

## The Influence of Societal Structure and the Impact of Legal Regulation on Corporate Social Responsibility: A Comparative Perspective

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### INTRODUCTION

Cross-national comparative work of corporate social responsibility (CSR) is a relatively novel concept, and has been regarded as an area of corporate law that remains largely “emergent”. While studies on comparative corporate governance and academic critiques on the notion of CSR have been advanced since the 1950s, corporations have only recently begun to employ comparative studies of CSR to develop their strategic management and improve their corporate social performance. This paper considers two phenomenon: first, countries are increasingly encouraged to pursue more CSR activities through practical changes in legal regulations; second, evolutions in the institutional framework of nations are also an emerging dynamic in determining the level of CSR adoption. This essay utilises comparative legal, institutional and agent-based analysis to assess how the exercise of CSR is influenced by legal regulation provisions and the societal structure of a nation. It subsequently considers whether divergences exist on a national level or whether variations are a result of global institutional differences.

Literature on CSR to date has primarily focused on the evolutionary theories of CSR and the difficulty of its implementation in particular forms of corporate governance systems, with very few instances of a meta-analytical approach being utilised to contrast levels of adoption in different countries. Furthermore, the development of comparisons between differing jurisdictions has been hindered by inconsistent definitions of CSR, which subsequently

makes evaluations devoid of a structured common framework. The primary advantage of carrying out a comparative study is that the various theories of CSR can be analysed and evaluated alongside one another, forming a clearer standpoint of the most effective methods of governance that can influence corporations. Hence, a comparative analysis of CSR environments - whether considered through a legal, institutional or agent-based framework - will help develop the theoretical perspectives behind the mechanisms that affect corporate social performance.

The concept of CSR activism carries increased prominence as a result of globalisation and the emergence of multi-national companies, who look to adapt similar CSR techniques across different regions. By undertaking an assessment of global themes and several jurisdictions, rather than concentrating on a specific comparison, it is hoped that the widespread, worldwide effect of CSR can be better appreciated. Furthermore, this paper provides the opportunity to consider the stimuli of CSR in regions which differ in terms of culture, ideology and prosperity. Conducting legal analysis allows for the exploration of contemporary regulatory strategies used by states and transnational governance bodies to promote social responsibility, while institutional analysis helps combine a network of formal and informal mechanisms including legislation, values and norms. Through the consideration of managerial and consumer motivations, an ephemeral comparison between the traditional shareholder and stakeholder theories can be investigated in relation to the exercise of CSR.

This paper examines CSR activism through a comparative perspective, and the aims and challenges are outlined here in Section I. Section II introduces the concept of CSR and outlines the challenges that scholars face, when attempting to give the term a universal definition and offer a comparative analysis. It also provides a brief framework of the varying theoretical perspectives and explores how Hall and Soskice’s Varieties of Capitalism (‘VoC’) model has been applied to CSR.<sup>1</sup> In Section III, a comparative legal analysis is presented on how CSR has increasingly been driven through different legal mechanisms and bodies to raise levels of policy adoption, while assessing the impact that mandatory legislation may have on firms. Consequently, Section IV reflects upon how state performance has influenced institutional framework, with reference to Richard

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<sup>1</sup> P Hall and D Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (OUP 2001).

Whitley's "National Business Systems" model.<sup>2</sup> Section V compares the understandings of CSR motivations among managers, while also establishing how state activity has facilitated the change to the contemporary model from Milton Friedman's neoclassical critique.<sup>3</sup>

## I. THEORETICAL FRAMEWORK

### CSR: Definitions and Rationale

Since the inception of the concept of CSR by Sheldon in 1924, the academic world has subjected the term to intense critique and deliberation, yet it has failed to earn an absolute and comprehensive definition.<sup>4</sup> Carroll's early explanation of CSR suggested that 'the social responsibility of business encompasses the economic, legal, ethical and discretionary expectations that society has of organisations at a given point in time', signifying the philanthropic background behind the notion.<sup>5</sup> Academics subsequently adapted similar philosophies for the concept, with Fredrick calling it a movement for business corporations to have 'an obligation to work for social betterment'<sup>6</sup>; while Wood broadened the altruistic angle, stating 'society has certain expectations for appropriate business behaviour and outcomes'.<sup>7</sup> As a result of globalisation, the field has grown significantly to incorporate a great proliferation of theories such as stakeholder management, sustainable entrepreneurship and business ethics amongst other determinants of corporate social performance. Furthermore, the wide reporting of corporate scandals, including those involving Enron, Worldcom and Tyco

<sup>2</sup> R Whitley, *Divergent capitalisms: The social structuring and change of business systems* (OUP 1999).

<sup>3</sup> M Friedman, 'A Friedman doctrine: The Social Responsibility of Business Is to Increase Its Profits' *The New York Times Magazine* (New York, 13 September 1970).

<sup>4</sup> C Williams and R Aguilera, 'Corporate Social Responsibility in a Comparative Perspective' in A Crane and others (eds), *The Oxford Handbook of Corporate Social Responsibility* (OUP 2009) 1.

<sup>5</sup> A Carroll and A Buchholtz, *Business and Society: Ethics, Sustainability, and Stakeholder Management* (9th edn, Cengage Learning 2014).

<sup>6</sup> W Frederick, *Corporation, be Good!: The Story of Corporate Social Responsibility* (Dog Ear Publishing 2006).

<sup>7</sup> D Wood, 'Corporate Social Performance Revisited' (1991) 16(4) *Academy of Management Review* 691.

International in the early 2000s, has contributed to raising public awareness of the concept of CSR.<sup>8</sup>

The evident ambiguity and lack of consensus regarding CSR are reflected in its internal complexity and the mechanisms that have been structured to influence CSR. Likewise, there is a lack of clarity regarding whether CSR is a normative concept or a positive concept, with CSR theorists often blurring the positive and normative distinction in a way that makes it difficult to assess their claims. In sharp contrast to Carroll's explanation, Friedman's "shareholder approach" outlines that the social responsibility of business is to increase its profits and promote the economic value of the firm on behalf its shareholders.<sup>9</sup> The main strength of this neo-classical theory is the value of the model for promoting the creation of wealth. However, it presents an unfavourable consequence from the viewpoint of society, as it lacks any true measure of regard for social issues.<sup>10</sup> Contrary to the shareholder approach, the "stakeholder approach" accentuates that organisations should also balance shareholder interests with that of their other stakeholders, who play a pivotal part in influencing activities of the firm. It principally considers the rights of all stakeholders and their respective legitimate interests, and links ethical theory to managerial theory.<sup>11</sup> However, it thus cannot provide sufficient or specific objective functions for the corporation, and is predominantly concerned with the distribution of final outputs.

Therefore, different social groups place different expectations on the performance of businesses, and this in turn prompts several differing types of voluntary behaviour to be conducted through the imposition of public policy, legal regulation or the reduction of legal externalities. As a result, providing a comprehensive and universal definition of CSR remains challenging.

### Comparing CSR

CSR has been dubbed a "paradigmatic social construction", with scholars attempting to juxtapose the competing views of different policy makers and

<sup>8</sup> T Clarke, *International Corporate Governance: A Comparative Approach* (Routledge 2007) 16.

<sup>9</sup> Friedman (n 3) 32-33, 122-124.

<sup>10</sup> *ibid.*

<sup>11</sup> D Jamali, 'A Stakeholder Approach to Corporate Social Responsibility: A Fresh Perspective' (2008) 82(1) *Journal of Business Ethics* 213.

stakeholder groups to try and provide a clear, universal definition.<sup>12</sup> In recent years, as studies have shifted away from the traditional analysis of theoretical perspectives, industry experts have increasingly endeavoured to compare the levels of CSR adoption across different jurisdictions. They have attempted this by analysing the global scope of CSR, which in turn depends on the country's societal structure and its conformity to legal regulations.<sup>13</sup> Meanwhile, cross-national comparative work can also be used to investigate the social responsiveness of business to stakeholders as well as to further the understanding of CSR amongst managers and consumers.

The elusive nature of measuring CSR has encouraged the recent emergence of comparative CSR literature and practices. A growing demand exists among scholars for analysis via ratings and metrics of CSR, as well as through tests undertaken involving surveys with single and multiple variants. While several approaches have attempted to measure the extent of social provision in countries, researchers have failed to reach a consensus regarding the validity of these methods.<sup>14</sup> Comparative studies often differ in how they define the comparative unit of analysis – whether it's legal, institutional or through the understanding of agents. For example, governments have regularly implemented perplexing quasi-legal regulations to try and control CSR policies amongst businesses. Similarly, few academics have inserted a third “hybrid” model to complement their institutional analysis on distinctions between capitalist economies and CSR.<sup>15</sup> Furthermore, globalisation has also hindered the development of pinpointing determinants, when comparing jurisdictions in regard to the adoption of CSR. As business transcends borders, firms increasingly begin to operate on a global basis and their original base comparison becomes increasingly blurred.

