

SOCIALLY RESPONSIBLE GOVERNANCE

The Human Aspects of
Sustainable Development

Rado Bohinc

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SOCIALLY RESPONSIBLE GOVERNANCE The Human Aspects of Sustainable Development

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Introduction

General

This book brings together in one place the author's key insights¹ into the social and human aspects of sustainable governance and social responsibility, some of which have recently been published as articles, in anthologies, or as books (which are also cited here).²

¹ These insights were gathered through three 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 researcher: Dr Rado Bohinc), 2011-2014.
2. Corporate social responsibility as a platform for the new social development paradigm (principal researcher: Dr Rado Bohinc (2014-2017)).
3. Corporate social responsibility as director's duty (principal researcher: Dr Rado Bohinc, (2022-2025)).

² This book partly relies on and summarizes the results of research that were partly already published in the author's following publications:

1. Rado Bohinc, »Učinki digitalizacije na pravo družb,« in Pravo in management v pogojih digitalnega poslovanja III, ed. Tatjana Devjak and Rado Bohinc (Ljubljana: MLC Fakulteta za management in pravo, 2024), 14-41, 335, 343.
2. Rado Bohinc, »Trajnostni skrbni pregled kot pravno orodje korporativne družbene odgovornosti,« in Podjetje in delo 49, no. 6/7 (2023): 1203-1221.
3. Rado Bohinc, »Trajnostno korporativno upravljanje ali zgolj poročanje?« *Ekonomska demokracija* 27, no. 4 (2023): 4-9.
4. Rado Bohinc, et al., eds., *Recent Challenges in Corporate Governance* (Ljubljana: Fakulteta za družbene vede, Založba FDV, 2023), 198.
5. Rado Bohinc, »Pravna orodja premagovanja dohodkovne neenakosti: od družbene odgovornosti do družbene pravičnosti,« presented at the conference *Socialna država in revščina*, Pravna fakulteta, Ljubljana, January 23, 2023.
6. Rado Bohinc, »Legal incentives and obstacles to corporate social responsibility in Slovenia, the EU, and globally,« in *Corporate Social Responsibility (CSR) in Green and Digital Transition: Legal and Sustainability Issues*, ed. Rado Bohinc, Andreja Primec, and Anita Hrast (Koper: Znanstveno-raziskovalno središče Koper, Annales ZRS, 2023), 19-20.
7. Rado Bohinc, »Genesis, values, controversies, and challenges of corporate governance in the EU,« in *Recent Challenges in Corporate Governance*, ed. Rado Bohinc, et al. (Ljubljana: Fakulteta za družbene vede, Založba FDV, 2023), 9-44.

The author's works dealing with corporate social responsibility, corporate governance, the social economy, entrepreneurship, and ownership are particularly emphasized, with a focus on employee share ownership and employee profit sharing.

The author's works presented represent a critical analysis of the current regulation of corporate law, which is still rooted in a time of a different evaluation of human rights and human dignity and completely different communication and information possibilities, i.e. more than 200 years ago.

The research presented in the monograph is intended to contribute to a new understanding of the role of modern corporate and labor law concerning property rights issues; it will hopefully be an essential reading for scholars and also relevant to key practitioners.

The book presents some alternative models for more inclusive and effective governance approaches at both the societal and corporate levels. It addresses issues such as corporate social responsibility, the duties and responsibilities of shareholders and directors,

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8. Rado Bohinc, »Is stronger shareholder engagement truly all we need?« in *Recent Challenges in Corporate Governance*, ed. Rado Bohinc, et al. (Ljubljana: Fakulteta za družbene vede, Založba FDV, 2023), 45-68.
 9. Rado Bohinc, *Družbena odgovornost podjetij* (Ljubljana: Fakulteta za dizajn, 2023), 455.
 10. Rado Bohinc, »Legal aspects of digitalisation in EU company law,« *Teorija in praksa: revija za družbena vprašanja* 59, no. 3 (July-September 2022): 707-728, <http://www.dlib.si/details/URN:NBN:SI:doc-DAP2BWWMP>.
 11. Rado Bohinc, »Pravna orodja premagovanja dohodkovne neenakosti: od družbene odgovornosti do družbene pravičnosti,« in *Socialna država in revščina*, ed. Etelka Korpič-Horvat, et al. (Maribor: Univerza v Mariboru, Univerzitetna založba, 2022), 233-265.
 12. Rado Bohinc, »Ameriški ESOP kot zgled za EU in Slovenijo,« *Ekonom-ska demokracija: strokovno informativna revija za delavske predstavnike in menedžerje v sodobnem podjetju* 26, no. 2 (2022): 8-11.
 13. Rado Bohinc and Jeff Schwartz, »Social enterprise law: a theoretical and comparative perspective,« *Social Science Research Network*, April 7, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3821128.
 14. Matjaž Mulej and Rado Bohinc, »Social responsibility: an application of and support to systemic behaviour,« in *Social Responsibility and Corporate Governance: Policy and Practice*, vol. 2, ed. Matjaž Mulej, Grażyna O'Sullivan, and Tjaša Štrukelj (Cham: Palgrave Macmillan, 2021), 1-30.
 15. Rado Bohinc, »Kaj je nedopustna prekarlost in kako jo ublažiti?,« in *Študije o prekarlosti: interdisciplinarni pogledi*, ed. Črt Poglajen, et al. (Ljubljana: Ekonomska fakulteta, Založništvo, 2021), 239-253.

