of this type of entity, like the capacity of having rights and obligations, despite the fact that it is not an individual. This brings about a debate regarding the manner in which legal, economic and moral issues can be synthesized into a new approach that preserves the old philosophical method, that of systematic and dialectic perspective.

KEYWORDS: *law, ethics, business, corporate action, CSR, imperative.*

JEL CLASSIFICATION: *Z19 (Business Ethics).*

1. INTRODUCTION

Scientific decency tells people that many misunderstandings regarding a certain issue could be easily avoided if one could find the proper approach to it (Bîgu, Anastasiu, 2014, p. 944). And, when it comes to a new field of research – be it exact, social or human – the mistakes can be even more noticeable. As everybody knows, business ethics is a new field of research – although preoccupations for trade fairness exist from the beginning of history, still a systematic research of what business persons ought or ought not to do is relatively new – and, furthermore, it is a science related to philosophy and ethics, economics and business, and, last but not least, law and justice. Business ethics might as well be called a border science that originates in philosophy and ethics and links them with the other above-mentioned fields of research.

Given this context, one really needs to clarify the nature of a business ethics approach. Therefore, at first, the present paper deals with the object of business ethics; secondly, it is all about the method of business ethics. In order to do that, one must firstly separate an ethical approach from a legal and an economical one, then to state the manner in which these three are melted within a business ethics approach. It is the main point of what follows to present the nature of a business ethics approach, as it appears in CSR, as a synthesis of economic, legal, and ethical approaches and to show, by means of a case study, what is new in the case of a business ethics approach regarding CSR. Last but not least, CSR will appear as a new type of morality, destined to complete, and not to replace, traditional morality.

The main justification for such an attempt is both historic and systematic. The evolution of economics (and, indeed, of business, which is, *grosso modo*, an application of economics) tells us that, before it became a science in its own right, it used to be a chapter of moral philosophy (Bălan, 2014, p. 265). Since economic activity pertains to the larger field of human action, and ethics is

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mainly concerned with human action, this subordination seemed right, at least when it comes to principles. But, as most positive sciences did, so economics became a separated science, having its own object and its own methods of research (and, of course, its own manner of application, i. e. business) (Svensson, 2007, 303). As time passed and economics (together with business) became more and more mature, it seemed only fair that it came back to philosophy and ethics, within an attempt to regain its social, cultural, political, and historical status. Therefore, it seems only fair that a relation among economics/business, philosophy/ethics, and law/justice be considered by means of the relations among three social levels: economic, legal and ethical, to which, as we will attempt to prove, one should attach a fourth one, namely politics and governance. As for the case study, we will try to show how a three-sided perspective can be gathered together into a completely new one, the business ethics perspective; furthermore, this new perspective should bring about some consequences that shape differently the status and role of a business enterprise within society and, besides, redefine the "profile" of a business person as a benevolent provider for people. The final point will be related to proving that it is CSR that brings about – together with the above-mentioned new type of morality – the turning point in what concerns the relationship between the four social levels: ethics, economy, law, and governance.

2. THE BUSINESS ETHICS APPROACH AND CSR

If we choose to follow Aristotle, the most important and, at the same time, the highest science is politics. In fact, this is not about politics as one understands it today, but politics as governance of human beings. If so, then all other things within society must be subordinated to accomplishing the goal of politics, i. e. good governance. Thus, ethics, business and law – the sciences we take into account now – must shape a behavior that aims towards some precise purposes that are supporting the goal of politics. Which are, as it is, the goals of these three approaches? An "ethical person" is a person that, given some principles and some circumstances, always acts in order to realize the good, be it either a specified objective or merely abiding the rules. A "legal person" is somebody who always seeks for justice, which can either entail or exclude what is good; it is about following the rules established by a society. An "economic person" always tends to gain profit. But all these three goals are supposed to be submitted to another goal, i. e. good governance. Good governance means, at the same time, good people that are acting according to the law and have a life level that makes the previous two possible. So, the main issue for governance is to find equilibrium among these three and even to establish some hierarchies among them. At this point, we can say that **the first trait of business ethics is about integrating the goal of profit within society, harmonizing it with the imperatives of good and legality and, above all, making it important for good governance. CSR binds together these three goals within its very concept, since it provides a framework for the corporation to melt together the aim for profit, the abiding onto law, and the achievement of good** (Crăciun, Macoviciuc, Morar, 2005, p. 240). And, last but not least, corporations are supposed to contribute, by assuming the previous three goals, to good governance – this being translated as the strategic importance of a corporation within society. Thus, corporate actions must serve – without abandoning justice, good or profit – to the public wellness, be it the wellness of each individual (liberal approach) or social wellness (socialist approach). This brings about **the second trait of a business ethics approach, which states that, by means of CSR, one may avoid social conflicts and the "economic war" between businesses an society.** Given this context, corporate action may as well involve the influencing of governance in order to get closer to the three objectives, if and only if this influence does not affect the main goal of a good governance, i. e. public wellness.

