

Rado Bohinc, Til Rozman, Matjaž Uršič,
Petra Podobnikar, Maja Jančič, Barbara Rajgelj

Corporate Social Responsibility

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FOREWORD

Rado Bohinc

Social Responsibility: the Need for the Global Concept

Social Responsibility to Income Inequalities

Income inequality (nowadays far **greater than at any time in the past**) is also **affecting equality of opportunities** in education, access to modern technologies, health, culture, employment opportunities (welfare), and is constantly increasing¹. Precarious employment and massive violation of labour legislation is becoming more and more evidently the accompanying social phenomenon of modern capitalism. The unequal distribution of the benefits of economic growth proves that more and more income goes to capital in the form of rent, while wages stagnate, and poverty is increasing. **Profit rates are higher than those of salaries** or otherwise: capital income is rising faster or more as incomes from work. Respectively, the “formula” for more accurate and proper assessment must include different income groups. Taxation system and social rights system can slightly mitigate the existing inequality, but cannot, nor is unable to prevent it².

Economic Growth is not an End in Itself

Economic growth is not an end in itself; it must be in the function of overall prosperity and social welfare, rather than infinite concentration of profits in the hands of a handful of rich people at the expense of low wages and low social welfare. In view of the massive

¹ The eight richest people have assets that are equal in value to the remaining half of humanity (3.6 billion people) (Oxfam 2017) The richest 10% in OECD countries own half of all households, while the lower 40% owns only 3%. The top 1% owns 19%.

² For example, 50% of lower population in USA which have no property ownership, are spending on expense of an accelerated borrowing from which the upper 1% of population is gaining.

maldistribution of income and wealth today — as analysed by Thomas Piketty,³ Joseph Stiglitz,⁴ or James Galbraith,⁵ there is much discussion of redistribution in the form of increasingly progressive taxation, closing of loop-holes for the rich, estate taxes, and the reinvigoration of collective bargaining.

Income (consequently social) inequalities in the global society, between countries and among people have been increasing in the last decades, exponentially to the level of technological and cultural development; it is especially visible at the last centile of income distribution⁶. The main reason for the increasing income inequality lies in non-adapted capital-based foundations for appropriation and governance rights in the enterprises, unchanged for centuries (since first modern corporate legislation in mid-19th century introduced capital-based corporations, considering workers as rented workforce rather than as members of the corporation; despite challenges of knowledge and information society and its effect to global economy and business.

³ Piketty, Thomas. 2014. *Capital in the Twenty-First Century*. Translated by Arthur Goldhammer. Cambridge MA: Harvard University Press.

⁴ Stiglitz, Joseph. 2012. *The Price of Inequality: How Today's Divided Society Endangers Our Future*. New York: W.W. Norton.

⁵ Galbraith, James K. 2012. *Income and Instability*. New York: Oxford University Press.

⁶ Average wages, OECD <http://dx.doi.org/10.1787/cc3e1387-en> are in OECD countries four times higher in the country with the highest wages (Luxemburg 62 580 \$) compared to the country with the lowest average wages (Mexico 15 230 \$). In the EU, the highest is Luxemburg followed by the Netherlands 52 719 \$ and the lowest is Hungary 20 667 followed by Latvia 21 113\$). Author(s): Average wages are obtained by dividing the national-accounts-based total wage bill by the average number of employees in the total economy, which is then multiplied by the ratio of the average usual weekly hours per full-time employee to the average usually weekly hours for all employees. This indicator is measured in USD constant prices using 2012 as base year and Purchasing Power Parities (PPPs) for private consumption of the same year.