cooperatives, employees, and social enterprises, the structural and financial participation of employees in corporate governance, and more. It concludes with some proposals for the EU in the field of public and corporate governance and corporate social responsibility.

The social dimension of governance issues, such as corporate and social responsibility, social dialog, the welfare state, etc., has its philosophical roots in human ethics and its legal basis in the constitutional paradigm of human rights and freedoms. In addition, a high level of employee involvement has an impact on successful human resources management, particularly in the area of employee motivation.

In modern society and in corporations that are characterized by significant developments in information and communication and other digital technologies, both capital gain and human/social aspects should form the framework for democratic life and social welfare. The new information and communication channels influence the balance between the two fundamental components of modern societies and corporations, namely capital and labor.

The purpose - why is the research topic of increasing interest at this time?

The global economic and financial crisis of 2010, which began in the United States and then escalated into an international crisis, called for a thorough conceptual rethinking of how to reshape the processes of social and corporate governance in the context of the globalization of finance, commercial and trade globalization, which have dominated recent decades. The research in this book therefore focuses on the context of the global financial and economic crisis from the perspective of corporate and societal sustainability governance and social responsibility.

This monograph aims to stimulate and promote a broader public discussion and reflection on contemporary approaches to public and private governance and the principles and rules of social responsibility. The assumption is that the financial and economic crisis of 2010 and previous cyclical crises in the world are evidence of the inefficiency and ineffectiveness of the existing prevailing models of corporate governance and social responsibility based solely on the traditional principles of property rights.

To this end, some of the literature and the current jurisprudence will be analysed and some ideas on the dilemmas and challenges of modern corporate law will be presented in the context of developments and trends in property rights theory. Particular attention will be paid to good and bad practice examples of some leading and successful European and global corporations, corporate governance, and corporate social responsibility.

Knowledge base

This monograph presents the results of several recent research projects on alternative models of corporate governance and corporate social responsibility, which represent one dimension of the necessary new development paradigm triggered by the permanent economic, social, and political global crisis and subsequent developments¹.

This book is based on the research findings and represents a continuation of the recent interdisciplinary (law, economics, political science, sociology) research projects on corporate governance in the context of the global economic crisis and corporate social responsibility conducted and led by the author of this text and his research group over the last 10 years. The book also contains and presents previously unpublished research findings in the field of sustainable and socially responsible corporate governance.

The book is aimed at students of economics, law and other social sciences such as sociology, political science and management, as well as postgraduate students, researchers, lecturers and practitioners in the fields of corporate governance, auditing and law who wish to study the topic of corporate social responsibility in depth.

Outline

The main objective of the book is to outline current theoretical and legal issues on sustainable and socially responsible corporate governance and to present new approaches in the political and legislative framework of sustainable corporate governance.

The book explores and proposes some suggestions for so-called alternative models for a more sustainable and inclusive and thus

more efficient governance approaches at the societal and corporate level, such as property rights conversion, mandatory corporate social responsibility and employee profit sharing, employee share ownership and related directors' duties, cooperative, employee and social enterprises, structural and financial employee ownership, and some more.

The book is divided into three parts to provide readers with a comprehensive understanding of the key contemporary challenges related to the social dimension of corporate governance.

First Part: Theoretical and Historical Background Of Social Responsibility

The first part introduces the theory of social responsibility in general and the theory of property rights in the context of socially responsible corporate governance. The understanding of property rights as the owners' absolute right, which disregards social, economic, and ecological responsibility, is at least old-fashioned, if not outdated, in times of the information, communication and innovation society, in which highly qualified labour is the key value creation factor. The economic and related social organization of human society in the 21st century still follows the paradigm of classical capitalism of the 19th and 20th centuries, in which capital was seen as the only factor of production, justifying it as an exclusive instrument for the appropriation of rights of determination and choice. This anachronism has led to tensions and even distortions in the structure of modern society that are significant for the predominant contribution of innovation and skilled human capabilities to value creation, what is now known as the global economic and financial crisis.