<sup>12</sup> A Apostolakou and G. Jackson ‘Corporate Social Responsibility in Western Europe: An Institutional Mirror or Substitute?’ (2010) 94(3) *Journal of Business Ethics* 371.

<sup>13</sup> *ibid.*

<sup>14</sup> D Kinderman, ‘The Political Economy of Corporate Responsibility in Germany, 1995-2008’ (2008) Working Paper 5, Germany in the Global Economic Governance Series, Department of Political Science, Cornell University; M Gjoberg ‘The Origin of Corporate Social Responsibility: Global Forces or National Legacies?’ (2007) Working Paper Centre for Development and the Environment, University of Oslo.

<sup>15</sup> N Kang and J Moon, ‘Institutional complementarity between corporate governance and Corporate Social Responsibility: a comparative institutional analysis of three capitalisms’ (2012) 10(1) *Socio-Economic Review* 85.

The premise of a comparative study remains inherently difficult. Although the definitions of CSR vary, they often involve the notion of ethical and social action going beyond legal requirements. The EU Commission, in their new 2011 definition, referred to social responsibility as ‘the responsibility of enterprises for their impacts on society and outlines what an enterprise should do to meet that responsibility’.<sup>16</sup> This implies that what is classed as CSR in one country may be merely an obligation in another. Therefore, depending on the country in which it occurred, the same action could easily be categorised as an investment in CSR or simply as a normal business operation. To set out the differences in between societal structures, the Varieties of Capitalism model and the “implicit” and “explicit” CSR insights, as developed by Matten and Moon, shall be considered to assess the scope of CSR adoption.<sup>17</sup>

### Varieties of Capitalism Model

Engaging in a comparative study, Hall and Soskice developed the Varieties of Capitalism (VoC) model to assess business systems and to provide a clear framework for understanding the behaviour of firms.<sup>18</sup> By separating the broad categorisation of institutions into Coordinated Market Economies (CMEs) and Liberal Market Economies (LMEs), the model sets out to explain the distinctions and evolutions across different capitalist systems. Japan and Germany are prominent examples of the former category, while the US and UK adapt characteristics of the latter. Five institutional complementarities are identified to compare themes associated with the two sets of bodies: corporate governance, the financial system, the organisation of industrial relations, innovation and the respective education and training systems.<sup>19</sup> CMEs are regularly depicted to be society-oriented, with firms holding the needs of stakeholders – such as employees and suppliers – as their utmost priority. They

<sup>16</sup> European Commission, ‘Press Release - Corporate Social Responsibility: a new definition, a new agenda for action’ (Brussels, 25 October 2011) <[http://europa.eu/rapid/press-release\\_MEMO-11-730\\_en.htm](http://europa.eu/rapid/press-release_MEMO-11-730_en.htm)> accessed 21 July 2015.

<sup>17</sup> D Matten and J Moon, ‘Implicit and Explicit CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility’ (2008) 33(2) *Academy of Management Review* 404.

<sup>18</sup> P Hall and D Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (OUP 2001).

<sup>19</sup> *ibid.* 4.

are dependent on non-market relations, engage in cross-firm collaboration and undertake precise calculations on the part of firms' strategies to operate. In sharp contrast to CMEs, LMEs present a more market-oriented focus, with the interest of shareholders taking priority. Their institutions are characterised by competitive relations between firms, formal-based contracting and the operation of supply and demand in accordance with changes in price signals.<sup>20</sup>

Consequently, if the institutional complementarities suggested above, are precisely calibrated with one another, the firm's performance will improve and so will its comparative advantage. The VoC model thus suggests that both types of economies need not converge and may co-exist through adhering to adjustment in the wake of external pressures. Apostolakou and Jackson relate the model in accordance with the principles of CSR and their research illustrates that CSR is largely implicit in CMEs, while it can be used as an explicit alternative for institutional gaps in LMEs.<sup>21</sup>

Explicit CSR can be demonstrated through high levels of individualism, liberalism and the performance of isolated actors. This is often rooted in economies where privatisation and deregulation take place such that highly competitive markets create the need to explicitly formalise the concept of CSR to respond to stakeholder expectations; for example, health insurance is characterised as a CSR policy in the US. In explicit CSR scenarios, involvement in CSR activism rests on corporate discretion and firms seek to take up policies which assume a "win-win relationship" between achieving financial success and attaining a positive CSR performance.<sup>22</sup> In direct contrast, implicit CSR is heavily influenced by values, customs and codification to appeal to the wider concerns of society. Firms usually foster collaborative ties in-between systems and operate through non-market relations, as seen among European nations and their close traditional ties to the Catholic Church. Rather than a business-oriented approach, CSR is considered to be a normative 'moral activity'.<sup>23</sup>

Hence, it is pertinent to note that the VoC model provides an introductory framework towards understanding the comparative mechanisms which can influence CSR. The "relational-insider" societal structure of CMEs provides

scope for more concentrated ownership and this is reflected in the extensive state provisions and rules which lead to implicit CSR in such regions. In comparison, the limits in state provisions in LMEs leave ample scope for practising CSR explicitly.

## II. COMPARATIVE LEGAL ANALYSIS OF CSR

Comparative legal analysis plays a pivotal role in developing the understanding of global CSR practices, as different governments opt to pass distinctively powerful laws to influence firms in their respective jurisdictions. Through the delivery of regulation, nations are able to dictate their own sentiments on the mechanisms which influence them most, and thus in turn their concerns can be assessed accordingly through a meta-analytical study. Policies enacted by the government about CSR issues are likely to be amplified to take into account underlying political and social philosophies, as well as the business culture of the country. So, the standards established by regulation have a strong influence on establishing social expectations, and subsequently act as a focal point around which firms can structure their corporate culture. Furthermore, the creation of such social standards paves the way for various interest groups – such as investors, consumers and NGOs – to help develop the law by expressing their opinions and working towards the eventual goal of achieving widespread enforcement.<sup>24</sup>

The development of new legal mechanisms to encourage CSR has forced firms to consider a move away from the strategy of voluntary CSR application, and begin to alter their models to adapt to market pressures. This in turn implies that firms will be encouraged to become more actively involved in the provision of CSR activities. The emergence of corporate scandals and the rising importance of ethics in business have acted as drivers for firms to seek more socially responsible investment. Governments have begun to implement quasi-legal regulations to promote CSR, and have extensively insisted on mandatory disclosure and reporting as persuasive mechanisms. Significantly, in some jurisdictions including India and Mauritius, direct regulation has already

<sup>20</sup> Matten and Moon (n 17).

<sup>21</sup> Apostolakou and Jackson (n 12).

<sup>22</sup> S Looser and W Wehrmeyer, 'Varieties of Capitalism and Small Business CSR: A Comparative Overview' (2015) 9(7) *International Journal of Social, Behavioral, Educational, Economic and Management Engineering* 1953, 2155.

<sup>23</sup> *ibid* 1954.

<sup>24</sup> D McBarnet, 'Corporate Social Responsibility Beyond Law, Through Law, for Law' (2009) University of Edinburgh School of Law Working Paper 2009/03 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1369305](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1369305)> accessed 22 July 2015.

compelled certain firms to set aside pre-tax profits towards CSR activities. Meanwhile, NGOs and other civil society groups are gradually beginning to innovate with legal doctrines and resort to private law, in order to force the legal enforceability of CSR.

### CSR Through Indirect Regulation

Governments have traditionally opted against drafting mandatory legislation which calls for the adoption and implementation of CSR activism, though states have often indirectly nurtured businesses to operate in a certain way to act with appropriate social responsibility. During the development of the policies on company law by the UK Government in 2001, legislators chose to retain CSR as a purely voluntary practice but provided subtle signs that major corporations indeed had particular social considerations to follow.<sup>25</sup> The Occupational Pensions Schemes Regulations 1999 required pension funds to state and explain investment decisions directed towards social, environmental and ethical issues.<sup>26</sup> While there was no compulsory or legal obligation to provide notes, pension funds gradually followed the regulations to maintain a clear standing and this consequently had a domino effect on interrelated businesses, which were involved with pension funds. Similar legislation consequently was enacted in Australia, Belgium and Germany.<sup>27</sup> Rahim notes that the rise of indirect socio-economic strategies has resulted in the integration of individual states perspectives' to establish novel social policies, and thus in his observation, it can be assumed that the EU Commission's Green Paper on Promoting a Framework for CSR was the chief instrument which renovated those social policies.<sup>28</sup> Thus, through the imposition of set guidelines, governments have successfully been able to induce firms to take voluntary action and create a trend of market-wide acceptance towards transparent reporting.

