Article 41 of the Italian Constitution and the Italian Model of Corporate Social Responsibility

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Abstract

Article 41 of the Italian Constitution is composed of three important provisions: the first one establishes the principle of free economic activity, the second one is about its limitations while the third one sets out the way public intervention – seen as necessary to the direction and co-ordination of economic activity – may take place. A proposal for reforming is possible in the new economy to achieve a CSR model.

Keywords: *Italian constitution, social responsibility, private economic, CSR model.*

JEL classification: M10, M14

1. Article 41 of the Italian Constitution: an introduction

Private economic initiative is free.

It shall not be contrary to public benefit or do harm to safety, freedom, human dignity.

The law shall provide appropriate programmes and controls so that public and private economic activities may be directed and co-ordinated for social purposes.

Article 41 of the Italian Constitution is composed of three important provisions: the first one establishes the principle of free economic activity, the second one is about its limitations while the third one sets out the way public intervention – seen as necessary to the direction and co-ordination of economic activity – may take place. The text mirrors, particularly when read together with articles 42, 43 and 44, the compromise reached by members of the three major schools – the Marxist, the Catholic and the Liberal – that met in our constituent Assembly. The mediation stated the necessary co-existence of private activity and public intervention in the economy, albeit envisaging a complementary relationship between the two, or at least a compatible and consistent one, in order to reach the social purposes mentioned in the charter. The constitutional attempt is twofold: *'to eliminate any condition of privilege; to guarantee the full and free expression of the human being, creating all the necessary pre-conditions such as freedom from need, substantial equality, actual participation to social life'.* Economic activity

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may in fact be considered an *'intermediate society'* through which the individual, who is not always in a position to take part in the administration of public affairs, contributes *de facto* to the definition of common interests and demands when advancing his own needs. At that time, halfway through a transition from a mixed economy to a regulated one, the guiding perspective for the Assembly was to ensure the safety, freedom and dignity of the human being, particularly with relation to working issues and the labour market. In our Constitution this dimension of the human being is so important that the State is called upon to check that the right to work is not substantially compromised by the notion of subordination implicit in industrial relations. Individuals, therefore, must be protected from within those very relations. Temistocle Martines explicitly says that *'the private entrepreneur, in other words, must guarantee dignity, safety and freedom to his employees'* (1984). This perspective still makes sense, but demands to be *updated* and enhanced, looking carefully at the meaning of social utility and at every other dimension of modern life. *'New rights'* cannot be ignored, especially those related to the different roles citizens play in relation to private economic initiative, such as worker, consumer, customer, entrepreneur, investor, user etc.

Back to the law: private economic initiative is free. The first paragraph of article 41 describes what is at the same time an inviolable right and power of the market economy, which gives everyone the freedom to start, run and end an economic activity. It is worth stressing that any such activity becomes viable only if certain pre-conditions – infrastructural, regulatory, fiscal, technological, financial, educational – apply. At the same time private economic initiative is not unlimited and uncontrolled, like it might have been at the time of classic liberalism, but it is constitutionally conceived as operating within a grid of specific limits and policies set by the State in order to better *socialize* the goals of the economic system. It should not be underestimated, however, the strong and decisive presence of the State in the Italian economy. That has made its action and intervention in almost any field of economic activity virtually irreplaceable, heavily affecting our managerial culture, which is still bound by the intervention patterns of a certain State capitalism and not fully open to the notion of free market economy. We might say that over the years the Italian economy has become somehow worn-out and less private.

