

Chapter 2

The Ethical Foundations for CSR

Claus Strue Frederiksen and Morten Ebbe Juul Nielsen

Abstract In this chapter we will discuss the ethical foundations of CSR. The chapter consists of three major parts. First, we discuss three different approaches to CSR, namely (a) an instrumental approach, (b) an ethical approach and (c) a hybrid approach, attempting to combine the instrumental and the ethical approach. We will conclude that the ethical approach to CSR is the most reasonable of the three alternatives. Second, we introduce some of the most influential ethical theories and their key principles, namely (a) the utilitarian principle of maximizing well-being, (b) theories of rights, and (c) social contract principles concerning fairness, and discuss how they might relate to CSR in general. Third, we present and discuss some specific ethical challenges characteristic for CSR including whether companies should focus solely on avoiding harmful actions or whether they also have obligations to actively do good.

2.1 Introduction

The purpose of this chapter is to discuss some of the key relations between ethics and CSR. More specifically, our main aim is to discuss the relation between *ethical theories* and CSR. We offer no substantial recommendations and defend no particular theory here. The purpose is much more modest: to clarify different views and possibilities as to how morality¹ and CSR can be said to go together. Briefly, by “ethical theory” (or “foundation”) we mean any reasonably sophisticated, well-considered and cogent normative background theory informing, guiding or criticizing some practice. By “CSR” or Corporate Social Responsibility, we mean any

¹ We do not differentiate between the terms “ethics” and “morality”.

C.S. Frederiksen (✉) • M.E.J. Nielsen
Philosophy Unit, Department of Media, Cognition and Communication, University of
Copenhagen, Karen Blixens Vej 4, 2300 Copenhagen, Denmark
e-mail: clausf@hum.ku.dk

business or organization practice that intends, or purports to intend, to follow at least some rules, principles, policies or values that in at least some cases are identifiable as “socially responsible”.

The chapter consists of three parts, apart from this introduction. First, we will outline the possible structural relations between ethics and CSR. We present three different approaches to CSR, namely (a) an instrumental approach, (b) an ethical approach and (c) a hybrid approach, attempting to combine (a) and (b). Second, we introduce some of the most influential ethical theories and their key principles, namely (a) the utilitarian principle of maximizing well-being, (b) theories of rights, and (c) social contract principles concerning fairness, and discuss how they might relate to CSR in general. Third, we present and discuss some specific ethical challenges characteristic for CSR. We focus on two important questions, namely: (a) whether companies should focus solely on avoiding harmful actions, i.e. respect negative rights, or whether they also have obligations to actively do good, e.g. by promoting positive rights and (b) the scope of companies’ obligations, i.e. which stakeholders (or other groups) they are obligated towards and to what degree.

Some preliminary notes: our intention is to outline some key systematic and analytic relations between ethical theories and the practice of CSR (or put more simply, between morality and CSR), and *not* to outline the “history of business ethics or CSR.” An “archaeology” of the existing body of literature and theory of CSR focusing on the relation between normative thoughts and CSR would indeed be interesting and valuable; however, our focus is on the systematic, not the empiric relations. Moreover, we do not hold the naïve view that businesses and consultants in fact are informed by only one ethical theory when they do CSR (or even any such theory at all.)² Rather, businesses (and business scholars) are most of the time notoriously eclectic in their approach, foraging freely in the wood of principles and values as they see fit. We do not take a stand for or against that approach, but for reasons of exposition we generally ignore that fact. Finally, we should point out that we trace only the connections between the most well-consolidated and influential moral theories within the field of academic ethics and CSR. We cannot in this short space even begin to offer a comprehensive overview of all plausible moral theories and their relations to CSR.

2.2 The Relationship Between Ethics and CSR

One of the questions business leaders ask themselves is why their company should (continue to) be engaged in CSR. Basically, there are three different ways of addressing this question in the affirmative, namely by referring to the positive business case for CSR (“it’s good for business”, the instrumental approach), or by

² However, there seems to be good evidence that businesses *do* view their engagement with CSR as being an *ethical* enterprise. See Arlbjørn, Warming-Rasmussen, Liempd, and Mikkelsen (2008).

insisting that it is morally obligatory to do so (“it’s the right thing to do”, the ethical approach) or by combining the points of view and say that, at least potentially, it is the right thing to do both financially and morally (“we should do good, both for business and morally speaking”, the hybrid approach).

