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**The concept of corporate social responsibility: a  
philosophical approach**

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## **Abstract**

Corporate social responsibility (CSR), or the idea that companies should combine economic, social and environmental concerns, seems an unavoidable component of discourses on business and society. Why is this the case? Is it because we are in a post neoliberal era, and in an economic crisis, that we are acknowledging the drawbacks of unrestrained business activity? Or is the opposite true, and the popularity of CSR is the product of the triumph of neoliberal ideology? Both views can be supported by equally convincing theoretical and empirical arguments. In this paper rather than arguing for either view, I propose to set the problem of CSR according to a different perspective, which may help to move beyond narrow alternative of CSR as ‘reaction to neoliberalism’ or ‘as product of neoliberalism.’

My thesis is that CSR and its concerns are much older than neoliberalism and post-neoliberalism. These are concerns that have to do with how to organize our social life, and what institutional arrangements can better promote justice and well-being. These concerns have to do with economy and politics at the same time. While many people may think that corporate social responsibility is empty rhetoric, I argue here that there is some substance to CSR, and that this substance has to do with the inextricable connection between economic, political and moral concerns. In the first part, I argue that disagreements about the nature of CSR can be addressed using the distinction between ‘concept’ and ‘conception.’ I identify the main understandings of CSR, and argue that all obscure, to varying degrees, the nuances of the relationship between economy and politics. In the second part, I argue that the relationship between politics and the market, which lies at the core of CSR, can be better understood if we reverse the neoclassical analogy between market and politics. In the third part, I address the opposition between voluntary and hard regulation and link this opposition to the tension between political means and ends. I conclude with some questions about the limitations of the label ‘Corporate Social Responsibility.’

## **Keywords**

Market, politics, morality, liberalism, freedom, corporate social responsibility.

# The concept of corporate social responsibility: a philosophical approach<sup>1</sup>

## 1 Introduction

Corporate social responsibility (CSR), or the idea that companies should combine economic, social and environmental concerns, seems an unavoidable component of discourses on business and society. Why is this the case? Is it because we are in a post-neoliberal era, and in an economic crisis, that we are acknowledging the drawbacks of unrestrained business activity? Or is the opposite true, and is the popularity of CSR the product of the triumph neoliberal ideology? Both views can be supported by equally convincing theoretical and empirical arguments.

In this paper rather than arguing for either view, I propose to set the problem of CSR according to a different perspective, which may help to move beyond narrow alternative of CSR as ‘reaction to neoliberalism’ or as product of neoliberalism.’ My thesis is that CSR and its concerns are much older than neoliberalism and post-neoliberalism. These are concerns that have to do with how to organize our social life and with what institutional arrangements can better promote justice and well-being. These concerns have to do with economy and politics at the same time.

These concerns are addressed by the timeless dispute about what to leave to market and what should remain under direct control of the state (and its citizens) in order to get closer to ideals of justice and further away from injustice. CSR as one of the ways to interpret this dispute has to do with matters of morality that have always been interwoven with economic and political choices.

In this paper I will suggest that rather than neoliberal or post-neoliberal we could think about CSR simply as *liberal*. Here I refer to liberalism as the tradition of thought that has formulated these concerns about individual and collective good and just institutions in their modern form. Liberalism, as John Gray (1986) among others reminds us,<sup>2</sup> is a philosophy of modernity. Liberalism is grounded in a modern idea of politics that subverts the relationship between governed and governors, between individuals and the state, by putting the individuals-citizens at the centre and limiting the power of governments over them.<sup>3</sup> In this paper I argue that the concept of freedom implied by CSR is closer to the liberal idea of freedom than to the neoliberal one.

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<sup>1</sup> This paper owes much to the discussions with Patricia Almeida Ashley and the research group ‘Interactions between civil society and markets’ and to comments from Bert Helmsing and Peter Knorringa.

<sup>2</sup> On the modernity of liberalism see also Sheldon Wolin (1960, last edition 2006).

<sup>3</sup> There have been forerunners of liberalism for example in the ancient Athens of the sophists and Socrates, and in Rome of Cicero and the stoics. I will here refer mostly to the historical offspring of liberalism in seventeenth century Europe and only incidentally to its ‘pre-history’ (Gray 1986) in classical Athens and Rome.

The difficulties in grasping the liberal core of CSR have to do with the difficulties in sharing a definition of CSR. Despite the flourishing of writing on the topic, CSR is still a theoretically weak field (Okoye 2009: 614). Yet establishing more solid foundations it essential to make use of CSR. This paper contributes to the quest for foundations of CSR by using the tools of political philosophy.

The reason for undertaking a philosophical exploration of CSR is that I believe that behind the brand “CSR” there is some substance. This substance has to do with essential concerns of political life, crucial questions such as: how is it possible to combine individual happiness and justice in society? Which institutions are more appropriate for this purpose?

CSR has a strong normative core. It is about how things should be—how to improve the impact of business on society—and not just about how things are. But it is important to look closer at this core, to be able to use CSR normative potential.

Examining what the core of CSR includes and excludes may consist of conceptual investigations and empirical investigations. In this paper I develop a conceptual investigation that is driven by the question: what is CSR about?

In order to answer this question I address the disagreement on CSR definitions and its lack of foundations as a theoretical problem that has important empirical implications. For some people, for example, philanthropy is one aspects of CSR. For others philanthropy is charity —another name and concept all together– and a company might be generous yet socially irresponsible (Almeida Ashley 2010). For some people CSR is either voluntary, or it is not. For others it may include governments’ interference to make companies socially responsible (Bredgaard 2004; Streurer 2007). But we need to agree at least on a general concept if we want to identify the measures of CSR in place, classify their types, the circumstances in which they occur, and finally evaluate their impact on human rights, and social and environmental ends.

