

# 1 *Government and Corporate Social Responsibility: Hands Visible and Invisible*

In 1601 the English Parliament passed the Charitable Uses Act, which offered exemptions from taxation obligations to those providing specified categories of charity. The Act was duly adopted or emulated in Britain's American and other colonies. On this basis, charitable giving by individuals, foundations, and business organizations was established, continued, and developed in the UK; in many of its, now independent, colonies; and in many other countries. In 1977 the French government introduced legislation for the *bilan social* [social report]. This reporting requirement for companies covered 134 items and indicators relating to employment, salaries, health and safety, training, working conditions, and labour relations. In the early 1980s, the UK Thatcher government introduced public policies to encourage companies to take more responsibility for some of the challenges emerging from mass unemployment and urban decay – policies echoed by the Danish government in the 1990s. In 1999 President Clinton created a task force in response to child labour and sweat shop scandals. This in turn developed into the Fair Labor Association (FLA), a corporate social responsibility (CSR)-oriented multi-stakeholder initiative (MSI).

All these are examples of governments engaging in and encouraging CSR in the form of philanthropy; transparency over domestic labour issues; social cohesion and economic development; and international supply chain labour issues. Yet the relationship between government and CSR, although now receiving more scholarly attention, has been the subject of disagreement and confusion on normative, definitional, and conceptual grounds.

This book investigates the regulation by national governments of international CSR. Our aim is to further an understanding of CSR; of government and CSR; and particularly of the role of national governments in the regulation of international CSR. Our book is therefore

intended as a contribution to the literature on CSR. Some of this literature we see as under-estimating the significance of government policy for CSR whether conceptually (e.g. McWilliams and Siegel, 2001), domestically (e.g. Margolis and Walsh, 2003), or in global governance (Scherer and Palazzo, 2011). In so doing, our analysis also offers a corrective to the literature on CSR and domestic governance which, while providing an important context for government policy for CSR domestically, tends both to overlook the capacity of governments to exercise their authority in the form of mandate and to omit attention to the relationships between policy for domestic and for international issues. Our study also addresses the literature on CSR and global governance, which provides an important context for the new governing roles of multinational corporations (MNCs) in international CSR but also, we argue, underestimates the power of national governments to effect business responsibility beyond their borders (Bansal and Roth, 2000; Brammer et al., 2012; Kostova and Zaheer, 1999; Muller and Kolk, 2009).

Our central thesis is that national governments make significant policies for CSR, including international CSR, and we therefore challenge the argument that government is irrelevant for CSR (which we call the ‘dichotomous’ perspective – to be explained in Chapter 2). We argue for the ‘related’ perspective in which governments make policy for CSR in two main ways. First, cumulatively, governments structure the opportunities for CSR by embedding certain regulations (be they rules, conventions, or norms) in national business systems over the long run (Matten and Moon, 2008). Second, individually governments act as agents to encourage and exploit CSR for public policy purposes (Gond et al., 2011) by directing public policies to support CSR organizations and other initiatives. Moreover, we argue that they make such policies to support CSR through direct and indirect means. Our analysis is conducted in the light of three key developments. First, there is the sheer growth of national government policies to support CSR *directly* in their own countries. Second, there is the emergence of some of these government policies for CSR, which either have international consequences, or are expressly designed to address international CSR issues. Third, there is the interaction of these policies for CSR *directly* with other public policies which support CSR *indirectly*, by shaping the regulatory environment for CSR, including in the international sphere.

In our analysis of policies to support CSR *directly*, we investigate: *how* governments deploy different types of policy (i.e. endorsement, facilitation, partnership, or mandate); *what role* these have in CSR initiatives, in terms of whether governments are involved in the inception of CSR initiatives or the support of their operationalization; and *why* they do so, in terms of the governments' own pressures and agendas. We do this, first, through an analysis of aggregate data of European government policies for CSR overall. Second, we do this through case analysis of government and CSR in the specific areas of: non-financial reporting in Denmark; ethical trade, including European and US responses to the Rana Plaza disaster; and transparency of payments in the extractive industries, including European and US regulation on the issue mediated and unmediated by CSR.

In our analysis of policies to support CSR *indirectly*, we investigate: *how* governments do so, in terms of the types of policy they deploy (as above); *why* they do so, in terms of the governments' own pressures and agendas; and *what* are the interactions between policies to support CSR indirectly and related CSR initiatives, particularly those that governments support directly. Here we examine policies in the areas of ethical trade and of transparency of payments in the extractive industries.