According to the Constitution, economic activity cannot take place in a way that may be contrary to social utility or that could jeopardize safety (not only at work, but also in relation to environmental issues, food consumption, social life etc.), freedom (in its various forms: personal, religious, contractual, work-related etc.) and dignity of the human being. The provision in question is above all a political one, but it is also vague and imprecise, as some of our founding fathers also stressed. This paragraph of our Constitution should be completely reversed counting on the (few) genuine trends related to the increase of corporate responsibility towards society, and avoiding the hidden traps (which are many) of a pseudo-corporate absolutism or of some sort of institutional hegemony. Any form of economic activity can and indeed must be carried out fostering social utility and guaranteeing safety not only for workers but for citizens in general, freedom for each and every individual, regardless of origin and race, and human dignity. Our Constitution does not provide a definition of social utility, even though the dynamic through which the utility of a community is attained day by day and faces (or clashes with) individual and corporate utility is today very clear. Over the past forty years we have moved from the study and analysis of the *Theories of profit* by Milton Friedman (1970), according to whom any social activity outside the maximization of profit should be seen as a theft at the expense of shareholders, to the variegated and complex *Theories of value* (1990) which focus on the maximization of stock prices, up to the most recent developments of the *Theories of corporate social responsibility* (2000). They consider the company as lying at the centre of a system of values, where the many, diverse and often conflicting interests involved are hardly merely financial. Even from a regulatory point of view, some corporate entities have been given a different *legal citizenship*: the social company was eventually regulated as a testament to changes occurring at corporate level. Also significant is the focus, placed once more by national legislature, on social accountability in the public sector with the Ministerial Directive on Public Administration, issued in 2006.

Finally, just a few notes on the third paragraph of art. 41. First of all there is the obvious need for a suitable system of planning and control of both public and private economic activities: the system needs less direct intervention and a greater commitment to the orientation and co-ordination of business goals, and therefore of the national economy as a whole, towards social ends. *Planning* in a mixed economy State is a paramount tool to promote the involvement of private and public players in the process of economic and social development. It is essential (also to make them more and more efficient) to clearly define ways and procedures to be followed in order to lay out any economic plan, regardless of the doctrinal disputes between lawyers and economists, however interesting and stimulating, about the plan content and its possible imperative nature. Promoting effective *democratic planning* becomes therefore very important. That is a planning activity carried out with the active involvement of social and political players, local bodies and all stakeholders entitled to the definition of goals and targets without interfering with the Parliament's prerogative. It is quite safe to assume that the attention our constitutional fathers paid to this issue has not been matched by subsequent legislative production and government policies. Italy in fact shows some weaknesses that have *de facto* offset the constitutional provisions in question: a) there is a strong discrepancy between legal requirements regarding economic activities and actual corporate conduct, b) state intervention has proved consistently inefficient and severely lacking in clear mid- and long-term strategies, c) ordinary law is certainly inadequate for government economic planning, d) state control exerted on private (and non-) economic activities is unquestionably weak, disorganized and very often ineffective.

It would be easy to criticize recent bills on – just to name a few cases – false accounting and financial crimes, bailouts of public companies, financial planning based on retrospective logic or a recent bill concerning the so-called tax shelter. At the risk of appearing hasty or superficial, we can say that Italian companies have indeed been offered *good examples* of social irresponsibility by their own State. One cannot disagree with Fabrizio Pezzani on the need for a *'pact of lucidity'* (2008), but that should be preceded by a *'pact of morality'*, through which the general interest could again be seen as more important than any particular one.

2. The evolution of CSR analysis with relation to the Italian context (and beyond)

The market, meeting point between supply and demand of goods and services, works as long as any number of relations based on trust can thrive in it: man, first cell of the global community, tends to act and organize his life socially, depending from and conditioning other human beings, triggering processes based either on conflict or on reciprocity. Following the proposed classification highlighted by Lorenzo Sacconi (1991) it has been acknowledged that, in order to address the *"matter of business ethics"*, the study of business macro-ethics (a system of moral assessment of economic institutions) and of meso-ethics (ethical assessment of single companies and institutions) should go together with the study of business micro-ethics (the assessment regarding single managers and businessmen and the complex web of their social relations). The need to focus on single economic players, meaning individual companies and the men who run them, is now universally acknowledged. Great attention is also being paid to that common feeling which permeates companies, men and markets: trust. Even if we adopt, as Guido Rossi does, a predominantly legal approach, we can safely assume that *'at the basis of any market system and of any exchange economy lies a conflict between individual and divergent interests, whose solution is reached through a contract'* (2003, 2006, 2008), which in turn implies the existence of trust between the parties. Trust therefore is what ultimately makes markets work, and a key factor to consider when assessing conduct and responsibilities of managers and businessmen. The issue is taken up by Luigino Bruni and Stefano Zamagni, according to whom *'sealing a contractual agreement always implies the parties' renunciation to full control of the relevant circumstances and therefore requires a certain degree of mutual trust and reliability'* (2004).