The conceptual investigation, which I will develop, can help to identify research questions and cases that mirror the controversies and different ‘souls’ of CSR concept. A possible research question may be: do voluntary and non-voluntary, narrow or broad, neoliberal or left-liberal readings of CSR have to do with its conceptions or with its concept? Once we have removed conceptions of CSR that are not consistent with its core, the appropriate conceptions and policies of CSR may depend on circumstances, institutional settings, quality of hard and soft code, types of relationships between state and non-state actors.

An empirical study that compares, within countries and between countries, companies and non- business actors that appear to interpret the concept in different ways may achieve two important aims. On the one hand, it may help to understand how interpretations of CSR differ and why. On the other hand, it may help establish which interpretations in each country are more successful in achieving economic, social and human rights aims. In this sense, the conceptual investigation that follows can be seen as a preparatory step to any empirical investigation on CSR.

## 2 Definitions and controversies

Current ideas<sup>4</sup> of CSR are based on the notion that companies should undertake tasks that are traditionally regarded as responsibilities of governments. Commitments to social, environmental and human rights aims expand the realm company responsibility to include issues outside the immediate economic interest of shareholders, and to address interests and expectations of workers, consumers, and citizens at large.

Despite a general agreement on this ‘core’ concept of CSR, controversies arise when we attempt to use it to design or evaluate policies. There are many theories of CSR and many labels are used to identify it. CSR has been theorised, for example, in terms of business ethics, corporate philanthropy, environmental sustainability, or corporate citizenship (Windsor 2006; Garriga and Mele 2004, Matten and Moon 2004).<sup>5</sup> Corporate managers often understand the concept differently from policymakers, scholars, and civil society activists. Business people, for example, say that profit is not inconsistent with the achievement of social aims. Many NGOs, by contrast, say that CSR goals should be pursued regardless of their effects on profit.

There are therefore many different understandings of the overarching concept of CSR. In philosophy, this lack of a single definition is called ‘concept contestability’ (Gallie 1956). The philosopher Walter Gallie in the late 1950s introduced this idea to refer to disagreement on notions commonly used in philosophy, notions such as ‘fairness,’ ‘freedom,’ or ‘democracy.’ There is agreement on the abstract meaning of these notions, but disagreement on their applications. Recently, scholars in the fields of sociology, economics, political science, and management have applied Gallie’s theory to the notion of CSR (see among others Moon 2008 and Okoye 2009).

Gallie’s contribution is unfortunately not one that can be automatically assumed, as the meaning of essential contestability is itself controversial. It is not clear whether essential contestability means intractable disagreement on the use of abstract concepts, or the fact that the disagreement is located at the core of the concept and not in its use.<sup>6</sup> This is not the place for dealing with the dispute extensively but, for example, the philosopher and legal scholar Jeremy Waldron (2002) argues that the adjective essential in Gallie’s argument refers to the impossibility to identify a core in abstract concepts. By contrast, his colleague Ronald Dworkin (1986) reads ‘essentially contested’ Rawls as referred to competing accounts of the same concept. In this essay I endorse the last view and argue that, in the case of CSR, the problem is not the essential

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<sup>4</sup> I follow Rawls’s use of “idea” as defined in *Political Liberalism*. “I use ‘ideas’ as the more general term and as covering both concepts and conceptions.” (Rawls 1992: 14)

<sup>5</sup> Adaye Okoye (2009) provides a thorough and up to date overview of the main theories of CSR, and the terminology used to refer to the concept.

<sup>6</sup> Gallie introduced the attribute of essential contestability out of the dissatisfaction for the usual stances held on philosophical questions. Stances commonly assumed are of dogmatism —my answer is right, the others are wrong— or of scepticism — all the answers have the same weight for nothing definitive can be argued on normative matters. Built to solve a problem, the argument gives rise to new ones.

contestability of the concept in itself but the distance between the core concept and the applications, or use we make of it.<sup>7</sup>

CSR concept is broad, vague, and slippery. When we talk about concepts, we do not need a complete account of what they comprise and exclude in order to agree on their general meaning. When we discuss freedom, equality, justice, and other fundamental socio political ideas we tend to recognise what we are talking about because we share a general understanding of these abstract concepts. It is when we attempt to refer these general ideas to particular phenomena that problems begin.

The contrast between concept and conception is... a contrast between levels of abstraction... At the first level agreement collects around discrete ideas that are uncontroversially employed in all interpretations; at the second level the controversy latent in this abstraction is identified and taken up (Dworkin 1986: 70-71).<sup>8</sup>

And John Rawls, summarising the problem at the beginning of *Political Liberalism*, says: "People can agree on the meaning of the concept ... and still be at odds..." (Rawls 1992: 14).

In this paper I am not going to show how Gallie's theory works in the case of CSR concept—Okeye (2009) does it already quite successfully in a recent article. I am going to assume the concept/conception distinction does apply to CSR, and use this distinction to discover the conceptual core that precedes the different understanding of CSR.<sup>9</sup>

A series of dichotomies identify the main contrasting understandings of CSR:

*Voluntary vs. non-voluntary*  
*Soft law vs. hard law*  
*Governance vs. government*  
*Business actors vs. non-business actors*  
*Product of neo-liberalism vs. Reaction to neo-liberalism*

On the left side we find attributes that associate CSR with voluntarism, soft law, 'governance', business actors, and neoliberalism. On the right side we find attributes that associate CSR also with enforcement, hard law, 'government', non-business actors, and reactions against neo-liberalism. I want to argue here not for either side of this dichotomy, but rather that *neither* the left nor right side fully captures the limits and potentials of CSR. We need, instead, to move

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<sup>7</sup> For those interested in a closer overview of the two positions, John Rawls addresses the concept/conception problem in *A Theory of Justice* (1971) and *Political Liberalism* (1992); Jeremy Waldron (2002) and Abbey (2005) also apply Gallie's argument; the former to law and the latter to liberalism.