We will begin by looking at the instrumental approach to CSR. This approach is characterized by its exclusive focus on the business case for CSR. One should engage in CSR-practices if, and only if, they are, at the end of the day, *profitable*. There are several ways in which such a connection can be construed. But essentially, they almost always boil down to one and the same key idea, namely *CSR as company branding*. (Some) customers are likely to prefer buying from companies with a good reputation, and building up legitimacy in the eyes of consumers and NGO’s will reduce risk when or if the company is seen to step out of line on some issue. Likewise, a good reputation is important vis-à-vis other key stakeholders, such as employees (current or future), policy makers, contract and business partners etc. In short, according to the instrumental perspective, CSR projects are to be evaluated on the basis of their propensity to make the company look good in the eyes of various stakeholders. CSR is a sophisticated marketing tactic in the company’s toolbox. Note that the instrumental approach does not imply that companies should ignore local or international legislation; it simply implies that companies should not go *beyond* the letter of the law and do good, unless such acts are expected to have a positive impact on the bottom line. Supporters of the instrumental approach might thus very well believe that companies should play by the laws and regulation set out by national governments and international forums like the UN and WTO.

We will return to the instrumental approach and some of its problems below, but we turn now to the ethical approach. The main characteristic of the ethical approach is the focus on ethical aspects rather than the possibilities for profiting from CSR. Supporters of this approach believe that companies should engage in CSR at least also because it is the morally right thing to do. In general supporters of this approach accept that CSR might not *always* be the most profitable avenue. In a conflict between the company’s narrow economic interest and moral considerations, the moral considerations at least on some issues take precedence over the company’s interests. However, it is a misunderstanding of the ethical approach to say that “true” or “moral” CSR *necessarily* is bad for profits: profit is not in itself morally wrong. Hence, taking an ethical approach to CSR entails that companies accept *potential* loss of profit, and that (eventual) loss of profit is accepted for moral reasons; because sometimes ethical demands such as a concern for the interests of other parties override the demand for profit.

A third approach to CSR is what we call the hybrid approach. The hybrid approach tries to reconcile the instrumental and ethical approaches to CSR. It is characterized by rejecting or downplaying the potential conflicts between financial and moral considerations, i.e. supporters of this position believes that the interests of companies and society at large (mostly) coincide. In the (characteristically) optimistic jargon of much business literature, social demands (roughly what we have called ethical demands) and profit match each other, offering a “win-win”

situation. The hybrid position has one main advantage, namely that it seems to solve the dilemma between economic and ethical considerations facing business leaders worldwide on a daily basis. By asserting that the conflict between companies' self-interests and society's interests is by and large an illusion, the hybrid position seems like a very attractive alternative. It is not difficult to muster examples that support the intuition that society and businesses prosper in conjunction. Businesses provides goods and services, they employ people and hence give them a livelihood, the workplace is very important for person's sense of self-esteem etc. and businesses *need* profit to provide all these good things. The question is, however, whether the hybrid approach is empirically realistic. We will not go into a thorough discussion of the matter here. However, one general point seems appropriate: It is an empirical question whether doing the right thing *always* pays off—whether there is *never* a conflict between maximising profit and acting morally. It seems very unlikely that this should always be the case, and supporters of the hybrid approach should provide an answer about what companies should do when such conflicts occur. The problem here is that if they argue that profit should prevail when there is a conflict then the hybrid approach is indistinguishable from the instrumental. Likewise, if they argue that the ethical choice is the right one, then the hybrid position collapses into the ethical. In the absence of the (happy but improbable) circumstance that profits and ethics always coincide, the hybrid approach lacks cogency and we shall limit ourselves to a discussion of the instrumental and the ethical approach. In this part, we shall focus on the instrumental approach, only to zoom in on the ethical in the next.

To recap: we have defined the instrumental approach as one that sees profit as the ultimate motivation for engaging in CSR. However, and this can be rather tricky, the instrumental approach *does not* require that companies should not engage themselves in ethical projects, or deny to adopt (seemingly) high standards on some moral issues (such as equal opportunity, or worker's rights) that might entail a *short-term* loss of profit. Doing so might be profitable in the long run. What the instrumental approach *does* entail is that the final standard of evaluation is all-things-considered profit. The bottom line is the (economic) bottom line, not some other standard. Note a complication here. Some scholars advocate what might *seem* like an instrumental approach, but do so on quite explicit *moral* terms. For example, Friedman's (1970) famous saying, that the social responsibility of companies is to increase profit, might be thought to be in line with the instrumental approach. However, Friedman's position is based on libertarian ethical arguments, and is thus, at least in one sense, in accordance with the ethical approach. That being said, the Friedman position seems to elude or bypass our definition of the ethical approach: according to his line of thought, it can never be morally acceptable not to maximize profit (within the limits of law.) However, note that the argument *is*—or at least purports to be—a *moral* argument. In that sense, we believe that it is best labelled as an ethical approach. Whether or not the Friedman's position rest on a feasible or desirable argument depends on the defensibility of the specific libertarian background theory and is hence beyond the scope of this article.