The issue of corporate social responsibility can therefore be studied along several lines and every time seems to lead to a new perspective, or simply to the least explored one.

A socially responsible company can be shortly defined as:

- a company whose management merely complies with existing rules and regulations,
- a company that puts in place offset policies to compensate any social utility presumably lost on a larger scale,
- a company that pursues its own goals in line with more general interests.

It is quite clear that mere compliance is a necessary – but not yet sufficient – condition in order to consider a company as socially responsible. Both the inconsistency in the standards taken into account during the years, and the virtual impossibility of properly assessing the system of individual, corporate and social values do not automatically make socially responsible a company whose actions were informed by mere compliance with current legal requirements. For the same reason, it would be difficult to say that mere *attention to social issues* or a simple act of patronage are sufficient factors to address the question whether a company could be considered socially responsible or not. We are talking here, at least in some cases, about nothing more than *standard compensation clauses*, often adopted trying to offset the consequences of a socially irresponsible conduct. These policies can be described at best as marketing-driven, devised in the attempt to boost corporate image and reputation. As such, they are basically the result of calculation. To find an answer we may have to move to the outer boundary *between corporate and social interest*, to the crest where different responsibilities meet: corporate social responsibility should be measured looking at the capacity of the company in question to comprehend (*cum prehendere*) the others' (employees, State, customers etc) interests, maybe trying to go beyond the ancient golden rule *'that which is hateful to you, do not do to your fellow'* or much further than just '*assume responsibility for all the other stakeholders who contribute to the life of the business',* as recently proposed by Pope Benedict XVI (2009).

What are we exactly supposed to think of, the moment we find ourselves facing the vast area of corporate social responsibility, whose borders are still indefinite and perhaps indefinable. The company is indeed an entity able to produce income and create wealth, but above all it is a spontaneous community, an aggregation of human beings. As noted by Pope John Paul II: *'In fact the purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a community of persons who in various ways are endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society. Profit is a regulator of the life of a business, but it is not the only one; other human and moral factors must also be considered which, in the long term, are at least equally important for the life of a business'* (1991).

The notion that the company holds a responsibility that goes beyond its men and its markets and that the width of its influence on the surrounding environment has been in constant motion, is nowadays widely acknowledged.

Asking ourselves some questions could now be useful:

➢ Is there a link between making profits, which for any company is essential to its survival, and the social role the company plays? Is it possible, in other words, to consider – and judge accordingly – the ethics of modern global capitalism, largely financial and immaterial, as no longer solely based on the utilitarian principle of profit maximization, well defined and established in itself, but rather on the notion of responsibility, whose definition is in many ways more difficult and uncertain?

- Can we assume that modern capitalism has come to an end and that contemporary capitalism is ready for a full, true and genuine integration of its many different functions? According to an utilitarian perspective, as a weakened company enters crisis stage it is no longer able to expand its system of values, while on the other hand development and growth allow the company to look beyond profit and to firmly focus on social issues. The matter is open to debate and is certainly not irrelevant. Generating wealth is of course socially commendable, as long as the value being created is viewed as incompatible with the destruction or depletion of other resources, whether individual or collective, present or future, tangible or intangible, social or environmental, while any wealth balance should not be assessed in relation to single corporate stakeholders, but to the socio-economic system as a whole. The very definition of sustainable development seems to confirm what has just been said: it is the kind of development that *'meets the needs of the present without compromising the ability of future generations to meet their own needs'*.
- What is the relationship between generic economic risk and individual amorality or immorality? Are they somehow bonded, taking part in the same existential pattern, or should they rather be considered as distinct factors, completely independent with relation to the activities normally performed by the company and its ownership? Are the corporate system of values an the entrepreneur's mutually compatible? Achieving and holding a position of general economic equilibrium for the company may require to disregard the constraints imposed by the ethical balance, therefore compromising the entrepreneur's moral status (with respect to this, Raghuram G. Rajan and Luigi Zingales point out that *'capitalism should be saved from its capitalists'*, ... particularly from the *greedy* ones, *'rather than from its formulas'*) (2004).