We argue that the distinction between government policies that support CSR directly and indirectly, and their relationships to each other, is a major issue that has been overlooked in the literature. Direct policies for CSR, i.e. those that are designed to expressly create, support, and supplement specific CSR initiatives are quite well understood, even though such an analysis has rarely been extended to the international sphere.

However, the literature on government and CSR has paid little attention to government policies for CSR indirectly, i.e. those which target a problem that is also being tackled by a CSR initiative, but are adopted independently of this initiative. For example, governments sometimes use trade policy as a way to promote international labour standards by linking trade access to demands that the exporting country improves labour standards (Brown, 2012; Duina, 2015). Trade policy initiatives can address the same social problem – improving labour standards – as CSR initiatives such as the Ethical Trading Initiative (ETI) or the UN Global Compact (UNGC). Trade policy initiatives that highlight labour standards may be intentionally connected to

specific CSR policy programmes. Trade policy initiatives thus can end up supporting CSR indirectly. Alternatively they may be disconnected from CSR programmes even though such government trade policies and CSR programmes may serve the same goal. We focus on public policies that address CSR indirectly but that are adopted in cognizance of public policies that address CSR directly. In other words, our focus is not on policies that just happen to support CSR (and there may be many of these) but rather those which are drawn up purposefully to advance or complement CSR policies.

The role of government in the regulation of international business responsibility is an important topic for several reasons. With globalization, companies increasingly operate overseas and outside the jurisdiction of their home governments, and outside the range of many of the elements of social control which had formed their domestic responsibilities historically (Boswell, 1983). Given the power of MNCs and the impact of their value chains, the responsibility of their operations can have vital social, political, economic, and environmental consequences for populations in host countries. Moreover, the international impacts of companies can also be crucial for the reputations of the companies themselves at home and abroad, impacting upon their attractiveness to investors, customers, employees, and suppliers. Some government representatives have also suggested that the reputations of their own countries as a place to do business rest, in part, on the responsibility of their companies at home and abroad, as well as on their ability to be profitable by serving customers and to create employment.

Thus we see national governments and CSR as mutually engaged in global as well as national governance. Hence we not only examine government policies to support CSR either directly or indirectly, but also the interactions of these different public policy approaches to solving international problems.

Although much of our attention is upon government, what it does, how, and why, our underlying motivation is to contribute to an understanding of CSR, its dynamics and relationships to societal governance. To adopt a thespian metaphor, while our attention is upon a single actor – national government – our interest is in the implications of that one part for the whole play – international CSR – in which there are many additional actors, notably companies and their core stakeholders as well as civil society, and associations, partnerships and MSIs, and, of course, national governments.

## Corporate Social Responsibility

The origins of the modern corporation as a legal person separate from its owners emerged in ancient Roman times, was consolidated in medieval Europe, and adopted in the Anglo-American common law in the nineteenth century (Avi-Yonah, 2005). In medieval Europe, corporations were bodies expressly created to perform specified public tasks (to build roads, bridges, canals) and accordingly given powers needed to that end (e.g. to acquire land, to impose tolls). In the late sixteenth and early seventeenth centuries, corporations were established with more commercial objectives (e.g. to trade with the East Indies) but significantly the government controlled their operations and rights.

During the nineteenth and early twentieth centuries, a number of landmark legislative and judicial decisions were made, which have led to the emergence of the modern corporation, which is managed by managers not owners and many of whose shares are publicly traded. These modern corporations tend to be very large and occupy critical positions in many industries and supply chains. They have been justified in terms of their economic, organizational, and technological capacity to bring private and public benefits. Nevertheless, their role has been controversial, particularly regarding the balance of the private and public benefits that they bring. Indeed, it is perhaps cases of corporate malfeasance that have done most to fuel the energy for CSR inside and outside corporations, as well as to encourage the critics of corporations (Vogel, 2005).

At the heart of the ethos of CSR is that corporations not only have social responsibilities, but that they should also be responsive to society. This relationship was nicely captured in Boswell's (1983) analysis of the informal social control of business in Britain (1880–1939). He presented this control as so effective that responsible business behaviour reflected the 'institutional influences' of the society (Boswell, 1983: 239). Boswell saw business social responsibility as both 'personally derived' and structurally built, including by 'social monitors' and informal channels for 'business cooperation with the state' (Boswell, 1983: 243). The period he was concerned with was characterized not only by regulation and litigation concerning the rights and roles of the corporate form, but also with a great deal of regulation designed to ensure business responsibility for the terms and conditions of employment, and the qualities of their products and services, for example. So

Boswell's socially embedded account of the social regulation of business also included a governmental dimension, which is instructive in anticipation of our analysis.

