1. Introduction

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What is Corporate Social Responsibility (CSR) and what exactly does the term encompass? Is CSR necessarily a good thing? As this collection of essays illustrates, the answers to these questions are essential for a rational system to be devised in order to respond adequately or appropriately to the challenges raised in the CSR debate. Globalization adds to these definitional challenges, as a term that also has problems of definition. Is global economic growth a (politically neutral) means of wealth-creation and -distribution or a (political) good in its own right? The answers to these questions will affect our views of CSR, and how it is enforced.

Where definitions are not settled, identifying the aims and expectations also becomes difficult. Misunderstandings arise alongside contradictions and competing approaches. For example, there exists competition between the notions of sustainable development, including environmental concerns, and social policy concerns focusing on poverty reduction and decent standards of living. The fact that either can and has been pursued through CSR merely serves to highlight what a wide field the CSR debate covers, and that there is a need for clear definitions. ‘Social responsibility’ and ‘corporate responsibility’, and related terms such as ‘corporate governance’, corporate ‘stakeholder’ or ‘shareholder’ models all need to be carefully defined, to avoid talking at cross-purposes.

This collection of essays arises out of a symposium in which lawyers from different spheres were brought together to discuss CSR in the context of globalization (Bristol EC–International Law Forum: Perspectives on Corporate Social Responsibility, 22–23 January 2007, Bristol University). Underlying our discussions was the question to what extent law is relevant to CSR. Whilst it is perfectly possible for CSR to be debated in economic, business and management terms as well as in political and policy terms, this symposium highlighted the central importance of law, legal systems and the role of lawyers to this very current debate. It thus covers not only international law, including issues of international trade, but also human rights, environmental law, company law, European law and public law. Although there has been

considerable debate on CSR amongst lawyers (Wells, 1993; Ward and Smith, 2006; Hopkins, 2007; Villiers, 2007), it has tended to take place in different spheres, whether that be domestic or international, and different disciplines, such as international law (UNCTAD, 1999), human rights (Addo, 1999, de Schutter, 2006), company law, European law and environmental law (Gillespie, 2000; Robbins, 2001). Our multi-disciplinary approach serves to bridge this gap. In doing so it is clear that a number of cross-cutting themes emerge strongly from the essays published here.

Is CSR a matter for legal intervention? If so, what type of intervention should this be? A number of the contributions (for example, Dine and Shields, Villiers, Corkin, Ward) discuss the effectiveness of CSR as a form of regulation through soft-law standards, and whether a move to hard law (Chinkin, 1989; Boyle, 1999; Hillgenberg, 1999) is necessary given that, as Colin Scott points out, compliance with standards depends more on political, social and economic pressures than whether a norm is binding or not. These questions underline the evident competition between a market driven approach to CSR – that which favours a voluntary character – and a regulatory approach (Baldwin and Cave, 1999; Black, 2001) – that which favours external control of corporate activities.

Should CSR be left to corporations? Many of the chapters in the book observe the inadequacy of a purely voluntarist approach to CSR but there are different viewpoints on the level of legal intervention necessary and the type of legal regulation most appropriate (Baldwin and Cave, 1999; Black, 2001). Colin Scott, for example, suggests that a reflexive approach may be a positive way forward in which the legal system acts as a support infrastructure that assists corporations in regulating themselves or if that should fail will be able to act as an enforcement mechanism. Scott argues that law can be a reason to act but it is not the only one as competition and markets can be other factors. Indeed, the law can be a trigger for further measures to be adopted voluntarily. Vice versa, formerly informal voluntary standards may gradually gain recognition as ‘hard’ law (see, for example, in relation to international law, Boyle and Chinkin, 2007). David Ong, for example, explores the progressive legalization and integration of corporate environmental reporting into legal standards on corporate disclosure.