With this confounding issue aside, what can we say about the instrumental approach? There are, we believe, two major problems with that line of thought, a practical and a more principled. The practical problem is that an instrumental approach might be unstable, at least in the longer run. If a company *only* invests resources in CSR-programs and *only* “behaves ethically” if it is indeed profitable, and backs out whenever long term maximizing of profits are seen to be undermined by doing so, then stakeholders such as customers, employees and policy-makers are likely to be alienated. Of course, a *clever* instrumental approach might take this into consideration. But the stability of such a line of thought depends ultimately on the same happy coincidence between morality and profits that is unlikely to hold for hybrid theories. The more principled problem is that it becomes hard to envisage what should *legitimize* the instrumental approach: since moral arguments cannot underpin it (remember, that the Friedman position rests on a moral argument), what could? With reference to what could corporations argue that their profit is the only things that matters *in principle*, without reference to some ethical background theory? See, however, the final discussion in this article.

2.3 Major Ethical Theories and CSR

An ethical theory can be defined as a relatively sophisticated, well thought through and, at least to some extent cogent and self-consistent theoretical background answer to the question “what ought I do, morally speaking”, applicable to all or a broad range of issues. There is a score of such theories available; nevertheless, we shall focus on just three, namely *utilitarianism*, *the ethics of rights*, and *contractualism*. Apart from reasons of limited space, our justifications for focusing on these three theories are as follows: first, they are central in the philosophical debate of ethical theories. Many of the staple issues in ethical theory are defined in and by the debate between these major players. Second, these theories and their concepts and principles largely (though far from completely) define and inform the academic literature on “the morality of CSR” and business ethics.

2.3.1 Utilitarianism

Utilitarianism is the, superficially at least, simple idea that morality concerns doing as much good and preventing as much bad as possible. More specifically, most contemporary utilitarians, including Singer (1993), argue that moral agents, including companies, should maximize the total sum of well-being.

Several characteristics are worth noticing. First, because it is the total sum of well-being that moral agents are obligated to maximize, it follows that the well-being of all humans (or sentient beings) should be taken equally into account. This means that the interests of distant strangers are just as important as our own

interests. Second, utilitarianism is perceived as a very demanding moral theory, because it rejects that agents have *options* to (sometimes) act in ways that does not maximize the total sum of well-being. Third, utilitarianism is also perceived to allow too much, since it rejects that moral theories should include categorical constraints against harmful actions such as using forced labour or discriminating on the basis of race or gender. Harmful actions are only morally wrong if they do not maximize the total sum of well-being. There are no *constraints* against maximising the good. Fourth, since the sole focus is on the consequences utilitarians do not distinguish between harmful actions and harmful omissions, meaning that not assisting a needy person is just as bad as actively harming him. Finally, utilitarianism focuses solely on well-being, i.e. other things like health or close relationships are only worth pursuing because (or if) they increase the total sum of well-being. In this regard it is important to note that even though utilitarians differ in what they regard as well-being, this difference rarely has any practical implications in regards to business ethics, since these kinds of utilitarianism would make the same moral judgments in regards to child labour, bribery, discrimination, etc.

Companies and business leaders wanting to act in accordance with utilitarianism might believe that they, when confronted with a moral dilemma, should simply try to calculate which actions seem to maximize the total sum of well-being. For example, when confronted with a possibility to land an important order by “inviting” a public official and his family on a trip to Bahamas, the company, personified by the manager, might try to calculate whether this seems to maximize the total sum of well-being. However, there are good utilitarian reasons not to follow such a direct decision procedure. First of all, constant calculation takes a lot of time, and thus they can be counter-productive. Secondly, and more importantly, since managers, like most of us, have a tendency to care more about their own interests and downplay or even disregard the interests of others, constant calculation will most likely not lead to the maximization of the total sum of well-being. Instead of constant calculation many utilitarians suggest that moral agents, including companies, should follow some kind of *indirect* decision procedure that might, on the face of it, differ from utilitarianism.

2.3.2 *Utilitarianism and CSR*

Indirect utilitarianism, embodying a two-level approach as just sketched, does not seem to allow companies to commit harmful actions, including bribery, discrimination and using forced labour, since such actions *generally* do not maximize the total sum of well-being. Basically, utilitarians would thus not recommend that companies should stop respecting negative human rights. There is, however, one major difference from today’s CSR practice and a CSR policy that would be in accordance with utilitarianism. Unlike today, where companies seem to focus on the interests of its stakeholders, a utilitarian approach would imply that companies took everybody’s interest into account, meaning that companies should consider the

interests of faraway strangers as just as important as the interests of closely related groups, e.g. the local community. The utilitarian so-called *agent-neutral* perspective, where everybody's interest counts equally, combined with the demand of maximizing well-being thus imply that companies should direct a large portion of their CSR resources (and some of their other resources as well) towards the needs of the poor living far away from where they operate, instead of spending them on "closer" stakeholders, which seems to be the current policy. It seems likely that using resources on saving faraway children from dying of hunger or (easily curable) diseases would promote more well-being than spending the resources on, e.g., relatively well-off workers in the rich parts of the world. Notice that the reference to the two-level approach does not seem to chance this conclusion, since companies, would have a hard time justifying eventual rules-of-thumb that prioritize (close) stakeholders to the same degree as today. In this regard, rules-of-thumb focusing a lot more on the interests of faraway strangers seems more in accordance with the utilitarian doctrine of maximizing the total sum of well-being.