Permanent Cyclical Economic Crises

The world's seemingly permanent cyclical economic crises, political instability, social inequalities, existential distress, uncontrolled migrations and massive violations of human rights call for a thorough conceptual rethinking of how to reshape the existing global, capital-based societal and corporate governance foundations which have, basically unchanged, dominated over the last decades and centuries. In a modern society, significant for huge developments of knowledge and technologies, both capital gain and human/social objectives should form the framework for democratic life and social welfare. New information & communications channels and therefore increasingly required higher skills and qualifications, shall more and more affect the balance between capital and labour

A Huge Gap between Normative and Real

The world faces a huge gap between normative and real, between political and legal acts stipulating to individuals guarantees, freedoms and rights on the one hand and the actual situation in real life on the other, especially between the normative scope of human rights law and the effective power of property rights. In the industrialized democracies, self-governance is touted as a fundamental human right in the overall political sphere while “work” (i.e., what most people do all day long) is not even *in theory* organized on the basis of democratic self-governance. People at work are, in general, rented people, so only the employers/owners have decision-making power — as if human rights to self-governance somehow stopped at the factory gates or the office door. Legal and economic levers do not work in such a way that the former supports the other, but against each other, which in the humanity creates tensions that result in cyclical economic crises, social outbursts, unstoppable migrations, and global terrorism.

In a globalized (cross-border, multi-national) economy, at the corporate level, legislation has difficulties in keeping up to such com-

plexity of economic processes (founded on the interests and legitimacy of capital) between the developed and the under-developed parts of the world. Lower standards of human (mainly economic and social) rights protection in countries with low GDP per capita, the predominant interests of capital and its legal strong protection against weak labour is causing massive human rights violations. Interests protected by property rights (corporate) legislation are much stronger than the interests protected by international human rights legislation.

The Non-binding Recommendations is not the Way Out

The non-binding recommendations of international organizations (UN, ILO, OECD, EU) concerning respect for economic and social rights as well as corporate social responsibility appears as too weak legal tools that could sufficiently confront the comprehensive and very powerful legal tools of international capital. Simultaneously, the protection against violations of human rights and inherent responsibilities are neither properly nor sufficiently regulated in the countries where violations occur and where the business takes place.

Scientific Response to the Contemporary Challenges

The scientific response to the above challenges and to prevent further deepening of income inequalities are steps to move towards empowering people and overcoming the gap between the owners and employees by developing new enterprise and cooperative forms and governance and appropriation concepts, by increasing employee ownership and other economic democracy approaches in enterprises—which in turn will impact, in a natural way, the concept of social responsibility on societal and corporate level.

Rethinking the Classical Corporation and Social Responsibility

A substantial change in the economic system should be oriented towards the understanding of **human labour as the responsible and**

risk-taking factor of production and therefore gradually integrated as a foundation of governance and appropriation.

From the point of view of empowering people and the rebalance of capital and labour relations, the classical corporation should be analysed and evaluated; research objectives will be focused especially on the following topics: **directors' liability to all stakeholders**, rather than just to shareholders, **directors' conflict of interest** with the interest of the enterprises, **gender equality, diversity, disinterested/independent members** of the boards, protection of **minority shareholders** against the majority shareholders of the enterprise and protection of human rights, especially economic and social rights in **multinational operating companies**.

The rules should be analysed from the point of view how legally binding and therefore effective they are and to what extent the rules might contribute to more social responsibility, therefore aiming to empower people to handle income inequalities.

* The articles were completed in May 2017. The data were based on national and international documents that were available to this period/date.

SOCIALLY RESPONSIBLE GOVERNANCE

Rado Bohinc¹

¹ Rado Bohinc, PhD, Professor, Faculty of Social Sciences, University of Ljubljana.

Abstract

This research paper aims to contribute to better understanding of socially responsible governance (SRG) and the related role of modern corporate and labour law in relation to contemporary trends and developments both on the state and corporate level of governance.

The SRG concept in this paper includes three pillars, namely corporate social responsibility (CSR), economic democracy (ED) (financial and structural participation) and social economy (SE). Accordingly, the scope of this research paper is limited to the same three issues. Environmental CSR issues and bribery and corruption CSR aspects are not a part of the analysis in this research paper.

