

Department of History and Political Science

Ph. D. in Political Theory
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**On Corporate Social Responsibility
and Human Rights:
a Transnational Perspective**

Ph. D. Thesis Summary
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Summary

“Freedom of enterprise and human rights”, it seems quite a generic and, therefore incomprehensible, association of concepts.

The first notion, the freedom of starting and carrying on an enterprise, rises two considerations. First of all, this freedom like all existing forms of freedom is limited by human security, freedom and dignity. Then, it should be contextualized in the present historical period. Enterprises, like desert tents, are characterized by a greater mobility with respect to their home countries. There's a new trend to break trade barriers for a unique free and “globalized” market. This is the main target of international organizations as well, such as the World Bank, the International Monetary Fund, and the World Trade Organization.

But this situation has a risk in itself.

Under an economic perspective the delocalization of an enterprise is a good way of improving the company's efficiency by exploiting the goods, facilities and labour of the States where these latter are less expensive. When the hosting State is a developing country, with inadequate regulations and safeguard standards, it is more likely that fundamental human rights are not respected. We learn from experience

that companies may even become unspoken complicit of abuses committed by governments and armed forces. Thus, they can produce what in the western world is absolutely forbidden in a place where the same things are instead absolutely legal, and yet those products will precisely be sold in western countries.

The production of goods and services has always implied and still implies the use of labour and the relationship with one or more communities. Since individuals are not goods, the respect of human rights should, therefore, go along with the economic growth.

This situation and the lack of a supranational law fostered an opposite trend: a regulation on corporate social responsibility was adopted to rise enterprises' awareness of their responsibilities.

The Green Paper of 2001 on corporate social responsibility defines CSR as the "voluntary integration of social and environmental concerns in an enterprise's trading activities and in its relationships with the interested parties".

Several international initiatives contribute to the development and implementation of CSR such as: the ILO Tripartite Declaration, the OECD Guidelines and the UN Global Compact.

They all share the voluntary approach and support the adoption of certifications, social marks and codes of conduct. These initiatives made people aware of the problem and caught the attention of both consumers

and entrepreneurs, nonetheless they didn't succeed in meeting the ends they were created for.

The CSR was adopted to solve an internal problem of corporate activities. It not only affects the enterprises' owners or officers but also their stakeholders who are subjected to the companies' activity though without any formal contract they could eventually rely on in case of violation.

Three are the main criticisms to the voluntary approach:

- 1) Corporate activity is strictly connected to the right to ownership.

Executive officers handle the interests of the shareholders who have entrusted them with their own responsibilities. If they used their power to make decisions that would safeguard people outside the company they would betray their mandate and would be responsible for the enterprise's partners themselves. These latter should be granted by the shareholders with a greater managerial discretion which would imply two perverted consequences: a dangerous inferior responsibility for executive officers and the permission to use what they own for the benefit of others. Even in this situation, stakeholders could not protect their rights because of the lack of a specific law.

- 2) In most cases the implementation of ethical codes or social mark certifications are not controlled by external authorities and therefore

the respect of standards cannot be proved. And even if an external organization monitors their effective implementation it is not possible to sanction any eventual violation.

- 3) Thirdly, with the voluntary approach companies' are entrusted with a task which would otherwise belong to political bodies. Shareholders or executive officers should compensate the lack of a law through self-regulation. They should compensate this legal gap according to their ethical principles.

The need of a law is, thus, self-evident.

The UN Norms on the responsibility of transnational companies and of other enterprises with regards to human rights are quite revolutionary though they are related to the principles of the Universal Declaration of Human Rights of 1948.

The lack of a supranational regulation have forced many countries to find different ways to safeguard the stakeholders' interests. The most relevant in this sense is the Alien Tort Claim Act (ATCA) adopted in the United States. It was passed a decade ago and is still applied to regulate this constantly developing market. This act allows international rights to be defended in a US Court though they have been violated abroad. The cases Doe Vs Exxon Mobil; Wiwa Vs Shell; Doe Vs Unocal and Aguinda Vs Texaco are a good sample of this attitude.

In Italy, the need of a law limiting the freedom of enterprise is supported by the principles contained in the art.41 of the Constitution.

Thus the following conclusions may be drawn: the voluntary approach is preferred because it is considered more appropriate for the right to enterprise and for such a rapidly evolving market, considering that a “standardizing” law is threatening today’s business creativity. But, will is not enough; for this reason the tendency of making coercive years-old public order flexible principles is now increasing. This trend is implemented to rebalance a situation which seems impossible to settle.

The freedom of enterprise ends where the respect of human security, dignity and freedom begins within a Nation and outside. This is a conquest of the past but, today it strongly needs to be uphold.

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