The regulatory concept of mandatory disclosure was also adapted by the European Union to monitor and track investment decisions carried out by

firms. Companies are now expected to report on issues outside their commerce and report back on 'information relating to environmental and employee matters' as a part of their annual statutory business review. Furthermore, the proposed Operating and Financial Review (OFR), initially earmarked as an innovative part of the UK's Company Law Act 2006, had also demanded that firms disclose their strategies behind dealing with risks related to social, environmental and ethical factors.<sup>29</sup> The concept was later abandoned but heavily influenced ensuing corporate culture, with many investment funds adamant on seeing through the plan's identification of reputational risk. Moreover, prior to its abandonment, leading firms had already begun to implement necessary changes to their strategies and readied resources to take lead of their respective social and environmental responsibilities. By March 2006, 85 of the FTSE100 firms had published OFR-like reports, while the remaining 15 also included non-commerce matters in their annual reports.<sup>30</sup> These figures show clearly that industry wide market pressure inevitably introduced a legal obligation for firms to adhere to mandatory disclosure, two years before reporting became compulsory in 2008.

Strategies comparable to those seen in Europe were also adopted by the US government to strengthen the market pressures which were being applied to further CSR interests. The introduction of the Foreign Corrupt Practices Act, though not directly mandatory, outlined greater financial advantages for firms that demonstrated an agenda for anti-corruption and environmental protection.<sup>31</sup> Meanwhile, as a direct response to the Enron scandal, the Sarbanes-Oxley Act of 2002, asked for firms to practice with a 'culture of integrity' to promote ethical conduct.<sup>32</sup> In support of increased indirect regulation, Parker praises the strengths that meta-regulation has had on influencing corporate accountability, while Paine asserts that such strategies are 'arguably a legal necessity'.<sup>33</sup> Therefore, through the fostering of indirect legal

<sup>29</sup> McBarnet (n 24) 33.

<sup>30</sup> M Armstrong, 'FTSE 100 giving drops to 0.8%' *The Guardian* (London, 6 November 2006).

<sup>31</sup> Foreign Corrupt Practices Act 1977.

<sup>32</sup> United States Code, Sarbanes-Oxley Act of 2002, PL 107-204, 116 Stat 745, Codified in Sections 11, 15, 18, 28, and 29 USC, July 2002.

<sup>33</sup> C Parker, 'Meta-Regulation: Legal Accountability for Corporate Social Responsibility?' in D McBarnet, A Voiculescu and T Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press 2007); L. Paine, 'Up

<sup>25</sup> Department of Trade and Industry, *Company Law Review Report 2001*.

<sup>26</sup> The Occupational Pension Schemes (Investment, Assignment, Forfeiture and Bankruptcy etc.) (Amendment) Regulations 1999, SI 1999/1849.

<sup>27</sup> Financial Services Reform Act 2001 No. 122, 2001; Loi Pensions Complémentaires 2003; Versicherungsaufsichtsgesetz – VAG 1992.

<sup>28</sup> M Mahmudur Rahim, *Legal Regulation of Corporate Social Responsibility: A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy* (Springer Science & Business Media 2013) 34.

policies and consequent voluntary adoption by firms to reflect market standard, CSR activism has been implemented into the system.

### CSR Through Direct Regulation

Alongside indirect nurturing, CSR activism and ethical codes can be promoted by governments through compulsory regulatory action. Despite still being a relatively novel concept, the significance of CSR has been elevated through its initial explicit appearances in legislation. Through the Indian Companies Act 2013, India announced plans for mandatory philanthropic activity, ruling that both private and public companies of a certain size should give 2% of their pre-tax profits to charitable causes.<sup>34</sup> Reaction to the innovative law has been met with mixed reviews from industry trackers. While Twigg claims that '2% can achieve a lot if levered well',<sup>35</sup> Miryala and Aluvala reveal a qualification, and state that it will force businesses to find different CSR objectives to increase the effectiveness of its interventions.<sup>36</sup> Though, it was estimated that CSR expenditure would increase from \$1.95bn to \$2.44bn, firms will have had to realign their business strategies to adapt to the changes so fundamental that the law's real effect will take a considerably long to evaluate. Similar outrage was expressed following the amendment by the Mauritian Government of the Income Tax Act 1995 by the virtue of the Finance Act 2009 to make CSR a mandatory practice in the country.<sup>37</sup>

Prior to the introduction of the mandatory CSR legislations in India and Mauritius, a few other nations adopted legislation favouring societal and environmental policies, to help companies keep their business models attractive to investment. Denmark became the first European country to mandate the inclusion of CSR information in companies' annual financial reports, while Indonesia passed a significant law that requires all public companies to issue CSR reports.<sup>38</sup> The strength of legal regulations being readily implemented in

developing nations, such as Indonesia, suggests that the notion of CSR activism is becoming increasingly high-profile as a global issue. Furthermore legislation such as the California Transparency in Supply Chains Act 2010 requires US companies to reveal the efforts they take to maintain the integrity of their supply chain, and ensure that they remain clear from occurrences of human trafficking and slavery.<sup>39</sup> Moreover, the US Securities Exchange Commission also ordered all US public companies to regularly include climate-related evaluations in their annual reports. Compulsory legislation has slowly begun to operate alongside quasi-legislative policies, with Philipsen and Xu arguing that selected compulsory laws will complement the framework of existing regulations to become stronger.<sup>40</sup>

The existence of mandatory laws thus strengthens the application of quasi-voluntary CSR. In the UK, section 172(1) of the Companies Act 2006 includes the duty of a director to act in good faith, which would 'be most likely to promote the success of the company for the benefit of its members as a whole'.<sup>41</sup> Thus guidelines for adherence to the law include taking into account the interests of the company's employees, the need to maintain a good reputation for high standards of business conduct and the company's impact on the community and the environment.

### CSR Through Transnational Governance

The emergence of CSR policy compliance has best been seen through regulations and frameworks scheduled by reputed transnational governance bodies, which have provided further legitimacy for local adaptations to be followed. International organisations such as the International Standards Organisation and the United Nations have helped structure a set of models and procedures for corporations to follow CSR, through programmes such as the ISO 26000 and the Global Compact. Though such measures lack the ability to implement laws directly into nations, they can seek to institutionalise policies, with Detomasi asserting that 'global public policy networks' have become one

to Code: Does Your Company's Conduct Meet World-Class Standards?' (2005) 83(12) Harvard Business Review 122.

<sup>34</sup> The Companies Act 2013 (No. 18 of 2013).

<sup>35</sup> C Twigg, *Corporate Sustainability in India* (Do Sustainability 2013) 38.

<sup>36</sup> R Miryala and R Aluvala, *Trends, Challenges & Innovations in Management: Volume II* (Zenon Academic Publishing 2015).

<sup>37</sup> Income Tax Act 1995 (Mauritius).

<sup>38</sup> H Goenka, 'Why it is a good idea to mandate corporate social responsibility' *The Economic Times* (New Delhi, 1 September 2012).

<sup>39</sup> California Transparency in Supply Chains Act 2010 SB-657.

<sup>40</sup> N Philipsen and G Xu, *The Role of Law and Regulation in Sustaining Financial Markets* (Routledge 2014).

<sup>41</sup> Companies Act 2006, s 172(1).

of the most influential drivers of firms adopting CSR policies.<sup>42</sup> Subsequently this has prompted governments to collate frameworks with businesses, such as the Extractive Industry Transparency Initiative, which looks to promote the accountability of the natural resources trade.<sup>43</sup>

A further comparative advantage of transnational governance shaping local practices is that it helps to revolutionise CSR practices on a global scale. The application of the 'country of origin effect' finds multi-national corporations, with Western values, implementing inspired positive changes through CSR into a developing nation.<sup>44</sup> For example, in a scenario where an American mining company engages in production in rural South America, they would repay the community with CSR-related activities influenced by American values, for example, through the improvement of transport links or the implementation of better communication facilities. Likewise, Nicholls and Opal also credit the spread of fair trade policies in developing countries, back to the 'growing impact of transnational regulations'.<sup>45</sup> Correspondingly, multi-national corporations apply regulation for their own transnational models and seek to make wholesale improvement to their global practice. Notably, the Coca-Cola Company pledged to reduce their water use and improve water quality in the regions where they operate.<sup>46</sup> They spent \$2bn between 2003 and 2014 on conservation projects worldwide.<sup>47</sup> Similarly, Starbucks actively promotes Ethos Water, which provides clean water to more than a billion people and Europe's largest engineering firm, Siemens, has implemented a range of anti-corruption policies to be entrenched throughout their global operations.<sup>48</sup> These case studies illustrate how cross-national regulations can be used effectively to raise standards and reduce the existence of compliance variation between countries.