This paper is based on research results and presents a continuation of the two recently performed interdisciplinary (law, economy, political sciences, sociology) research projects on corporate governance related to the world economic crisis and on corporate social responsibility¹, run and led by the author of this paper in the last 5 years.

This research paper is a survey of historical and contemporary insights related to all three pillars of SRG, aiming to summarize some of the proposals for future legislative and policy steps and for future research of this important field.

¹ Two fundamental research projects of the ARRS (Slovenian Research Agency):
1. Legal and economic aspects of corporate governance in the public and private sector as a tool for overcoming economic and development crisis” (principal: dr. Rado Bohinc), 2011-2014;
2. Corporate social responsibility as a platform for the new social development paradigm (principal: dr. Rado Bohinc (ongoing 2014-2017)).

Introduction

The main objective of this research paper is to justify and deliver some of the proposals for the necessary steps forward² in all three pillars composing SRG. It is a multidisciplinary analysis on contribution of CSR, SE and ED to SRG of contemporary societies, showing the gap between political resolutions and declarations, on global, EU and national level and related legal framework, referring to SRG.

Assessment of the grounds, scope and level of implementation of SRG in real life is far from complete. A more comprehensive model and research methodology is needed to define a consistent socially innovative model of a more socially sustainable, inclusive and (for this reason) more efficient governance approaches on corporate as well as on societal level.

Future research should cover topics like CSR related to directors' duties and responsibilities (liabilities), conflicts of directors' interests with corporate and social interests, diversity in composition of corporate boards including gender underrepresentation, social economy business organization like cooperatives, mutuals, employee and social enterprises, employee share ownership, and structural and financial employee participation. The research should be supported by case and comparative studies of selected countries' respective legislation and by case studies of governance practices of a number of selected corporations.

A development of an original and innovative methodology and a set of indicators to define, assess and evaluate countries' SRG related legal framework, focusing on the specific selected legislative fields of

² COMMUNICATION on CSR 2011: Many companies in the EU have not yet fully integrated social and environmental concerns into their operations and core strategy. Accusations persist of the involvement of a small minority of European enterprises in human rights harm and failure to respect core labour standards. Only 15 out of 27 EU Member States have national policy frameworks to promote CSR.

countries' SRG would more than welcome for the future, as well as a development of a new, innovative SRG Index³ as the proposal for the EC initiative on this field.

Corporate case studies of the CSR and other SRG (ED, SE) related strategies, bylaws, operations and outcomes of a number of multinational corporations, selected by different industrial branches and sectors (public and private), aiming to assess and evaluate the progress and the achieved results and the scope of the voluntary CSR concept are necessary to prove and gradually overcome the gap between the declarations, wishful recommendations and reality.

In addition to country case studies, the assessment of SRG (CSR, ED, SE) related legal framework focusing on corporate and labour (social) law of the selected EU and non EU countries, as a research basis to develop the methodology for the definition and the evaluation of the SRG legal system, both in an individual country and comparatively, would be indispensable for thorough and clear picture of the of the situation we are in and the possible solutions how to improve it.

Theory on Social Responsibility (Between Governments and Businesses)

The Invisible Hand

The history of SR is the history of modern capitalism. It starts with A. Smith's *The Wealth of Nations*⁴ and *The Theory of Moral Sentiments*⁵

³ To measure the level of sustainability, the Sustainable Society Index, SSI, has been developed by the Sustainable Society Foundation in 2006. The framework of the SSI differs from this proposal substantially for it comprises all three well-being dimensions human, environmental and economic. http://ec.europa.eu/environment/beyond_gdp/download/factsheets/bgdp-ve-ssi.pdf.

⁴ Smith, A. (1776): *The Theory of Moral Sentiments*. Oxford, UK: Clarendon Press.

⁵ Smith, A. (1776): *The wealth of Nations*. Oxford, UK: Clarendon Press.