<sup>8</sup> I am here drawing mainly on Fred D'Agostino's account (1996). In his *Free Public Reason* the political philosopher offers a synthetic and exhaustive review of the difference between concept and conception (D'Agostino 1996: 15-21).

<sup>9</sup> For a similar application of the concept/conception distinction to liberalism, see Sartori (2004).



*beyond* these dichotomies to reveal the *nuances* in the relationship between economy and politics, states and markets, public and private actors, or hard and soft law.

As anticipated in the introduction, the view defended here is that CSR is worth investigation for the old concerns regarding our social life on a shared and finite planet it brings back. These concerns are expressed by the relationship between states, markets, and civil society, and not captured by any of the three by itself. For this reason, it is more appropriate to talk about “public policies” for CSR, rather than just of measures of CSR.

Underlining this policy dimension means to acknowledge that contributions to the end of responsible behaviour in the market sphere come from different actors and are affected by different variables, both institutional and informal. Crane (2008) talks of a variety of drivers of CSR, including civil society, local communities, managers, government, investors and consumers. State and non-state actors are both involved in CSR; soft aspects (managerial and decisional styles, local cultures, implicit codes, incentives) matter as much as hard laws and state regulations. The core of CSR is to be found at the intersection, or better in the continuum, of the public and private spheres; politics and markets; individuals and organizations; hard codes and soft law. The view here defended is that in none of these pairs one of the two sides is irresistibly virtuous or vicious.

The attribute “public” referred to policy for CSR is to be read in two ways. On the one hand, it emphasizes the role of governmental bodies as a driver of social responsible behaviour in economic activities – a role exercised either directly, through initiatives addressed to firms, or indirectly by enabling other actors’ initiatives. On the other hand, ‘public’ refers to the quality of the problems — problems that are of collective concerns and the solutions of which require coordinated efforts by different actors. In either senses *public* as a modifier of *policy* does not imply that governments are, or should be the main authors of the initiatives.<sup>10</sup>

### **3 On old concerns, analogies, and metaphors**

Before proceeding, I want to underline two critical statements that summarise the nature of my argument:

- 1. CSR is interesting because it deals with old and intertwining moral, political, and economic concerns.*

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<sup>10</sup> Yet it does imply that governments should play a role in them and therefore share part of the responsibility with business and other non-state actors. Many recent contributions on the topic of CSR go in this direction and recognise government as one of the drivers. Yet it does imply that governments should play a role in them and therefore share part of the responsibility with business and other non-state actors. Many recent contributions on the topic of CSR go in this direction and recognise government as one of the drivers of CSR. See for example Fox (2002); Moon (2002, 2008); Vogel (2005); Albareda *et al.* (2008); Neal (2008), Steurer (2009); Epstein, (2009).

2. *The relation between politics and the market that lies at the core of CSR can be better understood if we master analogies and metaphors*

I am aware that these statements need to be made more clear, which is what hopefully this essay will do. But since they are the main pillars<sup>11</sup> on which my argument stands – and they answer the crucial question “what is this paper about?” – I would like to spend some words to introduce them.

The two statements summarise both the object and the argumentative strategy of this paper. They are strictly related and in this argument have the same weight. My story could not be told missing one of two. The first statement refers to what makes CSR worth investigating. CSR is interesting because it brings our attention back to important, enduring concerns and offers the occasion to rethink the relation between politics and the market.

Depending on the theory we hold — and before this, depending on the world view we favour — we will use different attributes to qualify this relation. Different views of politics and markets correspond to different ways of distinguishing or assimilating the two parts of the relation. These ways, though, have at least one thing in common: they all address the boundary between the two parts of the relation, the limits between ‘the market and the forum’ (Elster 1986). The attributes we use to qualify the boundary—e.g. sharp, impermeable, fix, shifting, dissolving or fading— reveal something of the way we interpret the relation between the parts this boundary identify.<sup>12</sup> Shamir (2008), for example, talks about dissolving boundary between politics and the market; Brown (2006) about erosion of the boundary, Elster (1986) wants to recover a sharp boundary between politics and economy. As we move on an imaginary continuum between the two extremes of impermeable limits and fading ones, something happens to the two parts of the analogy. We move from a maximum of non - relation to a situation in which the two parts dissolve into one another.

The last considerations bridge us to the second statement about the importance of mastering analogies and metaphors in order to discuss the relation between the market and politics.

The analogy between politics and the market is accurate provided we do two things. First we need to reverse it to take account of the fact that it is not politics that looks—better, should look— like the market, but the other way round. Neoclassical economic and political thought is characterised by a strong normative assumption about the virtue of the market. The neoclassical view is described, especially by its supporters, as a realistic account of politics. But in fact neoclassical views recommend rather than simply describe. The recommendation is that politicians and citizens should behave like sellers and consumers and give up any ‘romance’ about the capacity of politics to rescue

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<sup>11</sup> I chose the image of the pillars thinking more about Ken Follett’s trade book title, than about European Commission’s vocabulary.

<sup>12</sup> For a recent contribution on attributes and theories of the boundaries in the age of globalisation, see Canale (2009).

the market and correct injustice.<sup>13</sup> Yet in the market as in politics, private preferences and choices either *contribute to* or *detract from* collective good. Politics here identifies the conditions of the social life, the space of shared ends and suitable means to achieve them. In this sense, the market, as the sphere of economic activities is not divorced from politics, but strictly linked to it. As a matter of the fact ‘the forum’ included ‘the market,’ the place they were located in the city was the same in ancient Rome.

Second, we need to discuss the nature and location of the *boundary* between the two terms of the analogy, ‘market’ and ‘politics.’ This boundary marks *distinct* but *related* parts. And this is, I think, the account that better represents the actual relation between politics and the market and that is more appropriate to improve our societies. Differently from authors talking about dissolving boundary, what I want to underline is that if the market overflows politics it is because the boundary that is supposed to shape their relationship needs to be redrawn. The boundary has been changing for as long as the entire human history as a consequence of changing ideas about individuals and society and of structural dynamics.