To sum up, respecting negative rights utilitarians, at least those in favour of a two-level approach, would probably approve of many current CSR-practices, e.g. respecting the ten principles suggested by UNGC. However, when it comes to the question of promoting wellbeing, utilitarianism implies heavy reformation of the current practices. Utilitarians would demand that companies focus a lot more on the needs of faraway strangers than they do today. Additionally, it is important to notice that utilitarianism is not an easy theory to use in practice. Even though it might seem evident, from a utilitarian perspective, to assist e.g., poor Africans rather than relatively wealthy Europeans, difficulties arises when we turn to dilemmas concerning (fairly) certain immediate benefits versus more speculative future effects. For instance, it seems fair to say that the tremendous effort made by many companies to reduce their CO₂ emission has a very limited (if any) positive effect on the total sum of well-being in the short term. On the other hand, such steps might have a huge positive impact on the total sum of well-being 50 years from now. So what would a good utilitarian company do when faced with a choice between improving (and maybe even saving) people's lives today or taking costly steps to reduce CO₂ emission? In trying to solve such a dilemma companies should try to calculate the long-term expected benefits by reducing CO₂ emission and balance these against the immediate benefits resulting from e.g. assisting needy Africans. However, since the expected benefits by reducing CO₂ emission generally are difficult to predict, such a utilitarian calculation might be almost impossible to make for a particular company. We might thus end up with a somewhat unsatisfying answer, namely, that companies should try to calculate the benefits by the best of their abilities and then take the steps that seem to maximize the total sum of well-being.³

³ For further reading, see Frederiksen and Nielsen (2013).

2.3.3 Ethics of Rights

The term “ethics of rights” (from now on, ER) covers a set of theories (including theories frequently labelled as “deontological”) that congregate around some key notions, rights being one of the most prominent. A right can loosely be defined as a claim or “trump” against other claims which a person can “play” against the claims of other persons. Hence, if you have the right not to be killed, you can play the “trump” against the utilitarian arguing that killing you will, in fact, maximally promote the good.⁴

In general, ER proposes that morality consists of much more than just promotion of the good. Many actions are *morally wrong* even though they might promote the overall good. Conversely, agents have many forms of rights to act in ways that does not promote the good. Using the vocabulary from the above, proponents of ER argue that there are *constraints* against certain ways of acting (even if these actions sometimes promote the good.) Such actions are easily recognizable as something which at least in rough outline tracks “ordinary” or “common sense” morality, such as killing, lying, stealing, doing bodily harm, bribing etc. In short, persons have *negative rights* against being lied to, physically assaulted, killed etc., and businesses are to respect these rights. Moreover, most proponents of ER argue that we have *options* to refrain from acting in ways that maximally promotes the good. Hence, agents are permitted to further their own interests (for as long as they respect the rights of other agents) even though this does not necessarily promote the overall good. The question whether agents have duties to promote the interests of others—which is to say whether or not agents have *positive* rights, rights that others assist them—is a question we return to in the discussion below. ER has a long and complex pedigree. Still, a defining moment can be pinpointed to German philosopher Immanuel Kant.⁵ The probably most trenchant version of Kant’s (1994) various foundational formulations of basic ethical principles is:

Act in such a way that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end and never merely as a means to an end.

What does it mean to treat another person as an end, or, conversely, merely as a means to an end? Treating someone “merely as a means” implies either that you act selfishly, or that you use that person as a vehicle to reach some other goal (which is not shared by the person.) It means ignoring that person *as a person* with his or her interests. Treating a person as an end means taking him or her seriously as an equal human being with interests that ought not to be ignored just to further some other end. Note that Kant does not say we should treat other agents *only* as ends in themselves; the demand is (somewhat) more modest, namely that one should always treat other agents *also* as ends in themselves. ER tracks many aspects of common sense morality (at least as it is perceived in many respects in western

⁴ The idea of rights being trumps is beautifully laid out in from Dworkin(1984).

⁵ For this, see Gjerris, Nielsen, and Sandøe (2013).

liberal democracies), and it is also encapsulated in various forms in some of the most important regulatory and legal frameworks relevant for businesses. For instance, all legal codes incorporate notions such as a negative right not to be killed, property rights against stealing etc. Especially relevant for CSR-purposes are the human rights charter and similar regulatory codes, such as the UN Global Compact.