At this point we are able to state **the third trait of CSR, i. e. to say that the good towards which corporate action is oriented is a new form of moral good, a synthesis of what is legal, profitable and good at the same time and, moreover, a support for public wellness and good**

governance. The importance of this new type of good, entailed by CSR, is also related to the fact that the abandonment of any of the three main goals represents a threat to public wellness; still, these imperatives may be part of a hierarchy, given the precise social, cultural, and historical conditions. This does not mean, in any case, that, for instance, one can be more interested in profit than in obeying law. It only means that, since the main goal of good governance is public wellness, the establishment of social, ethical, juridical, and economic rules is subject to changes, given the principles **and** the circumstances. To put it another way: a shift towards pragmatism would be in order, since it brings about a corroboration of principles and circumstances. **CSR is a form of re-orienting ethics towards pragmatism, this being the fourth trait of it.** The point is that one should never allow to break the hierarchical equilibrium of the three main imperatives – for example, it is not prudent to sacrifice profit to the ethical imperative of equality, since this can bring about a decrease in investment and even poverty, if business persons think that the distribution of the economic result and that of economic responsibility is not fair – but to constantly watch over the efficient relationship among them. To be more precise if, for example, during a certain period and in a certain country, the governance believes that law should be more permissive in order to allow business to develop, than it should be so. If, given other circumstances, the governance believes that businesses should contribute more to solving some social issues related to ethics, then the corporate contribution should increase. The goal of good governance is, therefore, to find equilibrium. Thus, CSR, together with corporate culture, is an important tool to realize social equilibrium (Smith & Drudy, 2008 ,p. 165-166). This brings about the method used to reconcile the main social imperatives.

3. THE HIERARCHY OF SOCIAL IMPERATIVES

How to reconcile social imperatives? And, furthermore, how to show that they can orient human actions in the same directions? These are questions of method. When it comes to method, things get more difficult, since law, ethics, and economics seem to be sets of rules that limit one another. And to reduce acceptable human actions to those that obey all three sets of rules means to turn society into a totalitarian one and, moreover, to severely limit progress, at all three levels. This is why, besides showing that a “fluid” hierarchy that takes into account principles and circumstances would be in order, one should also prove that these social imperatives sustain one another.

3.1. The Economic Imperative

a. As everybody knows, the goal of a business is to make profit and increase it, even maximize it, given the actual restraints. And, as everybody knows, some people say that, in order to do that, one cannot always obey the law. What could be the cause of the fact? Be it the fact that, in a certain context, the laws are not well elaborated? If they were, corporate action and social action would be subject to convergence. Since we have agreed on the fact that a hierarchy of imperatives must exist, one could easily find a way to reconcile the two imperatives, the economic and the legal ones. Secondly, profit is not aimed at for a short period, but on the long run. Thus, the point is to set up a law that allows the existence of a sustainable profitability, without ignoring the social needs. This is where CSR comes into action, since corporate responsibility is not about gaining profit no matter what, but gaining profit that is, at the same time, a social gain. Corporate action should rely on respecting the law, since this sustains a social and sustainable profit. Thus, the influence corporations have on governance should be oriented towards setting up laws that guarantee this type of profit. One can see, now, how aiming towards the legal imperative of justice is sustaining profit.