Accepting the analogy and accepting the boundary between markets and politics implies rethinking the relationship between the political and the economic sphere and the roles of different actors— both public and non-public— in it.

#### **4 Freedom and responsibility in the Market and in Politics**

I am going to look more closely at the analogy between markets and politics. This allows me to address directly the neoclassical view of economic and political choices.<sup>14</sup> Furthermore, analogy as a rhetorical figure is still appropriate to describe the relation between politics and markets, a relation in which the two terms look to some extent alike, but are not identical. As the philosopher Hilary Putnam reminds us speaking of the facts/values relation,

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<sup>13</sup> To grasp the normative nuance of neoclassical view of economics and politics see for examples William Riker’s account of democracy in *Liberalism against Populism* (1982), or James Buchanan’s account of politics failures, in “Public Choice. Politics without romance” (2003). For a criticism of the value assumptions of neoclassical economics see Wendy Brown: “Part of what makes neo-liberalism “neo” is that it depicts free markets, free trade and entrepreneurial rationality as achieved and normative, as promulgated through law and through social and economic policy — not simply as occurring by dint of nature” (Brown 2006: 694).

<sup>14</sup> Other theory of economics has smoothed the reductionism of neoclassical view of individual preferences as given, for example underlining the relevance of motivations and intentions other than self-interest in importance of the setting of choice. There is for example a stream of “revisionist public choice.” “the mainstream public choice position is one that emphasizes a relatively narrow conception of self-interest as motivating choice in the political as well as the economic domain. By contrast, revisionist public choice theory seeks to move away from the strict conception of *homo economicus*, and this movement operates in several dimensions.” (Brennan and Hamlin, 2008: 2; Christiano, 2004).

what counts in analogies are differences more than similarities (Putnam 2002). In the style of Putnam, I argue about the appropriateness of sweeping away the dualism between politics and the market, which does not mean to rule out the distinction between the two.

The analogy between politics and the market is a core component of the neoclassical view of political and economic choices. The analogy is usually criticized by opponents of neoclassical economics for reducing politics to the aggregation of self-interested preferences. By contrast, I think this analogy is valid, but in the other direction.

Politics, as the space of shared objectives and concerns, is composed of moral sentiments, principles, and values that go *beyond* questions of mere self-fulfilment. But this is equally true of the market. Thinkers such as Adam Smith, John Stuart Mill and, more recently, Amartya Sen are *both* moral philosophers *and* economists, because they investigate the relationship between moral sentiment and the distribution of wealth and other public goods. In the thought of these philosophers, the notions of 'self-interest' and 'freedom' have a broader meaning than is often acknowledged. Classical economics, at its offspring and in its contemporary versions, holds that moral, political and economic concerns are inextricable.

Adam Smith similarly to his contemporary philosophy *confrères*, Scottish and French, unveils the irresistible link between economic and politics. In both his major works, Smith argues for the connection between political and economic freedom, which is closer to Smith ideas about political justice than any apology of markets wisdom, as it has been underlined recently by economic historians (Rothschild 1992; Walsh 2000).

Unfortunately the contribution of Smith the radical thinker, the friend of Hume and Voltaire, was obscured by his first biographer Dugald Stewart. In his attempt to defend himself from prosecution and Smith's name from ostracism, Stewart was indeed successful. Smith shifted from being a revolutionary scholar, at least until mid 1790s, to being the conservative philosopher of economic freedom and established institutions (Rothschild 1992: 75).

Vivian Walsh's rescue of Smith as a moral and political thinker focuses on the notions of self-interest and freedom. Walsh (2000) underlines how Smith's self-interest is not captured by present aims or goals, but it requires taking into account all our foreseeable future needs. As Walsh puts it, according to Smith true self-interest, differently from simplified and reductive versions of it, requires focusing on life-long interests as opposed to present aims (Walsh 2000: 10).

Self-interest so interpreted comprises a strong moral and political dimension, besides the economic one. Such dimension is at stake when individuals deal with concerns that are broader in space and time than the fulfilment of particularistic, short-term, or raw desires. In Smith and classical economics, we find an entanglement between economic facts and moral values, rather than a sharp dichotomy. According to Walsh, Sen has rescued Smith from the neoclassical view of self-interest as gross, short terms self-indulgence (Walsh 2000: 11). And in fact, Sen's capability approach is derived, as Sen himself points out, from Smith. In Sen's reinterpretation of poverty as

lack of capability rather than lack of income, as inability to function in a certain society, the moral, the political and the economic concerns are inextricable.

There is nothing new in claiming that economy has always been political. Economy has to do with the construction and survival of societies, and the well-being of its individuals. The contemporary globalized world unveils this strict connection and calls our attention once again on the relationship between politics and the market.

In his homonymous essay Jon Elster criticizes the analogy between “the market and the forum” that wants to reduce choices in the forum to choices in the private market arena (self-interested, affecting only the chooser). Elster defends a more demanding view of politics than the neo-classical view of rational choice theorists. I follow Elster in his critique of neo-classical economics, but I depart from him when I argue that the analogy should be maintained and reversed to explore normative and policy implications of the relationship between markets and politics, between markets and morality.

The idea of CSR has the merit of encouraging such a reversion of the analogy. It challenges us to rethink the interaction among state, markets and civil society and the role of different actors in it. The two terms of the analogy – politics and the market – are distinct but they present similarities. Actors’ moral responsibility is implied when they act in the market as in politics. Choices in the market – consumers’ choices, producers’ choices – similarly choices in politics have to do with the good of third parties.

Reversing the analogy between politics and economy enables us to gain a deeper understanding of the notions of freedom and responsibility as political rather than merely economic. Emphasis on freedom and responsibility is often seen as the product of neoliberal emphasis on private solutions to public problems. As politics retreats in failure or impotence, market mechanisms of regulation advance, and with them emphasis on voluntary economic behaviours.