However, the influence of CSR frameworks scheduled by transnational governance bodies has also warranted criticism, with scholars emphasising the

difficulty of aligning different interests. In his case study of the Responsible Care initiative, a voluntary plan entailing firms that contribute to 90% of global chemical production, Conzelmann highlights the existing tensions of creating and maintaining support for the scheme.<sup>49</sup> Through his analysis of the dilemmas based on business associations, Conzelmann adds that such initiatives often involve a trade-off of achieving CSR activities or appeasing members to be a part of the group.<sup>50</sup> Furthermore, he argues that the presence of a wide range of countries can lead to regulations being stretched and standards being diluted.<sup>51</sup> Meanwhile, Fransen explores the evolution of legitimation politics, detailing that business-oriented schemes are often dependent on the involvement of transnational governance bodies to boost the legitimacy of their strategies.<sup>52</sup> In turn, he argues that such transnational governance schemes are destabilised and fragmented as a result of those business-oriented initiatives.<sup>53</sup> Thus, it can be suggested that this insight subsequently establishes a paradox, as CSR requires the involvement of established stakeholders to appear more prominent, yet the original aims of the stakeholders are whittled away by increased business presence.<sup>54</sup>

### The Influence of Civil Society on CSR

Alongside governments, members of civil society are also increasingly beginning to use mechanisms of law to achieve favourable results. This marks a significant move away from the traditional NGO approach of indirectly lobbying for changes in legislation with external pressure.

Successful examples of civil society using legal mechanisms to accomplish their tasks have been recorded in the US. NGOs have increasingly used changes in company law to strengthen their legal rights and develop their business relationship with companies. Through the purchase of shares, members of

<sup>42</sup> D Detomasi, 'The Multinational Corporation and Global Governance: Modelling Global Public Policy Networks' (2007) 71(3) *Journal of Business Ethics* 321, 332.

<sup>43</sup> S Brammer, G Jackson and D Matten, 'Corporate Social Responsibility and institutional theory: new perspectives on private governance' (2012) 10 *Socio-Economic Review* 3, 15.

<sup>44</sup> *ibid* 17.

<sup>45</sup> A Nicholls and C Opal, *Fair Trade: Market-Driven Ethical Consumption* (1<sup>st</sup> edn, SAGE 2005).

<sup>46</sup> P Clark, 'A world without water' *The Financial Times* (London, 14 July 2014).

<sup>47</sup> *ibid*.

<sup>48</sup> B Watson, 'Siemens and the battle against bribery and corruption' *The Guardian* (London, 18 September 2013).

<sup>49</sup> T Conzelmann, 'A Procedural Approach to the Design of Voluntary Clubs: Negotiating the Responsible Care Global Charter' (2012) 10 *Socio-Economic Review* 193.

<sup>50</sup> *ibid*.

<sup>51</sup> *ibid*.

<sup>52</sup> L Fransen, 'Multi-stakeholder governance and voluntary programme interactions: legitimation politics in the institutional design of Corporate Social Responsibility' (2012) 10(1) *Socio-Economic Review* 163, 168.

<sup>53</sup> *ibid*.

<sup>54</sup> Brammer, Jackson and Matten (n 43) 16.

NGOs can now exert internal pressure by exercising shareholder rights and by bringing resolutions to annual general meetings. The Ecumenical Council for Corporate Responsibility (ECCR) was able to place internal pressure onto energy giant Shell's boardroom during 2006 by being eligible to participate in their AGM and brought a shareholder resolution noting the concerns about inclining environmental costs.<sup>55</sup> Similarly, the Interfaith Center on Corporate Responsibility withdrew a resolution from being proposed at Occidental's AGM, only after the corporation agreed to implement a certain human rights policy.<sup>56</sup> The legal developments in favour of activist groups, have prompted NGOs to accordingly innovate their strategies to fulfil their goals. Organisations such as Amnesty International now practice activism by investing in a portfolio of shares in their potential target companies. During 2006, in cases relating to the compensation for victims of the Bhopal Disaster and investigations detailing allegations of detrimental environmental impact by Texaco, Amnesty International explicitly appealed to their members to support shareholder resolutions addressing human rights.<sup>57</sup> The growth of potential litigation openings to allow NGOs to exert internal pressure, has increased the chances of firms moving towards a more favourable CSR approach.

Civil society has also implemented pressure on companies by seeking alternate routes through the use of private law practices, showing that NGOs are increasingly willing to innovate to enforce CSR as a legal obligation. For example, the Alien Tort Claims Act (ATCA), first established in 1789, has re-emerged after two centuries of minimal application to become a contemporary dilemma for corporations who garner allegations of committing human rights abuses through joint ventures.<sup>58</sup> NGOs including the Centre for Constitutional Rights, Earthrights International and Amnesty International have all developed ATCA as a powerful tool to hold transnational corporations to account for social failures. The publicity which surrounded the *Unocal* case (2005) has led to further high-profile allegations being laid against Shell, Texaco and Gap amongst other corporations, while the UN has also set up a panel to formulate

<sup>55</sup> The Ecumenical Council for Corporate Responsibility (ECCR) (2006), Shell Shareholder Resolution <[www.eccr.org.uk/dcs/ShellShareholderResolution.pdf](http://www.eccr.org.uk/dcs/ShellShareholderResolution.pdf)> accessed 26 July 2015.

<sup>56</sup> R Pillay, *The Changing Nature of Corporate Social Responsibility: CSR and Development – The Case of Mauritius* (Routledge 2015) 173.

<sup>57</sup> Amnesty International, 'The Bhopal Medical Appeal' <<http://bhopal.org/category/amnesty-international>> accessed 10 August 2015.

<sup>58</sup> Alien Tort Statute (28 U.S.C. § 1350 ATS/ATCA).

an international standard on corporate aiding and abetting liability.<sup>59</sup> Therefore, it can be argued that threat of private litigation has the potential to be costly for the firm's reputation, particularly in the aftermath of the *Kasky v Nike* case. As a result, companies are increasingly wary of their CSR press releases and are under extended scrutiny, which they must be prepared to encounter.<sup>60</sup> The result of such developments shows that civil society is progressively willing to extend legal provisions in order to force through issues which are blocked by more conventional legal routes.

However, writers have argued that disproportionate attention has been paid to the emergence of new legal mechanisms. The evolution of innovative tools such as ATCA has been downplayed by McBarnet who proposed that the new approaches were too reliant 'on the quirks of specific legal systems'.<sup>61</sup> Furthermore, Paul Hoffman, who led the ATCA case against Unocal, has expressed that mandatory legislation is a more complete way of curbing corporate behaviour than law suits, which can be 'patchy in target and impact'.<sup>62</sup> Therefore, despite the presence of increased legal mechanisms to constrain businesses, there are still calls for legislation to be the primary contributor towards the efficacy of regulation.

### Does CSR Require Legislation?

Activists have made calls to end the dependence on corporation's providing voluntary actions of CSR and to pass laws that make compliance mandatory. The influential human rights figure Sir Geoffrey Chandler stressed that the current system fails to address the growing problems of social neglect by corporations, especially in the age of globalisation, and referred to the scenario of voluntary CSR as a 'curse'.<sup>63</sup> Relatedly, it can be stressed that only legal regulation has the ability to make a systematic impact on the enforcement of CSR by providing equal footing for all corporations, which in turn would promote legitimacy and reduce the activities of rogue companies. This view is in accordance with Shamir's argument, which states that voluntary CSR effectively

<sup>59</sup> *Doe v Unocal* 395 F.3d 932 (9th Cir. 2002).

<sup>60</sup> *Kasky v Nike Inc.* 45 P.3d 243 (Cal. 2002).

<sup>61</sup> McBarnet (n 24) 47.

<sup>62</sup> *ibid* 48.

<sup>63</sup> G Chandler, 'The Curse of Corporate Social Responsibility' (2003) 2(1) *New Academic Review* 9.

acts as a barrier to the implementation of new legislation which could help avoid exploitation of labour, bribery and corruption.<sup>64</sup>

Moreover, Socialist and Green Members of Parliament in the European Union (MEP) have urged nations to impose mandatory regulations, while the 2002 Green Paper concerning CSR noted there was a 'large consensus' that mere voluntary initiatives were not sufficient to protect the interests of citizens' rights.<sup>65</sup> In reply to the Green Paper, pressure group Friends of the Earth also advocated that the promotion of acceptable behaviour 'could not be seen as an alternative' to legislation, and those voluntary commitments were 'hardly the basis' towards ensuring responsible corporate behaviour or improving sustainability.<sup>66</sup>

However, there are arguments against the imposition of mandatory CSR legislation. Firstly, critics have cited that the lowest common denominator argument would lead to a reduced overall quality of CSR provision. Henriques suggests that if legislation were in place, then companies would deliver what the law requires, although they would fall short of providing any additional services.<sup>67</sup> He proceeds to equate current CSR achievement to 'hundred flowers in a bloom', and expresses his concerns about legislation hampering the ongoing progress.<sup>68</sup> Secondly, the lack of definition of CSR would be reflected in how reporting would vary considerably between companies in different sectors and countries. Likewise, globalisation would constantly lead to the evolution of laws and regulations as CSR activity transcends borders.