Socially responsible, successful, and efficient public and corporate governance is a prerequisite for more competitive, transparent, and democratic societies. This book focuses on analysing relevant literature and current jurisprudence and presents some ideas on the dilemmas and challenges of modern corporate law in relation to developments and trends in property rights theory. Particular attention is given to examples of good practice from some of the leading and successful European and world corporations, related to corporate governance and corporate social responsibility.

This book is intended to stimulate reflection on contemporary approaches to corporate governance, bearing in mind that the cyclical financial and economic crisis is evidence of the inefficiency and ineffectiveness of the existing, prevailing property rights governance principles.

In modern society and corporations, characterized by the enormous developments of information and communication technologies and other technologies, both capital gain and human/social (sustainable) aspects should provide the framework for democratic life and social welfare. The technological aspects of societal and corporate developments should be considered as an integral part of social and legal analysis and innovation. New information and communication channels influence the balance between the two opposing principles of modern societies: capital and labor.

The concepts elaborated in this book are groundbreaking compared to Smith's idea of the invisible hand and the doctrine of *laissez-faire*, in which the aspect of social responsibility does not appear at all. The same is true of the concept of economic liberalism (Freedman's Capitalism and freedom), which invokes that profit maximization is the most fundamental and ultimate corporate responsibility and that social issues are not the business of businessmen (the business of business is business).³

Obviously, even in classical liberalism ("night watchman state"), which has many similarities with economic liberalism and neoliberalism, there is no social responsibility in such an approach, neither on a societal nor on a business level⁴. In modern liberalism, the state plays an important role in the economy, but there is still no room for social responsibility, either at state or corporate level.

Neoliberalism eliminates the concept of "the public good" and replaces it with "individual responsibility". Obviously, there is no room for social responsibility; it is more or less invented as a pretext for the anti-social economic policy, neoliberalism.

The question is whether efficient, sustainable, and democratic corporate governance requires a single, absolute, capital-based

³ Milton Friedman, *Capitalism and Freedom* (Chicago, IL: University of Chicago Press, 1962).

⁴ *Ibid.*

property right, as neoclassical theory claims, or whether a division of this right into a bundle of rights assigned to different interest groups within the corporation is the better solution?

One of the crucial questions explored in this book is whether the transformation of property relations, a process that took place in history before the emergence of Roman law, can be achieved in modern times by including other factors of production (such as labor and not just capital) as the basis for appropriation and corporate governance.

Such a shift would fundamentally change the contemporary economic paradigm, which is based on capital as the exclusive basis for appropriation and governance and would also change society as a whole.

The continuation of the historical process of the transformation of property rights is therefore *a condicio sine qua non* for the reforms necessary to overcome the existing blockages known as the world economic and financial crisis. We would like to prove that the transformation of property rights is necessary for the implementation of a democratic, human rights-based and, moreover, innovative, knowledge-based, and efficient social (public) and corporate governance as a prerequisite for a modern society.

Second part: Values and Rules of Corporate Governance in the EU and Oecd Countries

In the second part, we look at the traditional corporate law of the EU and the EU and OECD countries and analyse malfunctions and omissions from the point of view of socially responsible corporate governance. In the EU, corporate law is only partially harmonized, but there is a growing convergence in various areas. However, much has already been achieved in the area of non-binding recommendations to governments and corporations of the most developed countries. This applies in particular to non-traditional issues such as corporate social responsibility and industrial democracy.

There are several definitions of corporate governance, and the approaches vary. Most commonly, corporate governance is defined in a narrow sense (structure, powers and responsibilities of bodies)

and in a broad sense (the entire relationship between society, stakeholders and bodies) and does not include employee participation.

The OECD Principles of Corporate Governance⁵ have provided specific guidelines for legislative and regulatory initiatives in OECD and non-OECD countries. They are based on the following values for a well-functioning corporate governance system: a high level of transparency, accountability, Board oversight, respect for shareholders' rights and respect for the role of key stakeholders. The Principles provide non-binding standards and best practices of corporate governance as well as guidelines for implementation, which can be adapted to the specific circumstances of individual countries and regions. The Principles focus on listed companies, both financial and non-financial. However, they can also be a useful tool for improving corporate governance for private and state-owned enterprises.