Which is the worst stance, according to a moral perspective, between letting one's business go bust, this way depriving all the people involved of their jobs, and bribing someone in the hope of getting new orders to prolong the company's life. Will the answer depend on the person whom we ask or should the question rather be considered unambiguous and indisputable? It has been hinted at the existence of more than just one answer to such dilemmas for a long time. The truth is there should only be one acceptable answer. Even if we skip the trickiest questions, however, it is fair to assume that it is morally objectionable to damage the system of corporate relations because this would inevitably lead to the collapse of trust within/towards the economic system, as Loretta Napoleoni (2008) and Vincenzo Ruggiero (1996) have amply demonstrated.

- What parameters, results, performances or achievements should to be taken into account in order to assess corporate social behaviour? Public companies, being more familiar with social responsibility issues, could provide significant insights in this regard, although their practices are often polluted by serious political interference and by operational and assessment models that are not always sound and appropriate. We should move from a merely passive, aid-providing corporate social attitude, to a proactive and socially embracing approach. The latter is not always suceptible of immediate and objective measurement, and the risk of moving from business ethics to the business of ethics is always present. In private companies the measurement issue is a crucial one, which becomes particularly interesting with relation to social and environmental management. Also the *right proportion*, and a *fair and consistent relationship* between corporate results and the financial returns assigned to both shareholders and managers, are of great importance to CSR. Along the same lines, Egidio Giannessi says that in any company the production mix is aimed *'at reaching a certain economic balance, valid over time, which could offer an adequate return to input factors and reward the economic entity on whose behalf the activity in question takes place, in proportion to the results achieved'* (1960, 1979).

It seems that there is no longer trace of proportionality, fairness and consistency in most corporations, banks and financial companies, as it has been recently demonstrated by data disclosed in the aftermath of major financial scandals.

- Who is entitled to evaluate corporate social performances and to direct and co-ordinate corporate activities for social purposes? What subjects – markets, economic institutions, political power, all the relevant stakeholders – are qualified for the assessment of corporate social behaviour, how strongly are they able to express their views, what is their time-scale and on what basis is it arranged? Of course, it is entirely appropriate to consider this function as constitutionally given, even if not exclusively, to public authorities. They are definitely entitled to the assessment of corporate social behaviour, and we can say that the outcome of the entire planning and control process, which in turn affects any economic activity and contributes to the increase of social utility, depends on that assessment. The effort required at this point is twofold: on the one hand the company should become more open, developing a less opportunistic culture, while on the other hand its partners should redefine their interests according to a wider and more complex business perspective. This *'corporate social integration'*, which Michael E. Porter deems necessary (2006), can only be reached however through a process of internalization of social responsibility values that would be able – as Vittorio Coda points out – *'to permeate corporate behaviour'* (1992).

3. Towards a new CSR model

Some noted misadventures of western capitalism (Enron, Parmalat, Bear Stearns, Lehman Brothers, just to name those cases bearing high visibility and large social impact) have recently shaken public opinion. Also, we should not forget the many factory accidents, airplane or train crashes, or that kind of social alarm that often leads to unjustified panic, false expectations and therefore to *dependent masses* when amplified by the media. It all stems from the same, irresponsible way of doing business. Capitalism is made up of periods of development and crisis, the human race of content and greedy people, and that makes the balance of social well-being even more complex and uncertain. We should eventually ask ourselves some questions, starting from the assumption that the troubles we have mentioned, including deadly accidents at work, white-collar crimes and the related fears might have the same common denominator: corporate social irresponsibility.