2.3.4 *The Ethics of Rights and CS*

Few, if any, companies working with CSR would openly say that they flaunt human rights – at least insofar we are speaking of negative human rights. Companies don't officially steal, lie, kill etc. Hence, the ethics of rights is in practice informing at least some of the already existing CSR-practices. However, a key question is whether companies are in fact conscientiously following something which a proponent of ER would find satisfying. Treating other agents *always* as ends in themselves seems to imply a "duty of care" that goes well beyond what most companies think they are morally bound to. It seems to make many actions, such as firing personnel, outsmarting business opponents, polluting in ways that do not benefit some other parties etc. much more ethically problematic, though they not necessarily outright morally impermissible (it is possible, for instance, to fire people in ways that take their interests into account). In general, a CSR-policy heavily informed by ER will emphasize the rights and moral dignity of all agents that are affected by the actions of the business. A key notion here is *respect*; respect for all involved agents, in virtue of their standing as proper rights-bearers. On the face of it, this makes ER especially relevant for global contexts where (equal) respect for persons adhering to different sets of beliefs and cultures is in demand. The emphasis on respect can of course take many different forms. But generally, it seems to imply models of corporate governance where all important actions are carefully scrutinized from the point of view of rights—"do we respect the rights of affected agents?"—and where key members of the organizations are held accountable for their actions. If we return to the dilemma concerning reducing CO₂ emission, which (assumingly) will promote future well-being, versus assisting needy people today, supporters of ER will typically focus on whether companies CO₂ emission can reasonably be expected to harm anyone (now or in the future). If CO₂ emission is considered (substantially) harmful, then most versions of ER seems to imply that companies should reduce their CO₂ emissions, even if it can be demonstrated that it will promote far more well-being to use the resources to fight poverty and diseases in Africa. The key point, as we elaborate on further below, is that supporters of ER generally consider harmful actions to be morally worse than harmful omissions.⁶

⁶For further reading on the (admittedly multi-faceted) relation between ethics of rights and CSR, see, e.g., Arnold and Harris (2012).

2.3.5 *Contractualism*

Contractualism, as we understand the idea here, is a basic ethical theory that represents a full-blooded alternative to both utilitarianism and the ethics of rights, even though it is also fair to mention that it has clear affinities to the latter. The key idea of contractualism is that normative truths—normatively relevant propositions—are defined *procedurally* as the outcome of (in almost all cases) *hypothetical* “contracts” or agreements between the relevant agents. Hence, a normative proposition is true or justified just insofar all relevant and reasonable agents *agree* or *should agree* with it. *Reciprocity* and *mutual acceptability* are key terms. Note the term “reasonable”. Almost all contractualists agree that reasonability is a necessary condition for an agent to be presumed to enter into the contract. Reasonability can in essence be defined as the willingness to corporate on fair and equal terms with other agents, given their reciprocal reasonability. Hence, “reasonability” goes a long way towards weeding out outrageous, egotistic or frivolous claims. Naturally, this presupposes some form of equal bargaining field: the consequences of a “contract” agreed to under coercion or duress is not for that reason a valid one. Due to the procedural nature of contractualism, it is difficult to come up with a well-defined set of normative principles that is uniquely representative of contractualism. Different contractualist will disagree as to precisely which substantive propositions and principles reasonable persons would or should agree to. However, contractualist principles will often not allow for some of the actions that utilitarians in principle mandates, such as sacrificing the welfare of a few in order to increase the welfare of the many. The reason is quite simple: few would agree that it is justified to sacrifice *their own* interests completely in order to promote the interests of others. In short, due to the reciprocal nature of contractualism, the theory offers strong protection to all parties, and especially to those in a weak, real-life bargaining position. On the other hand, contractualism might diverge from some key principles in the ethics of rights. If, for instance, lying is downright forbidden by the ethics of rights, it might be the case that reasonable agents trying to find principles that should guide our everyday interactions will allow for such things as “a white lie” or lying when it serves to protect people against hurt feelings.

Contractualism in various guises has played a major role in CSR and business ethics. There are several reasons for this, one being that influential and important moral and political philosophers (Habermas, 1983; Rawls, 1999; Scanlon, 1998) have proposed philosophical programmes that are implicitly or explicitly identifiable as contractualist. But perhaps even more importantly is the fact that the idea of a “contract” seems to fit the relation between businesses and society very nicely on an intuitive or allegorical level: there is a (to some degree but not wholly) explicit contract between the two: businesses are expected to deliver goods and services, to produce a surplus and provide jobs and opportunities etc., it is obliged to follow the

law and special regulations not relevant for other legal agents. On the other hand it benefits from special permissions and privileges such as the right to managing and distributing work, to profit from its employees work, to have status as a legal entity etc. However, one should not focus solely on this quasi-empirical notion of the contractual relation between business and society if one wants to grasp the key notions of contractualism. The *actual* or implicit contracts between business and societies are not necessarily justified (or lends justifiability) in the way contractualists envisage.