In the second part of the book, we also included the phenomena of multinational enterprises in the research. Multinational enterprises today account for half of the world's exports, a third of the world's production (world GDP) and a quarter of the world's employment. Proponents of multinationals say they create high-paying jobs and technologically advanced goods in countries that would otherwise not have access to such opportunities or goods. On the other hand, critics say that multinationals exert undue political influence on governments, exploit developing countries and destroy jobs in their own countries. Multinational enterprises are confronted with a variety of legal, social, and regulatory frameworks. However, many of them are tempted to neglect appropriate standards and principles of behaviour in order to gain an undue competitive advantage by neglecting responsible business conduct and engaging in inappropriate tax avoidance and disregard of

⁵ OECD, G20/OECD Principles of Corporate Governance (Paris: OECD Publishing, 2015), <http://dx.doi.org/10.1787/9789264236882-en>. The OECD Principles 2015 contain the results of the second review of the Principles 2004, conducted in 2014/15. The basis for the review were the following values for a well-functioning corporate governance system: high level of transparency, accountability, board oversight, respect for the rights of shareholders and respect for the role of key stakeholders. Good corporate governance, according to the OECD Principles reassure shareholders and other stakeholders that their rights are protected and make it possible for corporations to decrease the cost of capital and to facilitate their access to the capital market.

environmental and social regulations. The second part of the book presents some cases and explains the OECD's approach on how to overcome them.

The second part of the book presents the key elements of shareholder protection in a given jurisdiction, including the main company legislation and applicable soft law and recommendations, which vary significantly from country to country. The prevailing ownership structures, which differ significantly from country to country due to different legal traditions and investment cultures, are the main reason for the different status of shareholders and the inequality in reality.

The prevailing institutional ownership structure in terms of size and, above all, political influence on decision-making is very typical of the economies of post-privatization countries. The state as an active professional owner, especially in the industries of public interest, where it combines and usually mixes its position as owner with that of authority and regulator. This often makes corporate decisions dependent on political objectives, including the objectives of the political parties that control a particular sector.

In the former transition countries, internal (employee) ownership does not work well and has been declining since privatization. Banks, brokerage firms or trust companies and also management as potential proxies do not usually organize diffuse (minority) shareholders. They organize themselves somewhere through various so-called shareholder associations, which in some cases protect the interests of minority shareholders quite effectively. Employee shareholders assert their influence within the company via special trusts or cooperatives, although this is rare in the transition countries as these concepts are not sufficiently supported by tax incentives; their share of ownership has declined considerably since the privatization process was completed. Individual employee shareholders, which still exist, neither participate in the shareholders' meeting nor do they participate as individuals or groups in a shareholder dialog. Furthermore, they have no relationship with the supervisory Boards and even fewer with the management Boards.

Shareholder democracy is not intended for small shareholders such as employees. In shareholder democracy, only the big players who have the majority can take power, prosper, and win. Therefore, the participation of employees as small shareholders disappears

wherever there are no mechanisms for their equal treatment (such as ESOPs) and as long as there are no tax incentives for the big players to open the way for employee ownership.

Third Part: Corporate Social Responsibility, Social Economy, and Economic Democracy (Csr, Se, Ed)

The research in this part of the book deals with corporate law issues such as corporate social responsibility in the context of directors' duties and responsibilities (liabilities), conflicts of interest of directors with corporate and social interests, diversity in the composition of corporate Boards including gender underrepresentation, social economy business organization such as cooperatives, mutuals, employee and social enterprises, employee share ownership, and structural and financial employee participation. The research is supported by case studies and comparative studies of selected countries and legislation, as well as case studies of the governance practices of a number of selected corporations.

In addition, country-specific case studies, an assessment of the SRG-related legal framework (CSR, ED, SE) with a focus on the corporate and labor (social) law of selected EU and non-EU countries are essential as a research basis for developing a methodology to define and assess the New Social Responsibility legal system in a single country and in comparison, in order to get a thorough and clear picture of the reasons for where we are and how to get out of this situation.

The third part of the book provides a cross-national analysis. It outlines the international specifics of CSR, SE and SD practices. Readers can get a comprehensive picture of the specifics, challenges, and changes in corporate governance by comparing them with previous studies and academic research. The book outlines new approaches to traditional corporate governance issues. This part of the book will help to better explain and understand how corporate social responsibility (CSR) aligns with the concept of socially responsible and sustainable corporate governance and furthermore, how CSR is becoming an increasingly relevant concept of modern corporate and labor law in relation to contemporary trends at the corporate governance level.

The main objective of this part of the research is to justify and provide some of the propositions for the necessary progress of CSR mechanisms. It is a multidisciplinary analysis of the contribution of CSR to contemporary societies, highlighting the gap between the political resolutions and declarations at global, EU and national levels and the corresponding legal framework in relation to SRG. In this part of the book, we comparatively analyse the extent to which the ideas on CSR have been translated into legislation on corporate duties and liability in some EU countries and in India.