Coupled with the other negative externalities, legislation would result in additional bureaucracy and the costs of operation could potentially rise above the amount required for continued sustainability. It also provides leeway for

<sup>64</sup> R Mares, *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Martinus Nijhoff Publishers 2011) 29-30; R Shamir, 'Corporate Social Responsibility: A Case of Hegemony and Counter-Hegemony' in B. de Sousa Santos and C. Rodríguez-Garavito (eds) *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press 2005).

<sup>65</sup> European Commission, 'Corporate Social Responsibility: A business contribution to Sustainable Development' (Communication) COM (2002) 347 final.

<sup>66</sup> Friends of the Earth, 'Consultation response: The Commission of the European Communities' Green Paper' (2001) 2, <[http://www.foe.co.uk/sites/default/files/downloads/corporate\\_social\\_responsibility.pdf](http://www.foe.co.uk/sites/default/files/downloads/corporate_social_responsibility.pdf)> accessed 19 July 2015.

<sup>67</sup> A Henriques, 'The First Law of Corporate Social Responsibility' (2002) Ethical Performance <<https://www.ethicalperformance.com/news/article/1545>> accessed 11 March 2016.

<sup>68</sup> *ibid.*

companies to engage in 'creative compliance', where regulation is frustrated through the use of gamesmanship to resist overall legal control. Firms could potentially circumvent health and safety legislation or environmental regulation, much like how firms look to achieve tax avoidances. Hence, in the defence of the conservative view, a number of explanations have been persuasively argued to raise question over legislating CSR.

### III. COMPARATIVE INSTITUTIONAL ANALYSIS OF CSR

The comparison of the structural framework of institutions provides a further route to engage in a comparative study of CSR, with academics arguing that it proves to be a more comprehensive mechanism than legal or agent-based analysis at assessing the level of CSR activism. By exploring comparisons among political, financial and cultural contexts, studying institutions permits for a wider understanding of the sentimental decision-making by a country's government, than a legal perspective would employ. Furthermore, it considers cross-national interdependencies amongst different tiers of stakeholders, thus diminishing the simplistic analysis offered via the agency theory. The concept of "institutions" extends beyond references to governments and corporations. Huntington defined the term as 'stable, valued, recurring patterns of behaviour',<sup>69</sup> which is defined by their autonomy, adaptability and coherence, while Peters suggested that institutions 'enable predictable and patterned interactions', which influence behaviour and hold a strong attachment to the ethos of a nation.<sup>70</sup> Hence, it can be proposed that the extent of CSR activism is best analysed by debating the divergence of different societal practices and institutional management frameworks.

In consideration of CSR, we assume some basic prerequisites of institutional theory for a comprehensive analysis. Firstly, it is expected that companies are independent and driven to incorporate their own discretion over responding to market or political drivers. Secondly, we assume that governmental and legal institutions operate interdependently of society and administer the market in a way that prevents market failure. Finally, countries

<sup>69</sup> S Huntington, *Political Order in Changing Societies* (Yale University Press 1968) 12.

<sup>70</sup> G Peters *Institutional Theory in Political Science: The 'new Institutionalism'* (Bloomsbury Publishing 2005) 18.

are not completely autonomous actors and should be able to articulate their respective social values and preferences to the market, allowing them to respond accordingly and in turn, make their own behavioural adjustments. Such an organised system would consequently pave way for further accountability of the government, an enriched operation of the judiciary and the freedom of the civil society. In scenarios where these prerequisites are absent, opportunities for irresponsibility will arise, as seen with the political turmoil and corruption apparent in regimes across sub-Saharan Africa.<sup>71</sup> Similar failures were seen in the environment which marked the end of the USSR, where monopolistic companies attempted to exploit capitalist economies and governments prioritised rent-seeking over administration of markets. This depicts that companies attempting CSR can be located in places of divergent institutional set-ups and that comparisons should be made with close attention to their respective national business systems.<sup>72</sup>

However, institutional theory has been subject to criticism, with academics describing the conceptual looseness behind ideas.<sup>73</sup> It presents significant overlaps between the sub-processes of institutional isomorphism, while often governments give approval to certain policies over others, setting the trend for the nation's choices. This can be argued to be a direct consequence of the complexity of the literature on institutional theory. Writers have often attempted to implement a portmanteau of cross-collaborative viewpoints emerging from both formal mechanisms such as legislation, rules and regulations and informal sources such as cultures, values and norms. Furthermore, it is pertinent to note that the concept of socially responsible behaviour is also dependent on specific institutional settings, and it is impossible to apply comparable provisions across particular societies.

The National Business Systems (NBS) approach, as generated by Richard Whitley, provides a strong theoretical framework towards understanding the comparative differences that arises between CSR adoption among countries.<sup>74</sup> The approach has since been conceptualised in accordance with Hall and Solskice's VoC model, which distinguishes between Liberal Market Economies

and Co-ordinated Market Economies, as well as Hollingsworth and Boyer's 'social systems of production' model.<sup>75</sup> The NBS thus contributes towards understanding comparative CSR by assessing the differences which emerge in the institutional framework of the nations, and provides a more comprehensive approach by using the operation of business systems as its base.

Whitley identifies four key features of institutional frameworks, which can be used to compare the scope of CSR activism, dependent upon each state's societal structure and regulation: (i) the political system, (ii) the financial system, (iii) the education and labour system, and (iv) the cultural system.<sup>76</sup>

### **(i) The political system**

The political structure and related decision-making strategies, exercised by a government, can help identify the extent of a country's CSR activism. In his model, Whitley considers 'the extent to which states dominate the economy' through the influence of policies which affect businesses.<sup>77</sup> He also explores how political bodies look to guide social performance by regulating barriers to entry, shaping market boundaries and setting constraints on the activities of corporations.<sup>78</sup>

The level of CSR exercised in a nation is directly correlated to the political stability of the country's government. As a part of the process of entrepreneurial advancement, firms often engage in dialogue with the state to bargain for the opportunity to take up public sector contracts and other business opportunities in order to improve their company's profile. Dependent on the levels of state efficiency and bureaucracy in a given country, the particular business relationship between the firm and the state can be exploited. This is a particular problem in countries where fraudulent morals and beliefs result in higher levels of corruption, as the provision of CSR would be discouraged considering that states look to recoup any extra benefits for themselves. In such an environment, firms are increasingly likely to partake in corrupt practices in order to appease immoral government officials. In turn, this creates a scenario where the state will be less willing to provide incentives for firms to exercise socially responsible

<sup>71</sup> Williams and Aguilera (n 4) 15.

<sup>72</sup> *ibid.*

<sup>73</sup> T Donaldson and L Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' (1995) 20(1) *The Academy of Management Review* 65, 84; R La Porta, F Lopez-de-Silanes and A Shleifer, 'The Economic Consequences of Legal Origins' (2008) 46(2) *Journal of Economic Literature* 285.

<sup>74</sup> Whitley (n 2) 48.

<sup>75</sup> T Clarke and J-F Chanlat, *European Corporate Governance: Readings and Perspectives* (Routledge 2009) 21.

<sup>76</sup> Whitley (n 2).

<sup>77</sup> *ibid.*

<sup>78</sup> *ibid.*

behaviour. For example, blatant corruption was a part of the UN Oil for Food programme (OFF), which had been incorporated in 1996 to allow Iraq to purchase food, medicine and other basic amenities. Eight years after its inception, reports emerged citing that UN officials, Iraqi politicians and multinational companies had profited from the illicit sale of Iraqi Oil, including more than US\$1.7bn in bribes during the programme.<sup>79</sup> As the incident suggests, corruption can be prevalent in all forms of the political stratosphere and can seep through to influence the activities of companies. Demonstrating the impact of other similar societal failures, Adi cites that prevalent political turmoil and corruption have meant that Nigerian firms have often chosen to focus their CSR efforts on healthcare and education, in order to compensate for the shortcomings of the Nigerian political system.<sup>80</sup> Offering an alternate view to the aftermath of the OFF scandal, this suggests that the exercise of CSR can be hindered by governmental wrongdoing, but firms may have to instead inevitably act as a substitute to fulfil institutional gaps. Thus, countries plagued by political turmoil and corruption provide largely unsuitable environments for CSR activity to thrive.