How far corporations will go in adopting voluntary CSR standards depends to a large degree on what company law allows, and disallows, them to do in the field of CSR (Parkinson, 1993; Villiers, 2006). In that sense, as Halina Ward remarks, the insistence on CSR as ‘voluntary action alone’ is misleading as company law will necessarily have a very basic impact on CSR. Charlotte Villiers, for example, explains why corporate law systems such as in the UK, that are designed for profit maximization and risk taking with little comeback from the legal system, are not conducive to effective CSR enforcement. The corporate law concepts of limited liability and the separate legal personality of

the firm act as barriers to holding companies and shareholders to account for their harms even when, she argues, global corporations are complicit in human rights abuses. What is more, an effective CSR agenda depends on a clear understanding of the nature of the business corporation itself. Peer Zumbansen here argues in favour of a radical re-thinking of the nature of the business corporation, away from the control-oriented images of the corporation in 'shareholder' or 'stakeholder' models, towards a more refined understanding of the firm in its various, highly differentiated and specialized contexts (the 'learning firm'). This, he argues, is a necessary first step in beginning to rephrase the question of the firm's corporate responsibility, and in devising adequate rules of corporate governance.

This then raises the question of the role of the state (Tullberg, 2004). A number of contributions discuss the role and responsibility of the state to participate in the control of corporate activity. Joe Corkin, for example, examines the extent to which the state has a role in regulating the behaviour of corporations, and suggests that this is still necessary. Charlotte Villiers has similar concerns on the basis that involving corporate actors in the process of regulating their business practice by means of CSR has the effect of increasing their power. Their recognition as part of CSR gives to corporations more power to act for their own economic agenda. To harness corporate power effectively external regulation is necessary. Apart from law and legal standards, the state has at its disposal a range of other means, including public policy, as noted by Halina Ward, and its public spending power, as mentioned by David Ong, to create an environment conducive to CSR, in order to control business behaviour.

International law and institutional structure do not necessarily render the role of the state obsolete. Indeed, states continue to enjoy considerable power politically and financially *vis-à-vis* corporations and international institutions. This power signifies that they still have a responsibility to ensure that companies behave properly and that human rights are not trespassed upon. Indeed, the notion of power and imbalances in power are identified as key by several of the authors of this collection, for example, Villiers and Dine and Shields.

But how far does and can the state in reality reach in terms of regulating or enforcing CSR in a globalized context? The question of effective enforcement is, on the other hand, particularly difficult to answer in an international context. International law gives rise to certain challenges and concerns as are identified by MacLeod. These include the traditional notion that only states are subjects of international law and the difficulties of binding non-state actors to international law standards (Clapham, 1993; McCorquodale and La Forgia, 2001; Muchlinski, 1999; Nijman, 2004). Zumbansen however notes that it is possible to justify making corporations subject to international law rules by pointing out that transnational norms have changed the nature and role of the firm from being purely an economic actor. Is it possible then to justify enforcing

international or transnational norms or regulations with or without voluntary mechanisms? What is the role for international institutions, whether that be the UN, human rights bodies, or international financial institutions? Dine and Shields, for example, discuss the competition between international free trade law and the international human rights system, and what this has meant for the fair-trade movement. Has the CSR agenda evolved as a complementary to international trade law?

In this context, the role of individuals and citizens also becomes important, whether this be citizens, as noted by Joe Corkin, civil society, as expressed by Sally Wheeler and David Ong, or consumers and employees, as highlighted by Peer Zumbansen. Running throughout the collection is the debate on the notion of democracy and what this means in this context (Dalton, 2004). The right to participate (Pateman, 1970), whether as an employee of a company, as a stakeholder in any society, or as a citizen, are discussed by several authors in this book. As Corkin suggests, the danger in CSR is that corporations misappropriate the political system and concepts such as citizenship with the effect of increasing even further their own power without risk of being held accountable. There is a danger that corporations are allowed, by such an approach, to gain too much political strength at the expense of the state and ultimately of citizens and social well being. The state must continue to have a role and has a responsibility to participate in the control of corporate activity, in order for its citizens to retain the collective power, as a political community, to regulate market activity.