Contractualism and CSR: A CSR-policy informed by contractualism will necessarily emphasize the key issues *reciprocity* and *mutual acceptability*, alongside the notion of reasonability. Imagine, for instance, that a company must decide between different ways of upgrading its means of production. It can either (a) opt for a cheap solution that pollutes on a high level or (b) a more costly one that reduces pollution. Imagine, moreover, that the pollution will (negatively) affect parties that in no discernible way benefit from the pollution. Other things being equal, what should the company do, as seen from a contractualist perspective? Clearly, some relevant parties might have no problem with option a). Shareholders, customers, and employees might prefer option a) if it is more cost-effective. However, from the contractualist perspective mutual acceptability is, as emphasized, a key notion, and it is conceivable that parties that do not in any sense benefit from the increased pollution could reasonably exercise a veto over the decision to go for the cheaper, more polluting option. This is of course subject to a lot of qualifications. It could, for instance, be argued that even though the negatively affected third parties do not benefit from *this* particular instance of pollution, they *do* benefit from a (contractual or quasi-contractual) system that allows businesses to pollute at *some* level in general. However, as a means of illustration the example stands: a company whose CSR-policy has roots in contractualism should use moral imagination to take into account the general and mutual acceptability of all their important business decisions. Alternatives where such an agreement is unlikely should, all things being equal, at least, not be pursued. With this in mind let's return to our example concerning reducing CO₂ emission versus assisting needy people today. It is worth to notice that this example differs in various respects from the above case concerning pollution. First of all, in the CO₂ example we might imagine that the needy people of today might protest if companies choose to take (expensive) steps to reduce CO₂ emission instead of fighting poverty. On the other hand, if the price for not dealing with the treat of climate change is very high, then such protest might not be considered reasonable, and (most) companies should therefore focus on reducing their CO₂ emission. Again (as it was the case for the utilitarians) a lot depends on the expected future negative impact of not taking (expensive) steps to reduce CO₂ emission. Notice, that a contractualist approach to CSR might thus very well imply that some companies should prioritize to reduce their CO₂ emission whereas others should focus more on assisting needy people today—the key point is when specific CO₂ reducing steps can be said to be something that reasonable

parties would agree to - and thus something that reasonable agents ought to agree upon.⁷

2.4 Some Key Ethical Issues for CSR

When constructing or revising the company's CSR policy, business leaders are confronted with a vast number of ethical challenges. In this section, we will focus on two of the most important. First we discuss whether companies should focus solely on *avoiding harmful actions*, e.g. refraining from paying bribes and discriminating, or whether they should also focus on *actively doing good*, e.g. assisting needy stakeholders after an earthquake in the local community. This question concerns the debate about positive and negative rights, i.e. whether companies should focus mainly on respecting negative rights, e.g., the right not to be discriminated against, or whether they also should respect positive rights, e.g., the right to health and education. Secondly, we discuss the *scope* of companies' obligations, i.e. which stakeholders (or other groups) they have an obligation towards and to what degree. Should companies, as suggested by utilitarianism, focus more on the needs of the poor and hungry, or should they stick to the current practice and focus mainly on their (close) stakeholders? And, if they should, are the interests of some stakeholder groups more important than the interests of other groups? We will begin by looking at the question regarding positive and negative rights in regards to CSR.

2.4.1 Positive and Negative Rights

Should companies' CSR policies focus solely on avoiding harm, i.e. respecting negative rights? In answering this question it might be a good idea to start by briefly looking into what companies actually do. Probably, the most widespread of all CSR standards is the UN Global Compact (UNGC) principles, where the focus is mainly on respecting negative rights. It seems accordingly that companies' main focus is on avoiding harm (against negative rights) rather than promoting the good. However, two points are worth noticing. First, even though the UNGC charter mostly concerns respecting negative rights, it also contains elements regarding positive duties, i.e. duties to actively do good. Companies are thus not only signing up for respecting negative human rights, they are in fact also committing themselves to

⁷ Although much early CSR-theory and business ethics revolved around notions of "the social contract" between society and business, not overly much has (yet) been written on the relation between contractualism as we define it here and CSR, despite contractualism's recent rise in moral and political philosophy. For some reflections akin to those made here, see Sacconi, Blair, Freeman, and Vercelli (2010), Chaps. 1, 7, 8.

support and promoting these rights, which mean that they are committing themselves to engage actively in human rights projects. Secondly, studies indicate that companies also feel that they have positive obligations toward needy stakeholders (Frederiksen, 2010). This means that a company deciding to focus *solely* on avoiding harmful actions would be going *against* common CSR practice.