Although much of the thinking behind CSR consists of ethical assumptions about business in general, it is clearly the rise of the corporation that has raised the most acute responsibility issues, particularly arising from the separation of ownership and control, and the immense size and power that corporations possess and can deploy (Berle and Means, 1932; Clarke, 1916). The challenge of wanting to utilize such organizations for public purposes while wanting to contain their activities to those deemed socially acceptable has long pre-occupied lawmakers and commentators in Europe and in the United States (Aguilera and Jackson, 2003; Campbell, 2007; Knudsen, 2017; Knudsen et al., 2015; Matten and Moon, 2008; Polanyi, 1944).

In many countries during the twentieth century, particularly in Western Europe, business responsibility became so closely entailed in a fabric of regulation and business-wide norms that the notion of individual CSR became rather muted. This is in large part because the mechanisms of democracy and 'collectivism' (Beer, 1965) or 'neo-corporatism' (Schmitter and Lehbruch, 1979) enabled business associations to be fully represented participants in the making of policy in the form of primary legislation or regulation in the tri-sector agreements emanating from government-led processes in which organized labour and business were fully engaged. This is what Matten and Moon (2008) described as 'implicit' CSR because the responsibilities of individual corporations are 'implied' in their membership of the respective national business systems such as in the UK or Scandinavia. They contrasted this with 'explicit' CSR, which is characteristic of the North American business system, where regulation tends to be more in the form of primary legislation. In this context, individual corporations take 'explicit' social responsibility initiatives and build these into their company organization and communication. Although there are clearly elements of the implicit and explicit CSR in all business systems, we will see in our later analysis that these different national relationships between business and government have implications for government and international CSR relationships.

Bowen, often regarded as the academic father of modern CSR, defined it as 'the obligations of businessmen to pursue those policies,

to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society' (1953: 6). This is important as it implies that social responsibility is not confined to certain activities *in addition to* the business, but rather that the responsibility should *permeate* the business. In contrast, many definitions in the succeeding decades have narrowed the definition, such that the focus was upon philanthropic acts alone. This narrowing may paradoxically have resulted from certain CSR scholars wanting to be sure that the responsibilities of business were understood to extend beyond running the business well in economic terms. Thus, McGuire suggests, for example, that: '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' (1963: 144). The viewpoint that the corporation's responsibility extends beyond legal compliance is a substantial one. Davis also defined CSR as 'the firm's consideration of, and response to, issues *beyond* the narrow economic, technical, and *legal* requirements of the firm' (1973: 313). Carroll wanted both to distinguish different types of responsibility and yet to see them as integrated. He conveyed this in his CSR pyramid with which he defined CSR as the 'the economic, legal, ethical and discretionary expectations that society has of organizations' (1979: 500). More recently, Matten and Moon (2008) echoed Bowen's (1953) integrated definition by offering that CSR was the 'policies and practices of corporations that reflect business responsibility for some of the wider societal good' (2008: 405).

What Bowen did not anticipate is the internationalization of CSR, both in the sense that US and other Western corporations, and more latterly corporations worldwide, have extended their responsibilities across borders, and that the concept of CSR has also internationalized. In some parts of the world, particularly Asia, this development has combined engaging with international systems and organization for CSR with the legacies of the inheritance of ancient ethical frameworks as well as their more modern national frameworks for CSR (Kim and Moon, 2015). Thus these corporations have had to encounter circumstances where the framing and understandings of CSR abroad are rather different from their home countries and where, moreover, the regulation of business responsibilities by government is often lacking or poorly administered. Hence there are incentives and opportunities



for irresponsible business abroad (Strike et al., 2006). These developments amply illustrate the significance of the *international* CSR.

So at its broadest, CSR refers to the nature of business and society relationships, but is more usually taken to refer to the specific contributions of business to society. These responsibilities generally include the mitigation of companies' own negative impacts on society, their welfare-enhancing activities, and the responsible/ethical/sustainability attributes of their products and services. Our book analyses how governments contribute to CSR generally (Chapter 3) and, more specifically, in the context of some of the core issues in business – society relationships, namely non-financial reporting, ethical trade, and transparency in financial payments in the international extractives industry (Chapters 4, 5, and 6).