In societal structures where governments seek to stimulate competition in between firms, a country is more likely to take a conservative approach towards exercising CSR. Considering that Friedman's neo-classical economic approach to CSR can lead to the maximisation of profit, any consequent government intervention would have led to improved allocative efficiency and better provision of social welfare.<sup>81</sup> However in societies where inter-firm competition is actively encouraged, firms struggle to survive and post lower profit margins, which consequently lead to fewer resources being left for nations to undertake CSR activities. Campbell suggests this will lead to a scenario where firms attempt to 'cut corners' to save money where possible, while this in turn, could lead to the level of product quality and safety becoming compromised.<sup>82</sup> This has emerged as an inherent problem in 'sin' industries, such as shipping and nuclear energy practices, where firms have looked to avoid liability, with

potentially drastic penalties. Therefore, CSR activism is more likely to be prominent in political structures which provide minimal provisions for encouraging corporate rivalry.

Furthermore, the ideological values of ruling parties can also influence the level of CSR activity in a country. In countries where there is a leftist political ideology, collective social consciousness means that the provision of CSR would be encouraged. The increased activism of CSR in the US during the presidential reign of Ronald Reagan and during the deregulation of the Thatcher era in the UK saw academics suggesting a correlation between increased CSR and neoliberalism. As beliefs are implemented into the societal structure, this implies that such countries are home to "implicit" rather than "explicit" CSR provisions.<sup>83</sup> However, as proposed in the VoC model, an implicit model denotes that a nation employs less active voluntary provision of CSR and has the paradoxical effect of actually resulting in fewer initiatives being encouraged by political bodies. Furthermore, academics have qualified the neoliberalism argument, suggesting that CSR's academic discourse has matured beyond its neoliberal roots and an 'impoverished' form is currently in existence.<sup>84</sup> Hence, the societal structure of different political ideologies does have a direct impact on the extent of CSR activism across countries, though it has been subject to debate of its contemporary relevance.

### (ii) The financial system

A second mechanism which can influence a country's CSR performance is the structure of its financial system. Through his NBS model, Whitley observes that financing arrangements around the world are often distinctive and varied by the contrasting methods of how capital is made available for business operations.<sup>85</sup>

In capitalist systems, market-based financial systems seek to induce inter-firm competition to secure favourable financing terms, and this in turn, leads to a form of short-termism to focus on maximising profitability. As a result, it can be proposed that this pushes firms to behave in socially irresponsible ways to

<sup>79</sup> S Otterman, 'IRAQ: Oil for Food Scandal' *Council on Foreign Relations* (28 October 2005) <[www.cfr.org/iraq/iraq-oil-food-scandal/p7631](http://www.cfr.org/iraq/iraq-oil-food-scandal/p7631)> accessed 28 July 2015.

<sup>80</sup> B Adi and others, 'Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?' (2006) 24(1) *Journal of Corporate Citizenship* 83.

<sup>81</sup> Friedman (n 3).

<sup>82</sup> J Campbell, 'Why would corporations behave in socially responsible ways? An institutional theory of corporate social responsibility' (2007) 32(3) *Academy of Management Review* 946, 953.

<sup>83</sup> Matten and Moon (n 17).

<sup>84</sup> G Hanlon and P Fleming, 'Updating the Critical Perspective on Corporate Social Responsibility' (2009) 3(6) *Sociology Compass* 937, 946; S Vallentin, 'CSR, SMES and Social Capital: An Empirical Study and Conceptual Reflection' (2012) 3(3) *Ramon Lull Journal of Applied Ethics* 17.

<sup>85</sup> Whitley (n 2) 49.

survive and the resultant unstable economic climate will limit investments towards CSR. Making a distinction, Fombrun and Shanley have argued that CSR is often a part of firm's long-term plans as they look to "build their reputation", so the existence of such short-term profit goals imply that firms will be unable to set aside extra resources for CSR practices.<sup>86</sup> However, in some extent it is true to say that, the structures of market-based financial systems appear to be more favourable in periods of high growth. This emerges as a result of credit-based financial systems facing more capital constraints and thus finding it more difficult to participate voluntarily in CSR activities. Hence short-termism and a desire for profit maximisation, as explored by Friedman, will have a negative impact on the levels of CSR adoption.

Countries which are able to exercise socially responsible investments (SRI) are more likely to be able to engage in CSR activities. The emergence of SRI initiatives, which has been referred to as an "investment philosophy", gained substantial momentum with investors across Europe and now exists as a permanent fixture of the financial market in Western European regions. Socially screened portfolios expanded rapidly at an annualised rate of 74% between 1995 and 1999, and helped establish a culture of incorporating environmental and social considerations into investment.<sup>87</sup> The more socially responsible investment opportunities that a firm chooses to undertake, the more attractive it will seem to potential investors and the more capital it will raise. So, comparatively, economies with sizable SRI funds and large amounts of capital available will have greater scope to invest in CSR activity. SRI has also been compared to a 'product' that firms choose to sell to potential investors of their business, which highlighted the growing importance of such advantageous schemes.<sup>88</sup> Subsequently, the extra capital garnered can be injected into the cycle to help the firm operate at a more proficient level and engage in further CSR work. The initiative has received the backing of prominent investment banks including Credit Suisse and UBS, while in a 2012 estimate, Booz & Company anticipated that the total value of global SRI would reach \$26.5 trillion in assets,

accounting for over 15% of total global investments.<sup>89</sup> Thus, considering the monetary value of incumbent projects, the growing attractiveness of SRI funds as a positive commercial undertaking has inspired states to actively increase their commitment towards CSR.

### (iii) The education and labour system

The structure of a country's education and labour system also has a direct impact on the level of CSR activity, with Whitley appraising the importance of a nation possessing a competent version of the dual arrangements in his NBS model. The societal structure of the respective systems varies between jurisdictions: in the US, corporations have sought to develop their own strategies, while alternatively in Europe, nationwide market policies still dominate vocational training.<sup>90</sup> The trade union movement differs from NGOs, as its primary objective is to seek improved industrial relations and they subsequently try to influence socio-economic policy. Matten and Moon state that 'higher levels of union membership in Europe resulted in labour-related issues being negotiated at a sectoral or national, rather than corporate level', hinting that trade unions possess sufficient strength to play a pivotal role in regulating the economy's performance, in comparison to the United States.<sup>91</sup> Similarly, legislation improving the democratic rights of labour unions in post-apartheid South Africa has been heralded as a significant driver for CSR. The presence of strong labour unions paves the way for extended lobbying and pushes the case for improved workplace amenities and increased community involvement.<sup>92</sup> The existence of a union can also act to promote environmental and social policies by creating awareness of their demands to firms. Moreover, the actions of unions can resultantly provide a domino effect on to other businesses that fails to adhere to unions, and can promptly lead to other businesses choosing to adopt more progressive CSR policies to match global market standards.

However, comparatively, the presence of labour unions does not guarantee the provision of CSR. Taking an alternative stance, it can be argued that

<sup>86</sup> C Fombrun and M Shanley 'What's in a name? Reputation Building and Corporate Strategy' (1990) 33(2) *Academy of Management Journal* 233.

<sup>87</sup> I Ioannou and G Serafeim, 'The impact of corporate social responsibility on investment recommendations: Analysts' perceptions and shifting institutional logics' (2015) 36(7) *Strategic Management Journal* 1053, 1057.

<sup>88</sup> A Mackey, T Mackey and J Barney 'Corporate social responsibility and firm performance: Investor preferences and corporate strategies' (2007) 32(3) *Academy of Management Review* 817, 830.

<sup>89</sup> Ioannou and Serafeim (n 87).

<sup>90</sup> Matten and Moon (n 17) 408.