In addition, what arguments would support such a position? None of the basic ethical theories discussed above implies that companies should focus solely on respecting negative rights. Utilitarians would definitely reject such a position, because it would be absurd to think that we always maximize the total sum of well-being by focusing solely on respecting negative rights. Supporters of contractualism would reach the same conclusion; we have reasons to reject principles that give moral agents the right to ignore positive rights altogether. Or they would argue that reasonable agents (behind the Rawlsian veil of ignorance or engaged in a Habermasian ideal discourse) would not accept a contract that involves that companies should focus solely on respecting negative rights. The same goes for (most) supporters of theories of rights. You are not respecting other people solely by not violating their negative rights. For instance, if a child is drowning in a lake and we are able to save it just by wading in and pulling it out, most rights advocates (except maybe a few very hard core libertarians) would say that we have a moral duty to save the child. The same goes for states: most theories of rights seem to imply that states should not only enforce negative rights but also promote positive rights, e.g. the right to health care and education. There seem to be no reason why the same should not be the case for companies. Some, including Donaldson (1993), argue that we should not expect the same kind of benevolence from companies as we expect from people and states, since companies are *designed* for a different purpose. Companies are designed to make profit, not to do good. There are several problems with this kind of argument. First of all, it does not seem to be especially directed against companies having an obligation to promote positive rights, since it might as well imply that companies should not respect negative rights in the first place. Secondly, a company's purpose is decided by persons (not by "nature", whatever that means), which means that the purpose might be defined differently, e.g. the purpose is not just to make a profit, but to uphold and promote some negative and positive rights *and* make a profit.

We have argued that the prominent ethical theories considered in this article imply that it is not, in principle, justified if CSR-policies focus *solely* on respecting negative rights (albeit pragmatic considerations can justify it; we will get back to this point in the discussion below.) However, a different question is whether CSR-policies should focus *equally* on negative and positive rights, or even *more* on positive than negative ones. We cannot adequately deal with that question here, but just to sketch some implications of the various theories, we can note that utilitarians would say that this is an instrumental consideration: whatever promotes well-being the most should, at the end of the day, be the basis for a company's CSR-policy. The implications of both theories of rights and contractualism would differ according to which specific account of morality they provide. Clearly, a libertarian or "classic liberal" ethics of rights would emphasize negative rights over

positive ones. On the other hand, a contemporary social liberal theory of rights, such as proposed by rawlsians, can be construed as giving equal importance to negative and positive rights. A similar fissure can be found in contractualist theories: some would say that we have reason to accept a wider range of negative rights than positive ones, whereas others would argue that they are on an equal footing.

2.4.2 *The Question of Scope*

However, if a company, on the basis of the above, decides that its CSR policy should focus both on avoiding harmful actions and on actively doing good, a new problem appears, namely the problem concerning scope. The question regarding *whose* (rather than *which*) rights companies should uphold and secure becomes a lot more difficult in relation to positive rights than in relation to negative rights. Unlike respecting negative rights, which a company (at least in theory) is able to do universally, securing positive rights, or fulfilling positive duties, is not something a company is necessarily able to do for everyone. Since a company cannot take care of all the problems in the world, it has to decide which persons it should assist. (Of course, the question of “which agents should we count as morally relevant” arises irrespectively of one’s view concerning positive and negative rights; the point is that it becomes more pressing as one accentuates positive duties and rights.)

A popular way of trying to define this scope is by focusing exclusively on stakeholders, ordinarily understood as the customers, employees, suppliers, shareholders and the local community (Freeman, Harrison, Wicks, Parmar, & Colle, 2011). According to some of the most prominent stakeholder theorists, including Freeman and Phillips (2002) stakeholder theory rests on a libertarian foundation. Whether this is correct is still heavily debated, see for instance Stieb (2009). However, if Freeman and Phillips are correct, stakeholder theory seems to be in accordance with at least one of the above basic moral theories, namely the theory of rights (or at least a specific version of it). A stakeholder approach to CSR implies that companies are (at least under normal circumstances) not obligated to assist needy non-stakeholders, ordinarily excluding the vast majority living in the poor parts of the world.