The research looks at the theoretical orientations of CSR in academia, the ways in which CSR is conceptualized and implemented in the global economy, and the issue of 'half-governance' that involves only the allocation of CSR funds as a token of charity, rather than 'full-fledged' governance that supports the implementation of the programs is serious, effective, and sustainable. The paper proposes policy and legal adjustments that can change the face of corporate CSR projects.

We argue that the reason for the poor implementation of the CSR concept in companies' day-to-day and strategic business behaviour is that CSR initiatives are not legally binding but are still more or less political strategies and ethical recommendations. However, there are differences between the EU countries and India, where CSR is regulated to a certain extent as a legally binding duty and is therefore not just a political wishful orientation but a legal institution. Whether this improves the implementation rate of CSR is the main question we try to answer in this part of the book.

We propose changes to national corporate legislation by redefining the duties and responsibilities of directors. This includes the duty of directors to "integrate social, environmental, ethical, human rights and consumer-related concerns into their business operations and core strategy in close collaboration with their stakeholders". In this way, CSR would become legally binding and not just a declaration of corporate responsibility that is not legally enforceable.

In this part of the book, we also present our views on the legal framework needed to put the concept of social entrepreneurship into practice. First, some historical roots of the social and self-managed economy are presented, then the concept of social enterprise is explained from the point of view of its eligibility. In addition, the Slovenian case is critically analysed, and some suggestions are made

to overcome the gaps in the existing legal framework. Social enterprises are very different in Europe. There are a number of different legislative approaches and different organizational and legal forms at national level. We can divide the legal forms of social enterprises by member state into the following groups:

- existing legal forms such as associations, foundations, cooperatives, public limited companies,
- new legal forms developed exclusively for social enterprises by adapting or ‘tailoring’ existing legal forms, e.g. social cooperatives in Italy, Societe Cooperative d’Interet Collectifs (SCICs) in France, Community Interest Companies in the UK,
- legal status that can be obtained by selected or all existing legal forms that meet a set of legally defined criteria (e.g. the legal status of a social enterprise in Italy or the Social Purpose Company in Belgium),
- new types of legal forms that allow traditional non-profit organizations to carry out an economic activity, such as the non-profit institute in Slovenia⁶.

In this part of the book, we outline the reasons that increase the importance and relevance of employee ownership and discuss the logic behind the better performance of companies with employee ownership, which is based on higher employee motivation, less short-time work, and a successful solution to the succession problem.

We also outline the current situation and trends in the EU compared to the US and try to identify the reasons why the EU lags behind the US in employee ownership, highlight the (dis)advantages of the EU and US approach and suggest measures to overcome the jumping on the spot. In addition, we will identify the causes and develop proposals to address the barriers to the poor implementation of ESOPs in the EU compared to the US.

⁶ Mapping social enterprises in EU.

Part I:

1. THEORETICAL AND HISTORICAL BACKGROUND OF SOCIAL RESPONSIBILITY

New social responsibility

The definition of social responsibility

In the first part of this book, we explain social responsibility as a way of governance (at the societal and corporate level) in which the social consequences of governance decisions are as important as the economic consequences (capital gain). We assume that the social impact of corporate governance is just as important as the economic impact. Social responsibility in this context means responsibility for the social consequences of governance. Corporate social responsibility is how a corporation is managed and pursues goals at the societal level in addition to economic development or profit maximization at the corporate level.

We understand social consequences broader as the observance of human rights, ethical labor, and employment practices, including CSR, ED, and SE issues. Environmental impact and anti-bribery and anti-corruption should also be considered, but these aspects are not the subject of our research in this book.

The social dimensions of governance, such as CSR, ED, and SE, have their philosophical roots in human ethics, equity, and social welfare, and their legal basis in the general principles and constitutional provisions on human rights and freedoms, the rule of law, and the rule of law. Furthermore, the inclusion of other stakeholders in the governance process contributes to a more equitable relationship between capital and labor and better value creation of human resources. Furthermore, a high level of human rights influences successful human resources management, especially in the area of employee motivation.

New, advanced technologies as well as information and communication channels and thus increasingly required higher skills and qualifications will more and more influence the balance between capital and labor as the two-opposing governance bases. In a modern society characterized by a tremendous development of knowledge and technologies, both capital gain and human/social goals should provide the framework for democratic life and social welfare.

Accordingly, not only capital but also labor should serve as the legal basis for governance and appropriation rights in an enterprise.