### Hands, Invisible and Visible

Students of Adam Smith will have recognized the significance of the title of the book before even opening it. We invoke the much-cited reference of Smith to the facility of those operating in markets to operate for social benefits by simply pursuing their own interests, often oblivious of the public good that this yields, specifically by supporting the domestic economy. It is worth quoting Smith at length here.

As every individual, (therefore,) endeavors as much as he can both to employ his capital in the support of domestic industry, and so to direct that industry that its produce may be of the greatest value, every individual necessarily labours to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. By preferring the support of domestic to that of foreign industry, he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an *invisible hand* to promote an end which was no part of his intention. Nor is it always the worse for the society that it was not part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good. It is an affectation, indeed, not very common among merchants, and very few words need be employed in dissuading them from it. (Adam Smith Book IV, Chapter II, paragraph IX of *The Wealth of Nations*, emphasis added)



Thus, Smith's application of the term 'invisible hands' is a very particular one. It concerns the benefits to the society as well as to the capital owner arising from decisions of the latter to support the domestic economy. However, Smith does note, more generally, that the intention to 'promote the public interest' or to 'trade for the public' good is usually a futile or even counter-productive endeavour.

Subsequently, the term 'invisible hands' has been employed by those who extend the basic point about the superiority of uncoordinated actions intended for private benefit as a means of maximizing the public benefit over the main method of market coordination, by government. Thus, Milton Friedman refers to the invisible hand as the possibility of cooperation without coercion (1958) in the context of his arguments against government policies designed to improve welfare which thereby impose regulatory constraints on those very actors that can create wealth, i.e. market players or businesses. For Friedman then, the 'invisible hands' contrast with what would be the visible hands of government and excessive law.

However, there is another side to Adam Smith. While he praised markets and legitimized capitalism and the idea that private interest could lead to a larger benefit for society as a whole, Adam Smith also saw a moral role for government to protect workers and citizens against the interests of the rich and powerful. Smith was sometimes tolerant of government intervention, especially when the goal was to reduce poverty and protect the weak. Thus, in the *Wealth of Nations* (Book 1, Chapter 11) he wrote that 'When the regulation, therefore, is in support of the workman it is always just and equitable'. Also, according to Adam Smith the invisible hand needs to be embedded in some form of regulation which can control the personal interest of the rich and powerful 'who do not always have the public interest at heart and seek instead laws and policies that favor themselves and hold back progress' (Montgomery and Chirot, 2015: 43). In short, the role of the government is not only to enforce the rule of law but also to prevent abuses and to ensure a certain level of social welfare for all. A society with great inequality of wealth and a large segment of the population toiling in poverty is a moral problem as well as a sign of a malfunctioning economy (Montgomery and Chirot, 2015). Adam Smith wrote: 'no society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who feed, clothe and lodge the whole body

of the people, should be themselves ... tolerably well fed, clothed and lodged' ([1776] 1965: 78). While Smith came to be used in support of laissez-faire, he also prefigured many of the nineteenth-century attacks on the dehumanization of industrial mass production.

In short, while Smith famously coined the term 'invisible hand', he also recognized that government regulation could be required to protect citizens from harm due to market excesses. We are inspired by both sides of Adam Smith: on the one hand, with globalization corporations have come to operate abroad including in the Global South where government regulation is 'invisible' in some respects; yet, at the same time, in order to deal with the challenges of poor social and environmental standards in those regions, governments (and here we are thinking in particular on advanced industrialized countries – the Global North) increasingly have become more 'visible' undertaking regulation of international CSR. By invoking the term 'visible hands' we therefore point to the ways in which CSR, a concept based on corporate discretion of market actors, paradoxically perhaps, can be encouraged, strengthened, and complemented by national governments. In so doing we also contend that national governments are not bereft of policymaking capacity in a globalizing world.

### **Outline of the Book**

In Chapter 2 we address the theme of national governments and international CSR as we frame our overall approach. We first present a brief discussion of the literature on CSR and government. We then indicate how the context for government has changed with key regulatory shifts and the emergence of new governance practices nationally, which are consistent with our argument about the ways in which governments regulate CSR. In this light we consider the argument that globalization has diminished policymaking capacity and the implications for international governance and CSR. We flesh out our argument and locate it in the wider literatures on CSR and social science. Our analytical framework is presented in anticipation of the empirical Chapters 4–6. We explain our framework of direct and indirect interactions between government and CSR initiatives, and outline our research questions concerning how, when, and why governments make policy for CSR, and how the direct and indirect policies interact.