Critics of neoliberalism often extend their suspicion towards neo-liberal political logic and intentions, to the very ideas of freedom and responsibility that accompany it. But this suspicion rests on a fundamental misunderstanding of freedom and responsibility. The pursuit of one’s self-interest is not freedom at least not as it is conceived in either classical or contemporary political liberalism. Freedom is not the same in neoliberalism and liberalism, which represent two very different views of politics and economy.

In the terms of classical liberalism, focus on market choice is just as likely to *endanger* individual freedom, as it is to *realize* it. When citizens approach political decisions as they approach houses or cars, as the neoliberal view of politics would suggest, they give up the task of evaluating political institutions. By contrast, *classical* liberalism emphasizes the responsibility of citizens to act and choose in the public interest. In classical liberalism, unlike in neoliberalism, freedom is a *demanding* concept. The core meaning of freedom we find in Locke, Kant, Smith, and John Mill is the freedom to check and remove illegitimate power in the private, as well as the in public sphere. It is not merely to assert private interests or ownership. Freedom, in classical liberalism, means *responsibility* at its higher degree. Freedom may become so explicitly demanding

in certain liberal accounts that some critics have referred to it as “self-tyranny” (Berlin 1969).<sup>15</sup>

## 5 CSR: neoliberal or liberal?

CSR is based on this demanding notion of freedom and responsibility. CSR refers to mechanisms of voluntary, autonomous behavioural control. It echoes the account of freedom and responsibility of classical liberalism, not of neoliberalism. Freedom is control over one’s choices achieved through rational scrutiny, evaluation of the quality of the actors’ interests and desires in the light of their impact on third parties — for example the chooser itself in the future, the rest of the planet, or future generations.

Since it is neoliberalism not liberalism that is usually referred to in the debate on CSR, I would like to say some words to distinguish the two.

Liberalism is a theory of politics and society, and *therefore* also an economic theory. It includes social contract theorists such as Locke and Kant, and quasi-utilitarian ones as Mill.<sup>16</sup> By contrast, neoliberalism is what political theorist Wendy Brown calls an “impure” version of classical economic liberalism (Brown, 2006: 694). This ‘impurity’ rests in the neoliberal requirement that states support markets through laws and policies, but do not interfere in matters of wealth distribution. In neoliberalism, the criteria of productivity, efficiency, and profitability are *substitutes* for the *juridical* criteria that otherwise govern the sphere of politics (Brown 2006: 693-696).

In criticising neo-liberalism, it is important to address the interplay between *facts* and *values*. On the one hand, the shift from ‘government’ to so-called ‘governance,’ from top-down to diffused authority, results from certain unavoidable facts: welfare states are overstretched, governments are increasingly indebted, inefficient, and ineffective in dealing with social problems. But the *choice* of *where* to spend and *where* to cut—*where* to interfere and *where* to retreat—is a matter of value priorities, not just ‘facts.’ And about this interplay between facts and values, it is interesting to note, together with Brown, how in neo-liberal times corporate responsibility became the “watchword” of both left liberals and neo-conservatives. Supposedly animated by very different motives, both parts lament the emptiness of moral meaning that characterizes free market capitalism (Brown 2006). Both sides invoke CSR to moralize the market. Other readings of the current neo-liberal times, underline the dark side of the “the moralization of the market,” and call CSR a product of neo-liberalism, and not a reaction to it.

Roner Shamir, for example, analyses this moralization as one of the two processes that characterize the shift from government to governance. The market assumes direct responsibility for issues traditionally confined to politics, as politics progressively abdicates its tasks of regulation and control, to assume

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<sup>15</sup> On this point, see Isaiah Berlin’s famous reading of Kant’s and Mill’s instable positions between Locke and Rousseau in *Two concepts of liberty* (1969).

<sup>16</sup> On the eccentricity of Mill, see *Mill on Liberty. A defence*, by John Gray. See also Gray (1983) for an historical and philosophical account of liberalism, and my “Think liberalism?” on different conceptions of liberalism as a political theory (Lebano 2009).

the more sustainable role of partner for other private sources of authorities ('the economization of politics') (Shamir 2008). The result of the two combined processes is a morality that has lost its normative and prescriptive character to turn into business opportunity. A morality so embedded in the market so as to become 'toothless.'

Brown and Shamir provide a good example of criticism 'from within' and 'from outside.'<sup>17</sup> The two critiques are very similar in their premises and focus, yet Brown's critique of neo-liberalism 'from within' is more accurate than the more widespread critiques from outside, in Shamir's style. To anticipate the argument of those pointing at the risk of being partisan in criticizing what is too close to us, I will only underline that distance in itself does not make us better critics (Walzer 2002). Tendentious account of our adversaries' thoughts and behaviours are at least as frequent as the accounts vitiated by excess of indulgence for what we care about. But I think that the danger on oversimplifying foes' theories is more pernicious for at least two reasons. First, because it is a closer risk — we tend to think that the so-called critical distance is a safer path to good criticism. Second, because it both diminishes the fair-play of the knowledge enterprise and weakens our arguments. How much theoretical value has the defeat of a hopeless theory? I am aware, of course, that for scholars who are not saints, the temptation is great.

We would like things to be either black or white, but the 'morality of the market' is too nuanced for this. The interplay between market, politics, and morality requires us to make distinctions and find similarities, for example distinguishing between liberalism and neoliberalism when we talk about large concepts like freedom, justice, and, indeed, 'corporate social responsibility.' CSR is therefore useful because it challenges us to question dichotomies and easy labels.<sup>18</sup>

In the last section I will address another important dichotomy that characterises the debate on CSR: the opposition between voluntary and hard regulation. I will then link this dichotomy to the unresolved question of the divide between means and ends in politics.