Stakeholder theory might seem like a good solution on a number of counts. First of all, it seems to benefit not just the beneficiaries but also the company itself. Secondly, even though there is some discussion regarding who should count as stakeholders, stakeholder theory still seems to limit the number of potential beneficiaries to a clearly identifiable group and to limit companies’ obligations to an acceptable (understood here as manageable) number of people or groups. That being said, stakeholder theory faces three hard questions. First, how should companies prioritize *within* the stakeholder groups, i.e. what should companies do in cases of conflicting interests between the stakeholders; e.g. owners and employees might have conflicting interests. Second, to what degree are companies obligated to

assists needy or vulnerable stakeholders. Are they, for example, obligated to pay wages that enable its workers to provide food and shelter for themselves and their families, or are they only obligated to pay its workers in accordance with the minimum wage of the country where the factory is located, however low that might be? Third, are there any convincing moral arguments that support a stakeholder approach to CSR, e.g. are stakeholder theorists able to defend their position against less excluding positions? As regards the first challenge, companies can basically choose between three different approaches. First, companies can construct a stakeholder ranking list, where they rank the different stakeholder groups in order of desert thus that in cases of conflicting interest, the company should (under ordinary circumstances) choose in favour of the highest ranking stakeholder group. Such an approach seems to be supported by Kaler (2009). Second, companies can choose a utilitarian inspired strategy and prioritize between its stakeholders on the basis of which acts results in maximizing the total *stakeholder* sum of well-being. Third, companies can construct some kind of hybrid and try to include both of the above positions. Concerning the second challenge, companies can choose to limit their obligation by operation with a threshold, e.g. we only assist stakeholders below (or in risk of falling below) a certain standard of welfare. Finally, as concerns the third challenge, companies might try to build a case for stakeholder theory by referring to so-called agent-centered arguments, i.e. arguments where the relation between the agent and the potential beneficiary plays an important part in regards to the agent's obligation to assistance. A classic example of such a relation that denotes special obligations is friendship. As Scheffler (1997) notes, special obligations are a necessary condition for having valuable relationships, since we cannot value a relationship with another person without seeing ourselves as having special obligations. A friend that does not prioritize the needs of his friends over the needs of strangers is no friend at all. Note that agent-centered arguments not only concerns close relationships like friendship. Some supporters of contractualism, including Rawls (1999) defend special obligations toward fellow compatriots, and companies might try to use these ideas as point of departure to develop a defence for a stakeholder approach to CSR. Some theorists believe that this strategy is problematic. The key allegation is that "special obligations" are in some important sense morally arbitrary. If, for instance, morality asks us to respect all persons, then it seems arbitrary, from the moral point of view, that you happen to be a rich stakeholder with lots of institutions (including companies) that should care about your rights and your well-being, and that some poor person a third-world country do not have any relevant "stakeholder connections." It hence seems arbitrary to support one's local community and not more needy non-local communities. We will not, however try to settle the matter here. Our objective is to point out that the question regarding the scope of ethically relevant persons seems to be one of the most challenging *ethical* questions regarding CSR.

2.5 Concluding Remarks

2.5.1 *CSR and the Division of Moral Labour in “Reasonably Just States”*

We have mentioned that some theorists, including Donaldson (1993) argue against ethical CSR on the basis of an argument saying that businesses are not designed to promote ethical goals; they are designed to make profit. We have rejected that position, but there is a much more powerful version with some of the same implications available. Roughly, the argument asserts the following: in reasonably just states, it is the job of governments (i.e., of democratic institutions) to pursue ethical agendas. Governments define good laws, tries to pursue some ideal of social justice etc. Businesses are of course restricted by these laws. But within this restricting legal framework, businesses should simply pursue the maximisation of profits, for the benefit of consumers, employees, shareholders, and, of course, the taxman. In short, there is, or should be, a form of “division of moral labour” between the state and private enterprises. If the premises are true, then of course this is an extremely strong argument. However, there are two countervailing reasons to be sceptic here. First, the argument relies on the state being “reasonably just”, and that the state is in fact at least somewhat effective in its endeavour to make good laws and secure social justice. This is of course a matter of deep controversy. Maybe it holds in some countries in some respects, but it is also fair to say that this does not hold universally. And even if it holds for some countries, it does not give companies any reason to relax their CSR-policies vis-à-vis their relations to stakeholders in countries with less-than-ideal political institutions. Also, many companies operate in states that cannot be described as well-ordered or reasonably just. In such cases the “division of labour argument” does not even seem to get off the ground. Secondly, even in an ideal state, state institutions cannot be all-knowing. In short, companies might have detailed, local knowledge (e.g., as concerns the local environment, or the plight of unemployed or marginalized minorities in the local areas of their businesses) which surpass that of the state.

If these reflections are true, then even the powerful “division of moral labour”--argument cannot justify a purely instrumental approach to CSR. We hence seem to be left with a choice between the ethical and the hybrid solution. The hybrid solution seems as mentioned above far from convincing, since it is highly unlikely that ethical and financial considerations always coincide. Therefore we end up with the ethical solution as the most reasonable approach to CSR. However, this raises a wide range of challenges. Especially difficult are the questions about which approach to ethics one should choose and what the implications of choosing that particular approach will be.

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