b. Aiming towards good is profitable on the long run. Corporate action is aimed towards a good that has a social relevance and is a bit different from what many people take as good. In short, the idea is not to help the poor, but to make them help themselves. Corporate action cannot be reduced to the mere act of being kind to a poor person. This is why CSR is a new type of morality, a social

inserted one. Furthermore, being good does not mean giving up competition. Being fair to competitors does not rule out profit. The point is that what stirs corporate action is the desire to improve own activity, not to weaken the activity of the competitors. Besides, one should never forget that being fair contributes to setting up a friendly business environment and, last but not least, both society and other businesses benefit from an act of goodness of some business. This is how moral imperative sustains profit.

3.2. The Legal Imperative

a. As one knows that all people should have access to justice, everybody knows that a juridical system cannot be separated by an economical one. In order to ensure justice, one must have resources. A society that is careful with its economic resources will have enough of them to spend on justice. As for CSR, it is quite obvious that much of the legislation was issued to regulate the propriety relationships; as a consequence, businesses should be interested to spend money in order to ensure a clean social environment. Thus, following profit also means following the rule of law.

b. Legal laws, as compared to moral ones, are meant to ensure the functioning of society and are imposed by an external authority, i. e. legal institutions. Still, laws express moral principles, since, at first, laws that are not according to ethics (which fundamentally means set of habits of a certain society) are perceived as "foreign" and, secondly, they are set up according to moral expectations, being an external manifestation of moral laws. Of course, legal authority is, indeed, external to the individual, while moral authority is none but own conscience. Still, juridical law originates in moral principles, like respecting the fellow human being. As for CSR, a business, for instance, should always be interested in influencing laws in order to obtain fairness, which contributes to the "cleanliness" of business environment. Morality is, indeed, sustaining legality.

3.3. The Moral Imperative

a. A simple empirical survey shows that, in most of the cases, poor societies also have moral problems. Poor people tend to justify their bad deeds saying that they should be forgiven because they are poor. The question is whether they would have done differently, had they been rich. This can be easily called an ethics of survival, an ethics that allows people use poverty as an argument. An economical increase of society is linked with a growth of respect for others, since they are less and less perceived as threats. As history proves it, together with the economic growth came a moral advancement, which is often reflected by laws. Besides, to those who say that moral commitment is more reliable when a person is poor one can answer that morality should not be interpreted as a huge burden, but as the inner nature of humans and, furthermore, people should get the chance to show their kindness instead of being taught that being good and being rich are mutually exclusive. One does not need to pass through hell in order to understand heaven. Moreover, rich does not necessarily mean avaricious. To be honest, businesses and corporations contribute more to society than poor people. If one needs to entail contradictions, to the accusation that rich means miser someone else can reply that poor means lazy. This kind on approach leads nowhere, mainly because the intentions of a rich person helping the fellow human being can be either egoistic, or altruistic. There is no ground for saying that corporations are evil and that CSR is just another way of lying to people and getting their money in a friendly manner. Doing good means, in fact, also acquiring the resources to do it, thus following profit.

b. If there is a logical precedence of ethics to law, there is also an empirical precedence of law to ethics. It is well-known that ethical values must, at first, be imposed by external restraints. People might be born with some innate moral ideas, but they become effective as people meet external restraints and adopt them over time. One cannot wait for an explosion of morality in a human being; educational system is a proof: in order to respect and care for the others, people must be educated, at first by external restraints. As for legal laws, only in a utopian society tribunals would be identical to consciences. The fact that following the legal imperative helps achieving the moral one

is also proven by the way the juridical system works: outlaws are punished not to get revenge on them, but to make them realize that their deed was bad. So, legality is a basis for morality.

This part shows how these three levels are linked together. CSR is a concept that contains all three, being, in fact, the concept of goodness enriched with those of legality and morality. This leads us to showing which are the advantages of CSR approach.