## 6 Soft and hard law, means and ends. Walking the line

The divide between hard and soft laws is echoed in the dispute over voluntary *versus* non-voluntary measures as the appropriate means to foster social responsible behaviour. Because CSR refers to a relation between public and private actors characterised by the shift from the logic of linear top-down authority to diffused horizontal network of authorities, it questions the

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<sup>17</sup> For the distinction between criticism 'from outside' and criticism "from within," see Michael Walzer's argument in *The Company of Critics* (1998, second edition 2002) and Nadia Urbinati's distinction between 'radical criticism' and 'criticism from within' (Urbinati 2009).

<sup>18</sup> In many cases unsound adversary attitude does not help. The label CSR is used as much by left and by right critics of neo-liberalism; Kant and Mill are theorists of negative liberty, as much as the far-too-liberal Locke, but at the same time they embrace positive liberty, just as the not-exactly-liberal Rousseau.

discontinuity between hard and soft law, and the supposed superiority of the first.

Generally speaking, soft law refers to mechanisms of regulations the normativity of which does not rely on binding rules and sanctions. By contrast, hard law refers to the regulations proceeding from the state in its legislative function (Di Robilant, 2006: 499).

On the specific issue of voluntary against non-voluntary measures of CSR, we can identify two extreme positions: the enthusiasts of soft laws as opposed to the sceptics of it and defenders of hard codes. The enthusiasts hold soft law to be flexible, modest and tailored on real problems, and hard law to be slow, expensive and distant from real problems and feasible solutions.<sup>19</sup> By contrast, the sceptics lament its lack of coherence, accountability and democracy, as well as effectiveness. At the same time they underline the distinctiveness and superiority of hard law and the danger of shortening the distance between the two.<sup>20</sup> The suspicion against soft law rises partly because of the special place that the legislative power occupies in liberal-democracy as defence against arbitrary power — not just illegitimate state power, but the power of any stronger part over weaker ones. Arguments in favour of soft law are therefore opposed because they appear to downsize the relevance of the rule of law by claiming the efficacy and legitimacy of other form of regulations.

I proposed to look closer at the two positions to better grasp their connections with the other dichotomies that we saw characterizing the concept of CSR. I will first continue with a “dramatized” account of the contrasting aspects, in order to set the problem. In the development of my argument nuances within each side should emerge.

For the enthusiasts of voluntarism and soft law, the path goes roughly from recognising the moral responsibility of economic actors, to claiming that binding regulations would endanger this responsibility. In making the danger explicit, they refers to matters of principles (responsible behaviour cannot be imposed, it must be spontaneously endorsed, or it would cease being responsible) and to matters of facts (command-and control measures are expensive and ineffective). By contrast, the sceptics of voluntary measures who defend hard codes appeal to coherence, certainty and democracy, which hard law has and soft law lacks. They cite the proliferation of self-imposed and self-monitored codes of conduct of dubious effects to ground their opposition to soft-law and voluntarism in facts, and not just theoretical and moral tastes (Neal 2008, Epstein 2009, Vogel 2005). Yet a different line of criticism of the

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<sup>19</sup> Anna Di Robilant distinguishes between a “neo-medievalist” and a “social genealogy” of soft law, both underlining the merits of soft law. In the author’s words, the first genealogy depicts soft law as “the ideal tool for strengthening the European market, eliminating the obstacles resulting from the diversity of national laws and responding to the actual needs and demands of the business community.” The second genealogy underlines “soft law pluralistic dimension and social potential” (De Robilant, 2006: 502-503).

<sup>20</sup> See for example J. Klabbbers, “The Redundancy of Soft Law,” in «Nordic Journal of International Law», 65, 1996, pp. 167-182; J.J. Kirton, M.J. Trebilcock (eds.), *Soft Law and the Elusive Quest for Sustainable Global Governance*, Aldershot, Ashgate, 2004. For a critical assessment of the sceptic position, see Pariotti (2009).



soft-hard law divide moves beyond these two extreme views and claims for redrawing the line between hard and soft, on the basis of theoretical and empirical arguments.

The legal scholar Graft-Peter Calliess, for example, addresses the conditions for crossing the line between hard and soft law in global governance regimes. As a matter of fact, global governance regimes, he argues, often pass this line as they are based both on hard law and social norms and have the potential and legitimacy to swing from soft to hard codes (Calliess 2009: 273). Calliess identifies two conditions for the shift from soft to hard law. First, soft law must provide an impartial dispute-resolution procedure; second, it must save a memory of past decisions. The first condition refers to the possibility of resolving a dispute about what is legal *versus* what is illegal by means of a third party, just like in the case of hard law. The second condition refers to the mechanism to stabilize normative expectations of a society. Hard law enables people not to relinquish their expectations about what is legal/illegal, even when the expectations are not fulfilled in a specific case. According to Calliess, legal systems can evolve through the aid of other forms of regulations, providing these regulations satisfy the two conditions.

This evolution, the author argues, is already taking place, because when hard codes fail to succeed in behaviour control or dispute resolution, due for example to their formalism, alternative mechanisms take their place. Some of these mechanisms compete with hard law both at performance (the first condition for trespassing the line) and at function level (the second condition for trespassing the line from social norms to law). The author cites *lex mercatoria* and internet regulations as examples of regulations that go beyond the hard vs. soft dichotomy by fulfilling both the conditions. While other regulations, such as CSR, competes with hard law only at the level of performance.

CSR in Calliess's account is an example of how corporate behaviour can be regulated by social norms. CSR is a governance mechanism that competes with hard codes in performing behavioural control, but not as alternative dispute resolution. The irresponsible behaviour is sanctioned by public opinion and not by the state. CSR is defined as codes of conduct voluntarily adopted by companies to commit themselves to social and environmental responsible behaviour. CSR guidelines are not directly legally binding, so they cannot be used to resolve conflicts, yet they can be a means for producing social pressure that in the long run will produce changes (Calliess 2009: 271-273). Public self-commitment to responsible behaviour becomes an effective means for change because publicity is directly linked to accountability.