<sup>91</sup> *ibid.*

<sup>92</sup> I Ioannou and G Serafeim, 'What Drives Corporate Social Performance? The Role of Nation-level Institutions' (2012) 43(9) *Journal of International Business Studies* 834.

conforming to the demands of labour unions leaves firms with fewer resources to set aside for environmental and social performances. This subsequently distorts the presumed relationship between the existence of a committed workforce and CSR performance, and the reproach is based on two separate assumptions. Firstly, it assumes that CSR does not form an integral part of the firm's business model and resources must be set aside to promote any form of CSR. Secondly, critics assume that labour unions will only push for their advancement and ignore any impact that the firm could provide for the community or the environment.<sup>93</sup> However, Ioannou and Serafeim object to the alternative argument and state a drawback of the critique: labour unions will often push for community concerns and 'typically employees originate from the local communities', so will continue to stay motivated to strive for communal pledges.<sup>94</sup> Moreover, European labour trade unions have looked to become involved in developing codes of conduct, with the Dutch union, the Sociaal-Economische Raad (SER) drawing up checklists as part of their assessment of the viability of CSR.<sup>95</sup> Therefore, it can be implied that countries with powerful and influential labour unions can help encourage the promotion of CSR activities.<sup>96</sup>

#### (iv) The cultural system

CSR activism can also be influenced by the attitudes of certain cultural systems, which may possess favourable values and beliefs towards ethical behaviour. Whitley argues that distinctive cultures across jurisdictions have a role in determining the practise of CSR and stresses that 'governing trust and authority relations are crucial', drawing attention to the cross-national techniques of building relationships between business partners and between employers and employees.<sup>97</sup> The divergences in CSR practices can be assessed by comparing the differences between the various cultural systems across the US and Europe. An unwritten ethic for corporations to "give back" to society has emerged since

the turn of the century in the US, while the situation in Europe still differs. Instead, greater cultural reliance on representative organisations exists, with attitudes still assessed from political parties, unions and churches among other bodies.<sup>98</sup> Another cultural determinant is whether the country is considered to be more masculine or feminine, with the former less likely to have policies which focus on the environment.<sup>99</sup> Evidence has consequently shown that corporations across India and South Korea, considered to be feminine countries, are more likely to take harsher stances against environmental degradation.<sup>100</sup> Thus it can be understood that cultural permutations help guide corporations when they consider the extent of their CSR provision.

Countries which are characterised by higher levels of individualism are more likely to engage in effective CSR activities. In their theoretical study concerning the 'latitude of managerial action', Crossland and Hambrick argue that societies which possess high levels of individuality would characteristically allow greater individual initiatives to be taken by managers.<sup>101</sup> Comparatively, countries with lower levels of individualism would expect the decision-making process to be more participatory, which in turn, increases the hurdles of passing favourable CSR decisions. Individualistic societies provide opportunities for economic actors to practice "explicit CSR", which arises as a result of autonomous strategic decisions. For example, a country with a Roman Catholic heritage may typically adapt a collective approach in comparison to a country of Protestant heritage, which stresses the importance of following one's individual faith.<sup>102</sup> So, in the former example, CSR philanthropy is likely to be of a lower profile, as it promotes an element of self-promotion. Analogously, in more individualistic countries, there will be more explicit CSR activities in comparison to "implicit" societies, where CSR operates as a substitute to institutional activity. However, it must be stressed that the measurement of culture is

<sup>98</sup> Matten and Moon (n 17) 6.

<sup>99</sup> G Hofstede, 'The business of international business is culture' (1994) 3(1) *International Business Review* 1.

<sup>100</sup> M Christie and others, 'A Cross-Cultural Comparison of Ethical Attitudes of Business Managers: India Korea and the United States' (2003) 46(3) *Journal of Business Ethics* 263.

<sup>101</sup> C Crossland and D Hambrick, 'Differences in managerial discretion across countries: how nation-level institutions affect the degree to which CEOs matter' (2011) 32(8) *Strategic Management Journal* 797.

<sup>102</sup> Matten and Moon (n 17) 9.

<sup>93</sup> R Mullerat, *International Corporate Social Responsibility: The Role of Corporations in the Economic Order of the 21st Century* (Kluwer Law International 2010) 442.

<sup>94</sup> Ioannou and Serafeim, 'What Drives Corporate Social Performance?' (n 91).

<sup>95</sup> Royal Van Gorcum, *Corporate Social Responsibility: A Dutch approach* (Royal Van Gorcum, Assen, The Netherlands 2000) 50.

<sup>96</sup> A McWilliams and D Siegel, 'Corporate social responsibility: A theory of the firm perspective' (2001) 26(1) *Academy of Management Review* 117.

<sup>97</sup> Whitley (n 2) 51.

restricted by logistical difficulties. Nations are a purely political concept and boundaries are not only designed according to culture; hence countries may have more than one particular culture (eg India and Switzerland), while many nations may have a single culture (eg Burundi, Malawi and Rwanda). Thus, the classification of national culture must be assessed pragmatically, in relation to CSR. Considerations of how managerial motivation is affected by cultural perspectives shall be considered in the next Section.

#### IV. EVOLVING MANAGERIAL ATTITUDES TOWARDS CSR

A further comparative inquiry focuses on how managerial values and attitudes towards CSR are likely to be influenced by particular beliefs, whether it emerges from an organisational, national or cultural context.<sup>103</sup> Despite the growing global convergence of business practices, scholars have noted that senior management teams continue to be heavily influenced by idiosyncratic matters when making decisions. Consequently, the decision-making process is subject to specific strategies and diverse constraints, depending on to the country's values from which the manager operates.<sup>104</sup>

##### Managerial Motivations

The organisational structure of a management team can influence decision-making, with Husted drawing a parallel between the likelihood of a manager engaging in corrupt behaviour and the extent to which his country is shrouded by high power distance and uncertainty.<sup>105</sup> In a comparative study surveying the motivations towards CSR of senior managers in South Africa and the United States, Orpen found that managers in the US displayed a more welcoming attitude.<sup>106</sup> Orpen assessed the differing 'major arguments for and against

involvement in social responsibility activities by business' and also designed his study to measure the 'perceptions of the extent to which their society regards it as desirable that business engage in various social responsible activities'.<sup>107</sup> Thus, he was able to conclude that while South African managers adapted predominantly anti-responsibility stances, their US counterparts took a positive approach and had felt more pressure to get involved to tackle social issues. The presence of efficient legitimacy and bureaucracy on a managerial level overcomes any negative obstacles associated with bribery and corruption, leaving funds to be allocated towards the provision of CSR activities. Therefore, clarity in the organisational structure of a management team can help firms strive towards further CSR activity.

In order to assess the influence of national inspiration on CSR, Maignan and Ralston conducted a cross-national study on businesses' communication about CSR across four different jurisdictions: The Netherlands, France, UK and US.<sup>108</sup> When assessing the differing levels of CSR-related statements via firms' web pages the four countries, Maignan and Ralston showed that businesses increasingly had implemented an approach based on stakeholder influence.<sup>109</sup> While the Dutch and French firms were only likely to include CSR issues on their websites as a response to stakeholders' scrutiny, the US and the UK tended to be more transparent and willing to include CSR issues for public view.<sup>110</sup> Moreover, the study also identified that factors determining stakeholders' decisions, also differed from country to country.<sup>111</sup> While communities and consumers were reported to be the primary stakeholder drivers in the UK, adapting to the demands of customers and regulators prompted France and the Netherlands to adapt more conservative approaches to CSR.<sup>112</sup> The analysis is subsequently in line with Apostolakou and Jackson's model on how CSR is largely implicitly practised in CMEs, while it can be an explicitly practised in LMEs.

<sup>103</sup> I Maignan and OC Ferrell, 'Nature of corporate responsibilities: Perspectives from American, French, and German consumers' (2003) 56(1) *Journal of Business Research* 55.

<sup>104</sup> I Maignan, 'Consumers' perceptions of corporate social responsibilities: A cross-cultural comparison' (2001) 30(1) *Journal of Business Ethics* 57.

<sup>105</sup> B Husted and J De Jesus Salazar 'Taking Friedman Seriously: Maximizing Profits and Social Performance' (2006) 43(1) *Journal of Management Studies* 75, 77.

<sup>106</sup> C Orpen, 'The attitudes of United States and South African managers to corporate social responsibility' (1987) 6(2) *Journal of Business Ethics* 89, 90.

<sup>107</sup> *ibid.*

<sup>108</sup> I Maignan and D Ralston, 'Corporate Social Responsibility in Europe and the U.S.: Insights from Businesses' Self-presentations' (2002) 33(3) *Journal of International Business Studies* 497.

