

A philosophical critique of the obligation to comply with the law in CSR

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Abstract: This paper questions the theoretical underpinnings of the largely spread view in CSR urging the corporations to comply with the law. Starting from the mere intuition that “legal” is not a synonym for “moral” this paper elaborates on the theory of political obligation to explain the flaws of the CSR mainstream rationale which considers the legal compliance as a moral obligation. The paper further explores the theoretical and practical implications for CSR of the distinction between “moral” and “legal.”

Keywords: compliance; CSR; legal; moral obligation; theory of political obligation

The very first attempts to define and conceptualize the Corporate Social Responsibility (CSR) (Carroll 1999) assumed that corporations should go beyond their own economic interests and do more than merely comply with the law. “The idea of social responsibilities supposes that the corporation has not only economic and legal obligations but also certain responsibilities to society which extend beyond these obligations.” (McGuire 1963: 144) While CSR was conceptualized as a voluntary practice, the social responsibilities were further distinguished from the legal and, thereby, compulsory obligations. Within this perspective, the large majority of the CSR scholars and practitioners consider that firms are compelling with the law, must not be considered sufficient (as it is their legal obligation), and, hence, they should assume further responsibilities towards the stakeholders. Indeed, Carroll’s pyramid –one of the most popular models in CSR (Geva 2008) – suggests that “CSR firm should strive to make a profit, obey the law, be ethical, and be a good corporate citizen” (Carroll 1991: 43).

The number and the order of these CSR dimensions proposed by Carroll (economy, law, ethics, and philanthropy) as well as the tensions in between them were lengthily analyzed in the literature. However, it is interesting to note, that even after such significant discussions, the idea that firms must comply with the law remains nevertheless undisputed. In point of fact, most of the CSR scholars who disagree about various and sometimes fundamental CSR

topics will easily agree on the corporations' law-abiding obligation. Indeed, even the most radical critiques of the CSR such as Friedman (1970) and Banerjee (2007: 165) – despite the major differences between their own perspectives – they both take as granted that firms should comply with the law. This common assumption is partially justified when we take into account the fact the CSR scholars are mainly concerned with the morality of corporations rather than with the morality of the laws. However, since the corporations are required to abide the law and since not all laws are moral, it became important to explore, from a moral point of view, the legal dimension of the CSR. This is precisely the theoretical gap that this paper proposes to fill. The objective of this paper is to criticize the mainstream approach in CSR, which takes as granted that corporations must always abide the law and discard as socially irresponsible any illegal activity.

To attain its objective the paper will first emphasize the emergence of a mainstream interpretation of legality in the academic CSR literature (Abt 1977; McGuire 1963). While it is widely accepted that CSR encloses numerous variables it nonetheless has a constant: the “compliance with the law.” Moreover, if we observe this situation through the practitioners' lenses, we can easily agree that integrating legal compliance in the social responsibilities makes it easier for a manager to concretely understand the use it can make of the CSR and prepare a CSR report. The intertwining between CSR and law can also be perceived when the CSR is itself integrated into the law. In April 2014 in India came into effect the Companies Act that requires large (above a specified threshold level) firms to spend 2% of their net profits on CSR projects. Also since April 2014, the European Union's Directive 2013/34/EU requires disclosure by public companies and groups of nonfinancial and diversity information. So, the CSR obligation to comply with the law might also concern laws which already enclose CSR principles. Also of these observations, the obligation to abide the law also simplifies the stakeholders' task in pointing out companies which do not meet CSR standards. For all these reasons, the interpretation of legality in CSR became widespread and mainstream.

Second, the paper proposes to show that merely abiding by law does not automatically wipes out the moral dilemmas from the choices a manager is expected to make. This is especially the case because abiding by law can be a part of the moral choice a manager is expected to make. So imposing the legal obligation does not cancel the moral dilemma but it oversimplifies it by preselecting by default the option to abide by the law. The argumentation in section mainly draws upon theories of political and moral obligation, with the view of showing that the CSR mainstream interpretation of legality must take into account the

heterogeneity of the obligation to comply with the law. It is common ground for the theories of moral and political obligation that a law is not intrinsically moral, and some laws might be immoral. If a law is fundamentally wrong, then it does not generate any moral obligation to abide by it. Moreover, even if the law is not intrinsically wrong, the duty to follow is at best a “prima facie duty,” which means that it is “a duty proper if it were not at the same time of another kind which is morally significant. (Ross 2007: 19). Finally, admitting that a law is broken the moral assessment needs to be fine-tuned if the authors accept the penalties and/or provide compensations. As Walzer famously put it, excusing someone for breaking the law is still different than justifying it. “The two can seem to come very close together ... but they are conceptually distinct ... An excuse is typically an admission of fault; a justification is typically a denial of fault and an assertion of innocence” (Walzer 1973: 173).

Third, the paper further studies the CSR theoretical and practical implications of this critique. A major theoretical implication is that in the light shed by the theories of moral and political obligation, the importance of the obligation to comply with the law is downgraded and, implicitly, Carroll’s pyramid, but also the theories taking it as granted needs to be reconsidered. The same reexamination is also required for all the various CSR standards such as ISO 26000, and Global Compact stating without any reserve the obligation for companies to follow the law. As to the practical implications of this argumentation, it will allow us to reassess the morality of the illegal corporate practices, which currently are considered beyond the scope of CSR: corruption (Alpern 1988; Pastin and Hooker 1980; Spicer 2009), tax evasion (Brennan 2012; McGee 1994; Morris 2012), undocumented employees (Cimini 2008; Clibborn 2015), etc.

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