Robert Goodin provides a similar statement about the link between publicity and accountability, and the normative force of mechanisms that do not rely on sanctions other than bad publicity and public embarrassment. He criticises the scepticism of what he calls 'hobbesian realpolitik tradition' towards 'toothless' accountability mechanism (Goodin 1992: 135). Sceptics' objection is that obligation to tell publicly a good story — a story of good management, or of environmentally responsible public procurement — is not a sufficient constraint to irresponsible behaviour. Conversely, Goodin argues not just theoretically, but on the bases of cases, that being exposed to public shame

may actually induce people to internalise moral norms, to be become accountable. After all, what is today's law was yesterday social norm, encouraging or discouraging certain behaviours (See also Epstein 2009 on the same point). Yet the passage between soft and hard may as well proceeds in the opposite direction, from hard codes to soft codes and social norms. But in this case hard code should not retreat even though they have been interiorised. A retreat of hard code to leave space to soft code, would be like saying that after have been punishing the homicide of an unfaithful wife as a crime for decades, we can now rely on the interiorization of the hard code we can stop sending *uxoricides* to prison and count, instead, on public shame. Besides the above provocation, a way to argue in favour of maintaining hard code even in those situations in which the rules have been interiorised is that keeping the law in place is both effective and efficient. Hard codes are still good incentives not to misbehave and when fewer and fewer people do misbehave they are also quite cheap.

A further argument of the sceptics of soft law, as I mentioned at the beginning of the section, underlines its uncertainty and the evanescence of its boundaries, but mostly, its lack of democratic legitimacy. Who are the extensors of soft law and why should we trust them to work in the interest of responsible behaviours in the market or in politics? According to this line of critique, state laws should be overriding because they are legitimately produced through democratic mechanisms. In this view, supporters of soft laws need to answer two main questions: what are the criteria for regulations to be soft laws? What is the relation between soft law and democracy? (Pariotti 2009)

Concerning the first question and the problem of the criteria, authors who defend continuity between hard and soft law, hold that these criteria should balance between strictness and flexibility. They should not be too strict, in order to avoid a state-centric views. And they should not be too loose and inclusive, in order to avoid that any social, economic, cultural pressure or practice results in a norm. The objective in this case is to find the right balance between hard and soft modes of juridical normativity (Pariotti 2009).

Concerning the second question and the problem of democracy and soft law, the matter under discussion is how the spread of soft law affects democracy. Some authors have underlined that we can reconcile self-regulating behaviour of non-state actors with democratic legitimacy once we redefine democracy and move beyond a merely procedural conception and closer to forms of participatory and reflective democracy (Mertus 1999). Thoughts and critiques to democracy, Mertus underlines, are triggered by the contemporary state of affairs characterized by globalisation and neo-liberal devaluation of democracy and legal standards in favour of privatization of authority and rules.

Some of these critiques claim for de-politicization in favour of deliberation (Pettit 2004, 2003; Elster 1986). Others instead claim for more participatory—democracy from below (Mertus 1999, Brown 2006, Urbinati 2010). There is a thin line between the two criticisms to procedural democracy, but this is not surprising, since both criticisms build on Jean-Jacques Rousseau's political theory.

The first line of criticism calls for *less* democracy (in the sense of majority decisions) and more rational deliberation through dedicated bodies of citizens.

It refers to Rousseau as the father of consensual and deliberative democracy, rather than of majoritarianism.<sup>21</sup> The ISO 26000 standards of social responsibility, for example, may be seen as the results of a non democratic, but deliberative setting of decision. The second line of criticism calls for *more* democracy, but of a different kind—democracy from below as opposed to institutionalised representative democracy, and appeal to Rousseau’s idea of democracy as self-government. In her appeal to “doing democracy differently.” This appeal to democracy of a different kind could be an argument to defend the actions of NGOs against the accusation of being illegitimated because not democratically elected. On this regards, Mertus argues that strict conditions of participation, transparency and accountability should be in place and they should include national and trans-national civil society, in order to substantially improve democracy and its processes.<sup>22</sup> I would add that strict conditions are required also to avoid that substantive, participatory democracy translates into appeals to the “will of all” of a bad populist kind. Rousseau himself was careful in distinguishing the “general will” from the “will of all.” The first is the will of the people when they are deliberating for the general, and not for the particularistic good, on the basis of their considered judgments, and not just raw self-interests. The second is the mere aggregation of the votes of contingent majorities.<sup>23</sup>

The heterogeneity of thoughts and criticisms that characterises ideas and practices of democracy challenges those who defend the continuity between hard and soft law. The dichotomy between binding and non-binding normative tools, according to many authors, loses importance. The so-called soft law is after all still based on standards, it has a system of accountability, and it is effective in filling the gaps of hard law (Pariotti 2009: 101). Its informality and bottom-up character is argued to take better into account the cultural specificities that influence the respects of the norms. What prevents soft law from becoming a legitimate normative tool is a still dominant positivistic idea of law.<sup>24</sup>

In this view, rather than worrying for the lack of democratic legitimacy, we should engage with more substantial conceptions of democracy. Because, Pariotti continues, it is time to move beyond the dichotomy between a world in which juridical community and political community overlap via the rule of law and one in which norms are produced by private actors and the civil society. The dichotomy does not represent the current state of the world in which law

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<sup>21</sup> This is a difference that both critics from the left and from the right omit to underline. Radical left critics share one of their dearest dichotomies (the Locke vs. Rousseau one) with their neoliberal foes, even though they stand on opposite sides of the boundary. For an account of Rousseau’s duality, see Gaus (1997), Burgio (1989), Cohen (1986) and my “Is Rawls a populist? Liberalism and ‘good’ and ‘bad’ populism,” MPSA-Paper, Chicago 2009.