4. THE ADVANTAGES OF CSR APPROACH

At first, this type of approach helps ethical conduct “spread” at all levels of society. Being itself an ethical concept *par excellence*, the existence of this type of responsibility strongly disagrees with the view that some human types of conduct can dispose of ethics. As it regains the philosophical meaning of ethics, the concept of CSR is a proof that no human conduct is outside ethics and, besides, that by reuniting humans into an organization, they are not exempted from moral responsibility, but a new type of responsibility arises: that of an abstract person (Fisher, Lovell, 2006, p. 311). Corporate action is the result of individual actions, although it cannot be reduced to them. This is why CSR is a new type of responsibility, one that emerges from individual responsibilities, but cannot be reduced to them.

Secondly, the CSR approach binds together the social levels: economic, legal, moral, and political. It shows that businesses and corporations must be more involved into social life, both for the good of society, and for their own good. The main point here is that corporate action strongly depends on a “healthy” social environment and contributions to this must be accordingly.

Thirdly, CSR ensures a higher rate of influence over the social decisions, as corporations are more entitled to have a point of view regarding social trends, since they are no longer considered a threat to anybody. Both legislation and everyday morals can be, thus, changed in favor of corporate action, since both profit and morality would have something to gain.

Fourthly and directly related to the third advantage, it could all be about an expectation to support. CSR ensures that businesses and corporations are a part of social life, that they are important actors of society. This comes to say that, just as in the case of all other moral actors, they have moral and social rights, including the right to be supported in case of difficulties. CSR brings about a new perspective within the philosophy of economics, raising the question of the nature of the ultimate economic interest bearer. The individual is no longer the only bearer of this interest, but also corporate entities.

5. CONCLUSION

We have tried to prove, within this first part of the paper, that CSR, being an ethical concept with deep roots into philosophical thinking, brings about a new type of morality. The main trait of this morality is that, when ethics is combined with law and economics, there is a new type of moral agent and bearer arising: the corporate entity (Duska, 2007, pp. 151-156). This type of entity is a social actor, with rights and obligations. Its conduct is shaped by three main imperatives, the economic, the legal and the ethical one, all subjects to political sanctioning, since social wellness and good governance are the imperative they are submitted to. Besides, this new moral agent, the corporate entity, proved to be not only a class of individual agents that act together due to a mutual economic interest, but a synthesis of mutual goals that may as well change even the individual conduct as such. This is why people notice that the debates regarding corporate culture and corporate ethics are more and more a concern for ethics and philosophy of culture. A comparison between the individual and the corporate entity, as social agents, would, therefore, be a task for the philosophy of social sciences and mainly for the ontology subjacent to these types of sciences (Heil, 2011, p. 15-16).

6. THE CASE

We will further try to show how the concepts from above function in the case of a precise corporation. Unfortunately, the recent years have shown that an ethical debate upon the use of lethal weapons by civilians. The gun manufacturers pretend that they satisfy the social need for security and that gun do not kill, but people do. Still, social responsibility is involved in this matter, although the interdiction to use firearms by civilians could make even more of them victims of outlaws, who will find weapons no matter the legal restraints. Anyway, the circumstances show that people need some sort of personal protection and that it would be ethically wrong to deny them this right.

Going back to the case, in 2002 John Allen Muhammad and John Lee Malvo shot to kill thirteen people in a few American states, using a gun manufactured by Bushmaster Firearms. They bought it from Bull's Eye Shooter Supply, although the federal law forbade this store to sell that gun, since Muhammad had a criminal record of domestic violence and Malvo was underage. The descendants of the victims sustained that the direct responsibility belonged to the two murderers, but that both the producer and the seller of the gun were guilty. The audit conducted by the Bureau of Alcohol, Tobacco, and Firearms found out that, despite the fact that the retailer had lost, throughout the years, more than 200 firearms and document related to them – including that of selling the gun to Muhammad and Malvo, the producer kept supplying them with weapons. The point was that the producer had the obligation of not generating an unreasonable risk of predictable prejudices by distributing firearms. Also, the producer did not monitor the retailer and did not assist it in order to avoid any risk and stimulate it to respect the legislation. If they did, then the two murderers would have never obtained the gun. Thus, indirectly, they helped Muhammad and Malvo to kill their victims.