But this raises the further question how to ensure that collective powers will be deployed democratically, and that citizens are properly engaged. Indeed, as Wheeler suggests, the state and conventional party politics may be obsolete but other methods of participation could be developed by engaging individual citizens and non-governmental organizations who must, in turn, be made as accountable as corporations. Without a developed form of civil society CSR and enforcement of CSR norms will not work. Yet a further concern is then to avoid problems of democratic deficit within CSR policy and NGO activity. Wheeler argues that these arise if individual citizens are led to endorse passively these activities rather than engage positively with them.

The state however is responsible to facilitate citizens' engagement including, as Ong illustrates, providing adequate access to justice. In this respect Ong laments a lacuna in many CSR endeavours in that they fail to hold corporations adequately accountable for the environmental damage of their activities. He argues that as public control over environmental standards weakens, the need for environmental NGOs to assert the protection of the environment by way of judicial proceedings increases. Ong examines to what extent standing rules reflect this need.

This brings us back to the question as to who should hold the responsibility

for CSR: should it be the more abstract entities of the state or the company, or individuals, whether they be employees, members of civil society organizations, consumers or others? And even once these responsibilities are identified, then the various legal systems, whether they be international or domestic, often have difficulties imposing duties and obligations on these various public and private actors.

The CSR debate, and particularly the debate on law and CSR, forces us to ask broader questions about the relationship between market and state, and the role of business in society (Ward). As such it has great potential. It might lead to innovative notions of the corporation shifting boundaries between market and state or a different kind of interaction between the market and the state as we have seen for example with public services, where corporations are taking on tasks that strictly belong to the state, as noted in Zumbansen's chapter. Its potential is what makes the debate on CSR so crucial and timely, but also what causes frustration and danger. Given the competing and conflicting policies and definitions within the CSR agenda, it is important for CSR not to be used as a 'deflection device', something identified by Dine and Shields in their chapter, to detract from the substantive questions of corporate power and corporate control, and effectively allow it to enhance the interests of global corporations.

While there may be considerable benefit in raising a number of questions, the book also attempts to provide some solutions and practical ways forward. Charlotte Villiers puts forward a range of possibilities. First, one could consider extra-territorial application of state obligations, a particularly political issue in the international law field and one which has received recent attention from international courts.¹ In addition, the requirement that states, in ratifying treaties, incorporate those standards into domestic law may indirectly ensure responsibilities for both public and private actors. Furthermore, developing the notion of corporate complicity and finding ways of translating soft law standards into hard law can provide additional protection. Collective measures (for example through international bodies) and individual measures (by particular companies themselves, NGOs and others, as Corkin suggests) need to be taken together in order to enforce the various standards. Wheeler's chapter on engaging individuals offers greater optimism on the power of political activity in bringing the CSR agenda to fulfilment.

We hope that the book provides valuable food for thought on this broad range of issues.

NOTES

1. See *R (On the Application of Al-Skeini and Others) v. the Secretary of State for Defence*,

[2007] UKHL 26, House of Lords, 13 June 2007; *Bankovic v Belgium*, (2007) 44 EHRR SE5; Miltner, B. (2007), 'Broadening the Scope of Extra-Territorial Application of the European Convention on Human Rights', *EHRLR* 172; Wilde, R. (2005), 'Legal "Black Hole"? Extraterritorial State Action and International Treaty Law on Civil and Political Rights', *Michigan Journal of International Law* 26, 739; O'Boyle, M. (2004), 'The European Convention on Human Rights and Extraterritorial Jurisdiction: A Comment on "Life After Bankovic"', in Coomans, F. and Kamminga, M. T. (eds), *Extraterritorial Application of Human Rights Treaties* Antwerp and Oxford: Intersentia.

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