<sup>22</sup> On the role of civil society, voluntary associations as a key too improve democratic states, see Joshua Cohen’s and Joel Rogers’s article in *Associations and Democracy: the real utopias project* (1995).

<sup>23</sup> On the fundamentals of the social contract, not majority but consensus is requires. Rousseau ([1762] 1973).

<sup>24</sup> On this point see also Calliess and Renner (2009).

becomes autonomous from nation-states and their politics and subjected to the influence of other actors and dynamics (e.g. business and civil society actors and economics dynamics) (Pariotti, 2009: 104). Pariotti does not argue that law is arbitrary, as post-modern conceptions of law do, but that it has a rationality that precedes and overcomes nation state boundaries. Governing is no longer an exclusive prerogative of nation-states in the age of governance, when the capacity of governing has been dispersed among a wide range of state, non-state and transnational actors.<sup>25</sup> This may as well be the case, but the way we manage the shift from procedural to substantial ideals and practices of democracy, and bridge the gap between government and governance still makes a difference. The link between means and ends is a crucial one, either when discussing ideals of democracy, or when defending tools of regulations in times of governance.

CSR seems based on the idea that soft law is better than hard law. Rules, regulations, and codes seem more and more autonomous from nation-states and their politics, more and more subjected to the influence of other actors and more voluntary dynamics (for example, business and civil society actors and economics dynamics). Voluntarism and autonomous regulations are therefore key aspects of the concept of CSR. But, returning to the distinction with which I began, do these ideas refer to the concept of CSR, or are they merely one *conception* of it?

Voluntarism, I think, does *not* lie at the core of CSR concept. Voluntarism is not related to CSR's ends, but rather to its means. Yet CSR is not only about means, or *particular measures*, but also about ends: fair distribution of rights and resources in the interests of each and every person. Voluntary or non-voluntary, narrow or broad, neo-liberal or left-liberal readings of CSR *all* have to do with *conceptions*, not with the core *concept*. The *concept* of CSR has to do with *ends*. Behaving in a responsible way in the economic sphere, when producing, distributing, consuming goods, or when dealing with the waste generated by consumer society, requires *hard* as well as *soft* regulations. Voluntary as well as non-voluntary measures are both appropriate, depending on the institutional setting, quality of existing laws, and the kinds of relationships between state and non-state actors that exist in particular places.

## 7 Conclusions: What's in a name?

There are views that contrast states and markets and consider them two worlds apart. Holders of these views, in some cases, stretch the politics and the market opposition to the point that they hope one of the two worlds absorbs and cancels the other – since genuine non-interference appears to be neither feasible nor desirable. Adversarial views of politics and the market are held both by apologists and castigators of the markets. My argument started not just from the dissatisfaction with such views and their Manichaeism. In this essay I wanted to appreciate that other ways of the relation between politics and the

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<sup>25</sup> “[t]he essence of governance is its focus on governing mechanisms which do not rest on recourse to the authority and sanctions of governments” (Stoker 1998:17).

market are possible. Contributions that investigate these ways are useful to improve theory soundness and policy efficacy.

The prerogative of this kind of reading is that it maintains the boundary between markets and politics, while redefining this boundary as a means of relation, exchange, and coordination. Boundaries and limits, are not merely barriers that prevent expression and communication, they are, to use Kant's insight, enabling conditions.

When contemporary socio-economical, political or legal scholars talk about the flood of the economic into the political sphere, they are describing a boundary that seems no longer suitable to shape the exchange between the two sides. I think that to question the quality of the boundary – an artificial boundary that is still there to be discussed and redesigned – is a more important task than claiming for the boundary break to the advantage of either the 'market or the forum.'

My argument builds on two distinct points. First, 'politics and market analogy' can be maintained, but should be reversed. Second, the two terms of this analogy (as in any analogy) share some features, but are distinct, because there is a boundary in place between them. We see this boundary shifting and broadening the market or the politics side, depending on contingencies, and interests of powerful actors (but also depending on fashionable lines of criticism). When we hold a more normative or philosophical view of this boundary, we want to discuss the quality of it, and the justice and well-being that it allows or prevents. Once cleared the field from easy adversary attitudes, there is something that can be said about how to make the boundary more consistent with the current state of affairs and the ends of global justice.

Social and environmental urgencies, welfare state-overstretch, globalized competition, information technology spread, and the multiplication of players and rules of governance call theorists and practitioners to think about more appropriate limits between the market and politics. Markets and politics are distinct, and this distinction is important, but they cannot and should not be conceived as *alternatives*. Discussing the limits means to look for solutions to improve their relationship that are both feasible and desirable, and CSR policies can be among these solutions.

I would like to conclude by raising a question: what happens when we change the name 'CSR'? Do we change the name to our conception of CSR, or do we change concept?

Different labels are used to evoke different conceptions of CSR. The label renames the concept to make explicit the conception of CSR proposed. This is what John Rawls did about the concept of justice, when he named his theory "Justice as Fairness." In other words, the proposition is "CSR as X," where X is the conception we choose to defend, but the subject is still CSR. But it is also possible to change concept when changing name. In this case, we might change the very name 'CSR' because we are abandoning the concept altogether. This is what Simone de Beauvoir did about women's condition, when she argued it was not a matter of equality, but of freedom. The proposition here becomes "Not CSR, but rather Y," where Y is some new concept, a different subject matter that we think more useful in framing the

relationship between market and politics. Both these possibilities demand better insight into what the concept of CSR includes and what it excludes.

In this paper I argued that the concept of CSR has to do with the morality of the market—the old entanglement among moral, political and economic concerns that has been at the centre of philosophical, economic and political theories before the rise of any disciplinary boundary. This is the rediscovery of old concerns that CSR puts forward, and in it rests its core, that precedes its name.

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