This case entails much of the concepts from the first part of the present paper. It is all about legal responsibility, economic advantage and moral responsibility, all melted together into CSR.

From a legal point of view, things are pretty clear: the retailer has broken the law. Still, two questions arise: does law ensure population that people who have no criminal records cannot turn into ruthless murderers? For all murderers there was a first time. Second of all: should all people that have records be denied the right to self-protection? If they wanted to get guns in order to kill innocent people, they could have gotten them on the black market. Is it not better that, if they want a gun, to have a registered one and to be monitored?

From an economic point of view, things might also appear as clear: the retailer wanted to make profit, and so did the producer. This is why the retailer was careless with the customer and the producer was careless with the retailer. Still, this raises some problems. Gun manufacturers and gun retailers are business enterprises that are supposed to make profit. Guns are not cheap; guns offer the beholder an increased sense of security and society gets the taxes. It would be quite unfair to say that gun manufacturers and gun retailers purportedly sold guns in order to help murderers. The most reasonable accusation would be that of carelessness. Of course, the gun Muhammad and Malvo used was an assault gun. But, in fact, there is not such a noticeable difference between assault and defence guns: they both kill. The point is that it would be difficult to either say that gun manufacturers or retailers must forget about profit or that there is a clear definition of what an appropriate customer looks like. The gun looks the same in the hands of a vicious murderer and in the hands of a jealous teenager. And it does the same thing.

The ethical viewpoint, that which entails CSR, is, we believe, the most appropriate. From an economical point of view, one must notice that gun manufacturers and retailers have a serious disadvantage: they have to seriously select customers, they have to pay for the monitoring of guns a. s. o. This is why this factors that affect profit should be counterbalanced by some social reaction. Economic and legal restraints should be modified inasmuch as they allow this kind of business to be a profitable one and not favour some questionable behaviour from the agents. Society seems to need gun manufacturers and retailers in order to satisfy the need for security; therefore, it is only fair to

“take care” of the agents that provide this type of services. As for the present case, the moral responsibility for the thirteen victims of Muhammad and Malvo belongs to the gun manufacturer and to the gun retailer just as much as it belongs to some other social actors. Neither police, nor the government, nor anybody can predict tragedies. Establishing more severe laws does not help the defenceless, but the killers. Pointing a moral finger towards the businesses that provide something that society requires just because they are not able to predict tragedies is only absurd. And denying gun manufacturers and retailers the right to make a profit or making it virtually impossible will have the same result: the impossibility to offer citizen some tools meant for defence.

A CSR approach deals with all these difficulties. Therefore, legally speaking, the two businesses and their managers were indeed guilty. But this is not always the case. In most of the cases, laws are unfair and cannot help avoid tragedies. The laws should be established in such a manner that they do not create disadvantage of the innocent. If laws deny the right to protection to large categories of users, then the laws help the outlaws. Besides, it is society that should spend more on institutions that monitor the use of guns, and not leave this for the businesses that provide this kind of service. And why is that? Precisely because these businesses offer a socially required service. A system of monitoring guns and ammo is better than leaving people defenceless. As for the moral responsibility of Bushmaster Firearms and Bull's Eye Shooter Supply, this undoubtedly exists: just as much as the responsibility of some other social agents. Maybe, in the above-mentioned case, things were pretty clear. But most of the cases are not that clear and blaming the companies at all costs looks less like imposing morality and more like finding an escape goat and denying responsibility.

Thus, as a conclusion of the case, one must say that there is a social responsibility for Bushmaster Firearms and Bull's Eye Shooter Supply, but this must be placed into context in order to find a pattern for other cases. Besides, it is not all about the context, but also about the possibilities this corporate entities, as moral agents, have in order to act and the expenses they entail. It is not reasonable that society take all the benefits from the use of guns and, in the case of a tragedy, te companies be left with all moral, legal, and economic burdens.

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