Luciano Gallino clearly says it is *'irresponsible the company that somehow assumes not being accountable, apart from basic legal obligations, to any authority, whether public or private, or to the general public for the economic, social and environmental impact of its activities'* (2005).

We think further considerations are needed:

a) on the rule of law, that cannot and does not always regulate the ethical dimension of business conduct. Abiding by the law does not mean in itself acting in compliance with the ethical dimension of business. The rapid evolution of markets and products and the speed at which business practices keep changing make difficult to promptly lay out appropriate regulatory updates;

b) on the economic system conditions that the State should guarantee in order to make the constitutional rule workable. Private economic initiative is truly free only when the right conditions to start, carry out and end a business are in place. Factors such as the quality of public services, the necessary infrastructure, an effective and efficient legislative system, public policing and control, a sound and effective judicial system and so on, all play a decisive role. They become even more important if referred to a globalized business context like the current one;

c) on the deregulation process which has in some cases, and quite unexpectedly, brought irresponsibility to Western capitalist cultures. *Public-over-private* control has considerably decreased. Pietro Onida used to stress that in business organizations *'trust in people should not prevent from controlling and constantly looking for the truth, in order to closely monitor all corporate activities'* (1971), and to lay out more effective policies and strategies. It is therefore paramount for the government to fully implement the constitutional rule by developing a simple and effective control system, which would be able to effectively prevent irresponsible corporate behaviour without being oppressive;

d) on citizens' high level of education (whether they are workers, taxpayers, voters, users, customers or investors). They now seem to be more sensitive, certainly more experienced and perhaps more demanding when it comes to information requirements and standards, but that does not mean they are in a stronger position towards the company. That is why the company-stakeholder information flow needs to be rethought and enriched having in mind a wider cultural context. The class action, for example, could be a vital step towards the establishment of more balanced relations within the economic system;

e) on the distance between private and public morality (or the socio-ethical dimension of individual life). The distance in question has grown, and that has caused social confusion. In recent years a new behavioural model has been established. It is more or less like: *'do what you want in private while in public do as the law says'*. However, if the latter is inadequate and the company is considered *something private, personal and sometimes even intimate*, the entrepreneur will be able to do virtually anything. At best, he will formally comply with applicable rules, disregarding all other forms of social relations and accountability standards. There is no need to say that all this possibly becomes more serious when a public company or entire chunks of the public sector are seen as *something private, personal and sometimes even intimate*;

f) on financial communication. We need communication tools better suited to the assessment of corporate social performance and better regulations, based on:

- utility,
- transparency,
- participation.

Clear communication, well tuned in to the recipients' needs, will therefore be the basis for the establishment of sound and socially responsible corporate practices, and for the achievement of true participation in corporate life.

It is worth remembering what Luigi Einaudi said about that: *'(...) les bons comptes font les bons amis; and if we want participation to work well, it must be accompanied by a certain degree of control'* (2004).

We can finally say that socially responsible corporate behaviour is directly affected both by the values of the business system as a whole and by the entrepreneur's. These values can be briefly listed as:

- being aware of the relations existing between the company and all other socially relevant players (State, employees, customers, suppliers etc) and of their reciprocity;
- constantly working on the establishment and the improvement of a trust-based relationship between company and individual;
- rejecting any form of managerial absolutism based on profit or other financial indexes or ratios.

A short but meaningful warning by John Maynard Keynes makes us think about the risks brought by a capitalism without checks and guidance: *'We destroy the beauty of the countryside because the unappropriated splendours of nature have no economic value. We are capable of shutting off the sun and the stars because they do not pay a dividend'* (1971-1989).

A proposal for reforming article 41 of the Italian Constitution:

Private economic initiative is free and the State guarantees the conditions for its implementation.

It promotes social utility through the application of transparent reporting to third parties, the protection of personal and collective safety, the development of individual freedoms and respect for human dignity.

The law determines, also encouraging active participation and contribution by citizens, the programmes and the controls to be implemented in order to responsibly direct and co-ordinate the economy for social purposes.

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