<sup>109</sup> *ibid.*

<sup>110</sup> *ibid.*

<sup>111</sup> *ibid.*

<sup>112</sup> *ibid.*

Furthermore, managers are also often culturally motivated and attempt to pursue their tradition and values as they engage in decision-making. Egri and colleagues conducted a study which looked at individual values and attitudes towards corporate responsibilities (CR) across 28 countries and consequently, found that individual values have a direct relationship with the types of corporate responsibilities dealt with in different countries.<sup>113</sup> Confucian-based societies including Hong Kong and Taiwan were increasingly likely to support economic CR proposals, as were survival societies including post-Communist nations, Bulgaria and Hungary.<sup>114</sup> On the other hand, nations with a Roman Catholic Heritage, notably Colombia and Italy, were found to be more willing to support social CR initiatives to promote ethical idealism.<sup>115</sup> In a further study assessing the influence of beliefs on decision-making, Xu and Yang found that CSR had specific meanings in China related to its social and cultural background.<sup>116</sup> They were able to list China's three unique CSR dimensions influenced by culture: good faith (conforming to business ethics), employment (increasing job opportunities for the unemployed and disabled), and social stability and progress (ensuring social stability, prosperity and harmony).<sup>117</sup> Chu and Lin remarked that CSR in China is best understood as a 'continuous negotiation between business practices and local, social, cultural, and economic contexts'.<sup>118</sup> There is no doubt in the truth of the claim that the role of cultural and national beliefs in the provision of CSR. Nevertheless, it is pertinent to note that the internationalisation process has meant that developing countries often have a different source of legitimacy to consider apart from their own traditions. Drawing a distinction between driving institutional factors of CSR and managerial motivations, it can be argued that the latter may purely emerge from an isolated view of helping a company gain a comparative advantage in the market. The studies thus provide a perspective of what certain businesses in the

nations strive towards, but more established firms could attempt to mimic successful models from other successful corporate cultures.

### Criticism of Managerial Motivations

Despite the relative establishment of parallels between CSR and national and cultural trends above, previous comparative studies have been less conclusive. Other academics have instead proposed that the values of individuals and organisations, regardless of regional or cultural context, are a superior predictor of managerial CSR behaviour. In a comparative study, Quazi investigated the textile and food manufacturing industries in two differing nations, Australia and Bangladesh, only to conclude that CSR decision-making tends to be more universal than country-driven.<sup>119</sup> He found that corporate responsibility was often calculated in proportion of the business's social commitments, rather than being influenced by culture.<sup>120</sup> Similarly, Bansal and Roth examined the determinants of managerial motivations across the United Kingdom and Japan, through a qualitative study.<sup>121</sup> They examined distinctive corporate-level motivations such as competitiveness, legitimation, and the degree of environmental responsibility, and contrasted it with contextual determinants such as the significance of the CSR issue and the managerial concern for CSR issues.<sup>122</sup> Consequently, the study noted that managers and firms in the two countries were driven by separate factors to undertake CSR actions and that there was no explicit country-based divergence.<sup>123</sup> As a whole, these studies downplayed the existence of any trends which affect the provision of CSR activity, and give further credentials to decisions being inclined towards the "shareholder approach".

The notion of organisational, national and culture trends influencing managerial motivation also challenges Friedman's neoclassical critique.<sup>124</sup> As a

<sup>113</sup> CP Egri and others, 'The Influence of Personal Values and National Contexts on Attitudes towards Corporate Responsibilities' (2006) presented at the Third BC Organizational Behaviour Conference, Vancouver, Canada.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

<sup>116</sup> S Xu and R Yang, 'Indigenous characteristics of Chinese corporate social responsibility conceptual paradigm' (2010) 93 *Journal of Business Ethics* 321.

<sup>117</sup> *ibid.*

<sup>118</sup> S-C Chu and J-S Lin, 'Do Chinese Consumers Care About Corporate Social Responsibility?' (2012) 2(1) *Asian Journal of Business Research* 69, 72.

<sup>119</sup> A Quazi, 'Corporate Social Responsibility in Diverse Environments: A Comparative Study of Managerial Attitudes in Australia and Bangladesh' (1997) 16(4) *Business & Professional Ethics Journal* 67.

<sup>120</sup> *ibid.*

<sup>121</sup> P Bansal and K Roth, 'Why Companies Go Green: A Model of Ecological Responsiveness' (2000) 43(4) *The Academy of Management Journal* 717.

<sup>122</sup> *ibid.*

<sup>123</sup> *ibid.*

<sup>124</sup> Friedman (n 3).

part of his “agency argument”, Friedman argues that ‘in a free enterprise, private property system, a corporate executive is an employee of the owners of the business’ and their ‘responsibility is to conduct the business in accordance with their desires’, thus providing managers with the solitary goal of attempting to maximise profits from investment.<sup>125</sup> Friedman maintains that corporations cannot be expected to exercise CSR as they operate independently of governments, and the context of his activism promotes the values of free enterprise.<sup>126</sup> Hence his argument distances itself from managers being motivated through other connotations and assumes that specific institutional rules of CMEs and LMEs are essentially universal. However, as demonstrated through the studies above, corporate governance varies cross-nationally, and this led Gourevitch and Shinn to argue that the differences are a result of political contestation rather than through profit-maximising goals or the “needs” of capitalism.<sup>127</sup> Boatright draws further criticism to Friedman’s critique, stating that shareholders’ interest is a public policy choice rather than an inevitable consequence of shareholder property rights, and that subsequently, no fiduciary duties are owed to the owners from managers.<sup>128</sup>

Further revoking the applicability of Friedman’s critique, Chryssides and Kaler argue that in UK and US law, the company is considered to be a separate legal entity and managers are therefore not direct agents or managers.<sup>129</sup> His neoclassical model has also been widely considered to be outdated in the context of rapid globalisation and changing business strategies. CSR has emerged as a platform through which the public demands accountable actions and the need for flexible governance has rendered Friedman’s critique irrelevant. The move towards stakeholder and society oriented business practices has been driven by increased consumer participation, which now represents a significant dynamic of a firm’s strategy. Guidelines from the World Business Council for Sustainable Development have also reflected Edward Freeman’s emerging “stakeholder theory”, encouraging the integration between business and

<sup>125</sup> *ibid.*

<sup>126</sup> *ibid.*

<sup>127</sup> P Gourevitch and J Shinn, *Political Power and Corporate Control: The New Global Politics of Corporate Governance* (Princeton University Press 2007).

<sup>128</sup> J Boatright, ‘Fiduciary Duties and the Shareholder-Management Relation: or, What’s so Special About Shareholders?’ (1994) 4(4) *Business Ethics Quarterly* 393.

<sup>129</sup> G Chryssides and J Kaler, *An Introduction to Business Ethics* (Cengage Learning EMEA 1993) 228.

ethics.<sup>130</sup> Hence, the definition of managerial motivations has significantly evolved to embrace the changes caused by globalisation.

## CONCLUSION

Through globalisation and the development of cross-national practices, the concept of CSR and the related societal structures that drive activism are going through a period of transformation. A surge in optimistic attitudes towards CSR as a result of political, financial and cultural evolutions has prompted governments to respond accordingly with legal regulations. Implementing a more rigorous approach of corporate accountability to promote ethical practices, laws are increasingly being employed to enforce, rather than simply encourage CSR activism. Consequently, such societal changes are leading to a transnational movement where nations are increasingly choosing to raise levels of adoption as a result of the domino effect.

Utilising comparative legal analysis to assess the role of legislation in global CSR practices, it becomes evident that there is an increasing trend towards implementing progressively stricter regulations. Through the imposition of legal or quasi-legal guidelines, countries have been able to offer firms with new strategies to adapt their CSR practices accordingly to the state’s respective political and social philosophies. Voluntary action across Europe was encouraged following the EU Commission’s 2002 Green on Promoting a Framework for CSR, while indirect regulatory concepts such as mandatory disclosure, became prominent in national legislations and elevated CSR towards being a legal obligation. Furthermore, the introduction of the first mandatory CSR legislations, the emergence of a legal role for transnational governance bodies and the increasing availability of litigation tools for civil society marks a significant development for CSR activism, asserting its increased importance in global practice.

The consideration of institutional theory involves an evaluation of the key features of a nation’s structural framework which in turn permits a wider understanding of the sentimental decision-making of nations. Considering a society’s political structure, CSR activity will thrive where a country is free from

<sup>130</sup> World Business Council for Sustainable Development Guidelines, *CSR-Meetings Changing Expectations* (1990).

corruption and exercises regulations which prevent the evasion of compliance. A further line of argumentation suggests that governments with a leftist political ideology observing collective social consciousness would encourage CSR, though critics have lamented the paradoxical effect of neoliberalism. Assessing the impact of a country's financial and industrial set-up, the practice of CSR has been shown to be increasingly prominent where socially responsible investments are made and in nations with strong labour unions to promote policies. Moreover, taking a cultural perspective, it can be argued that a societal structure characterised by high levels of individualism will also prompt autonomous strategic decisions.

Through the analysis of managerial values and attitudes towards CSR, it becomes evident that the global convergence of business practices has prompted senior management teams to be heavily influenced by cross-national issues while making decisions. Traditional, national and cultural beliefs are progressively being abandoned a part of the internationalisation process because firms seek to gain a comparative advantage in the market. However, an alternate argument suggests that the emergence of managerial motivations provides a further challenge to Friedman's neoclassical critique of profit maximisation. Finally, increasing cross-national CSR and the integration of business and ethics have rendered Friedman's neo-classical economic critique of the CSR model largely irrelevant.