(Smith's idea of the invisible hand and the doctrine of laissez-faire have always been closely related), followed by Hayek's *Scientism and the Study of Society*⁶ in early 1940s. Central to Hayek's theory is the notion of a "spontaneous order" of social life, which is better than any kind of artificially created order when it comes to securing individual's liberty and wellbeing (cf. especially Hayek, 1944; 1976).⁷

Smith advocated the abolition of government intervention in economic matters (no restrictions on manufacturing, no barriers to commerce, no tariffs, free trade, free competition, freedom to make huge profits). It is obvious, that Smith's economic liberalism prevailed in the United States through the 1800s and early 1900, and then led to the Great Depression of the 1930s. Today, Smith' theory is no longer relevant, and no social responsibility aspect can be found in his approach at all.

Keynesianism

J. M. Keynes challenged liberalism by saying that full employment is necessary for capitalism to grow and it can be achieved only if governments and central banks intervene to increase employment. The belief that government should advance the common good became widely accepted. Social responsibility dimension could be seen in Keynes's economic approach and such were the consequences in wellbeing of that time⁸.

Keynesianism was the dominant theoretical framework in economics and economic policy-making in the period between 1945 and 1970,

⁶ Hayek, F. A. (1944): *Scientism and the Study of Society*. *Economica*, New Series, 11, 27-39: to adopt CSR would put business into fields of endeavour that are unrelated to their proper aim.

⁷ Hayek, F. A. (1976): *Law, Legislation and Liberty: A new Statement of the Liberal Principles and Political Economy*. Volume II: *The Mirage of Social Justice*. London: Routledge.

⁸ These ideas had much influence on President Roosevelt's New Deal, which improved the lives of many people.

but was then replaced by a more “monetarist” approach inspired by the theories and research of Milton Friedman. Since then, “neoliberalism”, i.e. monetarism and related theories, has dominated macroeconomic policy-making.

Economic Liberalism

Economic liberalism claims that the maximization of profits is the most fundamental and ultimate corporate responsibility and that social issues are not the concern of business people.

Friedman’s *Capitalism and Freedom*⁹ is the first serious critique of the CSR concept in the sixties. Friedman held that management has only one responsibility and that is to maximize the profits of its owners or shareholders. Friedman argued that social issues are not the concern of business people and that these problems should be resolved by the unfettered workings of the free market system. Further, this view holds that if the free market cannot solve social problems, it falls not upon business either. Obviously, there is no social responsibility neither in societal nor in corporate level in such an approach.

In *The Problem of Social Cost* (1960), Coase suggests that well-defined property rights could overcome the problems of externalities. The Coase Theorem holds that, regardless of the initial allocation of property rights and choice of remedial protection, the market will determine ultimate allocations of legal entitlements, based on their relative value to different parties¹⁰.

⁹ Friedman, M. (1962): *Capitalism and Freedom*. Chicago, IL: University of Chicago Press.

¹⁰ Parisi, Francesco (2008): "Coase theorem." *The New Palgrave Dictionary of Economics*. Second Edition. Eds. Steven N. Durlauf and Lawrence E. Blume. Palgrave Macmillan, 2008. The New Palgrave Dictionary of Economics Online. Palgrave Macmillan. 02 May 2016. http://www.dictionaryofeconomics.com/article?id=pde2008_C000589>doi:10.1057/9780230226203.0252.

Economic liberalism is basically a belief that ought governments to abstain from intervening in the economy, and instead leave as much as possible up to individuals participating in free and self-regulating markets¹¹.

Classical Liberalism

Classical liberalism is often associated with the belief that the state ought to be minimal, which means that practically everything except armed forces, law enforcement and other “non-excludable goods” ought to be left to the free dealings of its citizens and the organisations they freely choose to establish and take part in. This kind of state is sometimes described as a “night-watchman state”, as the sole purpose of the minimal state is, according to Thorsen and Lie, to uphold the most fundamental aspects of public order.¹²

Classical liberalism has thus much common ground with what we described above as “economic liberalism”. And it is often the case that classical liberals are, with their tendency to favour laissez-faire economic policies, portrayed as leading proponents of “neoliberalism”¹³.

Modern Liberalism

Modern liberalism is, on the other hand, characterised by a greater willingness to let the state become an active participant in the economy: to regulate the marketplace, and to have the state supply essential goods and services to everyone.

¹¹ Einar Thorsen, Dag and Amund Lie (2009): What is Neoliberalism? Department of Political Science, University of Oslo. Available at: <http://folk.uio.no/daget/What%20is%20Neo-Liberalism%2010-11-06.pdf>

¹² Ibidem.

¹³ Ibidem.

The state must play a significant role in the economy, but there is still no room for social responsibility on neither on state nor on corporate level.

Neoliberalism

Neoliberalism is the conviction that the only legitimate purpose of the state is to safeguard individual, especially commercial, liberty, as well as strong private property rights; the state ought to be minimal or at least drastically reduced in strength and size.

Neoliberalism is a set of ideas of how the relationship between the state and its external environment ought to be organised, and not a complete political philosophy or ideology (Blomgren, 1997, as cited in Thorsen and Lie, 2009)¹⁴. In fact, it is not understood as a theory about how political processes ought to be organised at all.

Neoliberalism is the revival of economic liberalism on a global scale in the last 25 years. It tries to prevent the shrinking of profit rates by cutting public expenditure for social services like education and health care, reducing the safety-net for the poor, and reducing governmental role in development of transport, energy and communication infrastructure by selling state-owned enterprises (including banks, key industries, railroads, toll highways, electricity, schools, hospitals and even fresh water), done in the name of greater efficiency. Privatization has mainly had the effect of concentrating wealth in only a few hands to an even greater extent¹⁵.

¹⁴ Blomgren, Anna-Maria (1997): *Neoliberal political philosophy*. A critical analysis of Milton Friedman, Robert Nozick och F. A. Hayek. Nora: Nya Doxa Bokförlag.

¹⁵ Martinez, Elizabeth and Garcia, Arnaldo (1996): Speech at Intercontinental Encounter for Humanity and against Neoliberalism, held July 27–August 3, in La Realidad, Chiapas.

Neoliberalism eliminates the concept of “the public good”, replacing it with “individual responsibility.” Obviously, there is no room for social responsibility as far as the governance on societal level is concerned and corporate social responsibility is invented more or less as an excuse for the socially adverse economic policy¹⁶.

The implementation of neoliberal policies and the acceptance of neo-liberal economic theories in the 1970s are seen by some academics as the root of financialization, with the financial crisis of 2007–08 as one of the ultimate results¹⁷

Further Milestones and Approaches

Further milestones are the Multiple-constituency Approach (Connolly, Conlon & Deutsch¹⁸), the Stakeholder Theory (Freeman¹⁹) and the Triple Bottom Line of Responsibility (Elkington²⁰).

Corporate scandals and collapses (Enron in 2001 and WorldCom in 2002) triggered the development of reporting guidelines (Global Reporting Initiative (GRI), Dow Jones Sustainability Indices (UN Global Compact)); followed by financial crisis, global recession of 2008 influenced substantially contemporary discussion.

¹⁶ Around the world, neo-liberalism has been imposed by powerful financial institutions like the International Monetary Fund (IMF), the World Bank and the Inter-American Development Bank.

¹⁷ Braedley, S. and Luxton, M. (2010): *Neoliberalism and Everyday Life*. Montreal: McGill-Queen's University Press.

¹⁸ Connolly, T., Conlon, E. J., & Deutsch, S. J. (1980): Organisational effectiveness: A multiple-constituency approach. *Academy of Management Review*, 5, 211-217.

¹⁹ Freeman, R. E. 1984. *Strategic management: A stakeholder approach*. New York: Basic Books.

²⁰ Elkington, J. (1997): *Cannibals with forks: The triple bottom line of 21st century business*. Oxford, UK: Capstone Publishing Limited.